EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Dobbie	**v**	**Paula Felton t/a Feltons Solicitors**

Heard at: **London Central** **on: 17-21 and 24-28 June 2019**

Before: **Employment Judge Gordon**
Mr J Walsh
Mr S Godecharle

Appearances

For the Claimant: Adam Ohringer (counsel)
For the Respondent: Susan Chan (counsel)

Reasons provided following request pursuant to Rule 62(3) of the Employment Tribunal Rules of Procedure 2013.

REASONS

1. In this matter, case 2301370 of 2016, Mr A Dobbie against Paul Felton t/a Feltons Solicitors we now give judgment on day 10 of the hearing.

2. The claim was presented on 21 July 2016 in the London South Employment Tribunal. It was transferred to London Central by order of 4 December 2017. The original claim included a claim of automatic unfair dismissal and a breach of contract claim. Both of those claims were dismissed on 21 September 2017. This was because at a preliminary hearing Employment Judge Frances Spencer on 18 to 21 September 2017 decided that the Claimant was not an employee but was a worker.

3. The original claim was also brought against Claire Duncan who worked freelance from time to time as a solicitor for Feltons but this claim was withdrawn as noted by Employment Judge Walker in a preliminary hearing for case management purposes on 2 May 2019 after noting that the Respondent was not relying on the defence of having taken reasonable steps in section 47B(1D) of the Employment Rights Act 1996.

4. So the claims remaining before us is a detriment claim based on alleged protected disclosures and a claim for unauthorised deduction of wages.

5. The tribunal gave various directions. On 22 November 2016 Employment Judge Martin in a preliminary hearing for case management purposes considered that the time estimate was going to be 10 days for the hearing and directed that there should be a preliminary hearing to decide the question of employment status. Employment Judge Elliott on 22 February 2017 also made some case management orders and on 29 March 2017 made an anonymity order to protect the identity of any party other than the Claimant's parents who might be a client of the Respondent firm. Employment Judge Hall-Smith on 27 April 2017 gave directions about witness statements and documents. As stated, Employment Judge Frances Spencer heard the preliminary hearing in relation to the Claimant's status on 18 to 21 September 2017 and on making that decision dismissed the unfair dismissal claim. She listed the matter for 10 days starting 5 November 2018. Employment Judge Mason on 4 October 2018 made further directions orders including an order in relation to disclosure of documents. Employment Judge Walker on 2 May 2019 noted that the issues were as presented to Employment Judge Mason earlier in October and noted that the Claimant had withdrawn the claim against Claire Duncan, and made orders in a further effort to ensure that disclosure worked smoothly.

6. On 9 May 2019 the Claimant sent to the tribunal his schedule of loss as he had been directed to do. On 13 May 2019 tribunal was notified that there were difficulties agreeing the bundle and with disclosure issues and in agreeing the chronology as had been directed by the tribunal. Employment Judge Walker on 14 June 2019 left it to the tribunal hearing the matter to deal with such issues leading up to the hearing.

7. Despite the efforts of the tribunal therefore to ensure that a bundle of documents was created for the hearing sufficient to enable the matter to be determined with efficiency, this did not happen. Instead, the tribunal was given bundles by both sides, so the tribunal had a total of no less than 16 loose leaf folders. Most of the relevant documents were duplicated in different folders, many were truncated or written on, often the chronological sequence in the files was broken or non-existent, and many were improperly page numbered or not referenced in the index properly or at all. As it turned out, the documents to which we were referred could have been fitted into three loose leaf files.

8. How did this happen? Well each side blames the other and it is not for the tribunal (at least at this stage of the proceedings) to lay the blame on one side or the other. But the tribunal thinks that this is a manifestation of the intensity of the dispute and lack of trust which has developed between the two sides, both of whom are solicitors and who were responsible themselves to prepare their own cases. The necessary co-operation was not there. Counsel instructed at the hearing did their best to ensure that the hearing was conducted as efficiently as possible but there is no doubt that that number of bundles, the duplication of documents and lack of chronological order caused difficulties for them, the witnesses and the tribunal. That, and numerous breaks and lost time, meant that the hearing took longer than it would otherwise have taken. Thankfully the issues in the case were agreed seemingly with the assistance of counsel, and helpfully counsel also presented us with an agreed bundle of authorities.

9. We have strictly limited ourselves to those issues because they define the evidence which is relevant to enable us to determine the case and to ensure that all participants are aware of the nature and extent of the dispute.

10. When discussing these issues with the parties at the commencement of the hearing, it was clear there were two more difficult issues which were more efficiently left until the end of the main case. One was the question of remedy should we find in the Claimant's favour in his detriment claim. This was because there were difficult issues disclosed in the schedule of loss and in the counter schedule concerning mitigation, and other issues of contention where there had not yet been full disclosure. In that respect we told the parties that if we found in the Claimant's favour in the detriment claim we intended immediately to proceed to deal with remedy so that they should ensure the necessary disclosure had been done to enable that to happen. We did however, in discussion with the parties, agree that we would reach a conclusion when deciding liability on the detriment claim, on the question of how long the Claimant would have remained working for the Respondent under his consultancy agreement if it had not been terminated as a result of making the protected disclosure. That issue involved a consideration of whether he would have left of his own accord or whether the consultancy contract would have been determined anyway for a reason unconnected with the protected disclosure or for any other lawful reason.

11. There was also another part of the claim which was difficult to deal with in the main part of the hearing and that was the claim for unauthorised deduction, although an understanding of the principles to apply to that claim could be reached when dealing with the detriment claim, the fact was that resolution of that claim required further information and possibly documents to be provided by the Respondent for the claim to be calculated. There seemed to be good prospect that upon that information being given, the claim could be agreed. And counsel have been working towards that as the main claim has progressed. The tribunal will need to revisit this part of the claim after delivering this judgment.

12. Turning therefore to what we need to consider in the main part of the case with which we are dealing now, we would briefly describe the claim as that the Claimant was subjected to a detriment under section 47B of the Employment Rights Act 1996. Under that section a worker has a right not to be subjected to any detriment by any act or any deliberate failure to act by his employer as widely defined in section 230(4) of the Employment Rights Act 1996, done on the ground that the worker has made a protected disclosure.

13. Section 47B(1A) deals with acts done by another worker of the employer, and in this case it is relevant to the alleged acts done by Claire Duncan The disclosures qualifying for protection are listed in section 43B and a disclosure must be made in the reasonable belief of the worker that it is made in the public interest and it must tend to show one or more of the things in the list (a) to (f). The ones we have been studying in this case is (a) concerning a criminal offence, and (b) concerning a failure to comply with a legal obligation to which the person is subject.

14. We need to point out that during the hearing the Respondent expressed some concern that we might make a finding whether or not the Respondent firm had

breached the Solicitors Accounts Rules because that is one of the ways in which the claim has been put under section 43B. That is certainly not within our remit. We declared that we would be determining whether or not the Claimant held the reasonable belief that the disclosures or any of them were in the public interest and whether any such disclosure tended to show one of the things in section 43B of the Employment Rights Act 1996, but that that issue did not require us to make a finding of fact whether or not the Solicitors Accounts Rules had or had not been breached, and we would not be making any such finding.

15. Although the Claimant said in his witness statement and repeated in evidence that he also relied on another protected disclosure on 2 November 2015 (paragraph 32 of his first witness statement), in fact this was not before us as an alleged protected disclosure.

16. To resolve the issues in the case that we are determining now we heard from the following witnesses. We heard from the Claimant and read his four witness statements although the third and fourth were only of partial interest for these matters.

17. We heard from a person we shall call 'MB' who was a director of client 'M'. We read the witness statement of Rachel Robertson. We read the witness statement of a person we shall call 'RW' who was property manager for client U. We read a statement from John Crosfill who was counsel in the mediation concerning the Claimant's parents case. We read the statement of James Driver who was a consultant solicitor appointed by the Respondent at some point. We heard in person from Claire Duncan who was a consultant solicitor. We read the statement of Lorraine Hannon and read the statement of Norman Makin who was an expert instructed by the firm in a certain matter. We read the statement of a person whom we will call 'MR' who was client manager for client 'A', and we heard from the Respondent Paula Felton.

18. As stated, we received a large number of documents which were in disarray but we were also given four other documents. There was R1 which was a list of the Claimant's invoices, R2 which was a schedule of the Claimant's fees; R3 which was a signed witness statement from James Driver and R4 which was a signed witness statement of MR from client A.

Facts

19. We now recite the facts from which the issues can be understood and decided.

20. The Claimant had been working with the Respondent firm as a paralegal since 2010 and was admitted as a solicitor whilst he was with the Respondent firm on 3 March 2014. He is also a barrister having been called to the bar in 2006 although he did not undergo pupillage. In the period with which we are concerned, he was engaged under a consultancy agreement dated 6 March 2014, that is R1. It was for a fixed term of six months but it was renewable. Under the consultancy agreement he was to receive 40% of his fees billed and paid, but this increased to 50% for clients he introduced to the firm. The consultancy agreement had not been formally renewed at the end of each term but had rolled

over by implication. It was terminated on 15 March 2016 by an email sent to him on that date by the Respondent.

21. The Respondent firm was operated by Paul Felton who was its principal.

22. Client A was an important client for the firm. It was by far the firm's largest client and had been a client for many years. The work done for the client was both before and after litigation had commenced. The claim was a high value one, it was complex, and decisions had to be made about which parties should be added both before and after the litigation had commenced, as to which limitation period applied and from what date, and also about possible arbitration of the dispute. The claim also had an international element. Over the time with which we are concerned, the Claimant had conduct of the file and was being paid on the basis of 50 hours per month receiving 40% of the fees paid by client A.

23. In this claim there is a reference to the Claimant's parents being clients in a particular matter. They had brought a claim against their builders whom they had engaged, and they instructed the Respondents to represent them in that dispute. The Claimant was the solicitor who had the conduct of that claim. The claim was settled in a mediation on 25 November 2015.

24. The list of issues describe the disclosures relied on by the Claimant. Firstly there is an alleged protected disclosure on 29 February 2016 which is in Q bundle page 485 which is said to have disclosed information tending to show that the Respondent was billing client A incorrectly.

25. The second alleged protected disclosure is on the 2 March 2016, bundle Q page 451, in which the information which was disclosed was that the Respondent was billing client A incorrectly and that she had misrepresented to client A that an expert insurance litigator had been engaged on the matter.

26. The third alleged protected disclosure relied on is on 4 March 2016 in Q bundle page 464 that the Respondent was billing client A incorrectly, that the Respondent had misrepresented to client A the engagement of an expert insurance litigator and that the Claimant had suffered an unlawful detriment on 3 March 2016 as a whistleblower.

Considerations

27. In the list of issues we are asked to say whether any of the disclosures qualify as protected disclosures under section 43B of the Act. If we find that any of them were protected disclosures, then we would go on to find whether the Claimant had been subjected to any detriment because of the protected disclosure.

28. So we turn to the first alleged protected disclosure in the list of issues. And that is the email of 29 February 2016.

29. On our finding, the email did disclose 'information' because it informed the Respondent that the work done which in an assessment of costs by the court could properly be put forward as the costs incurred by client A, was the work that the Claimant had done as well as various meeting attendances. That is in the

second paragraph in Q457 which begins 'I do appreciate you have been copied in' and ends 'in the January Stuttgart meeting'. The email said that on that assessment it could be found that the additional work done by the team (as opposed to himself) was limited to 50 to 100 hours over a 5 months period. That is the first paragraph on Q457 which starts 'I do not think that on a detailed assessment of costs' and ends 'may well later be a gap in the recovery'.

30. The part of the email at (iii) on Q457 which refers to how the matter could be corrected, only suggests that the correction could be made on future bills, not that past bills could be amended. The past bills being pages 911, 1605 and 1615 in the C bundle.[1]

31. So on our findings the overall effect of these parts of the email is to suggest that the firm had overcharged the client for the work done.

32. Having heard from the Claimant we are satisfied that he held the belief that this overcharging was a breach of the firm's legal obligation to the client but also a possible breach of the Solicitors Accounts Rules, and therefore could be a breach of a legal obligation under section 43B(b). The possible breach of the Solicitors Accounts Rules would have arisen from the need to ensure that the amount charged on an interim bill corresponded with the amount of work that had actually been done.

33. And in our view this was a reasonable belief because the Claimant was the solicitor with the conduct of the file over the period to which the bills applied, up to this alleged protected disclosure and beyond, and he had no reason to believe that other fee earners were doing any work on the case of which he was unaware. This is confirmed by the correspondence we have seen, showing he was heavily involved in the preparation of the claim to prepare for the next stage in the litigation, that is the proper service of the claim form and preparation of the particulars of claim with the assistance of leading counsel.

34. But we also know that the Claimant was aware that (a) the Respondent herself and Claire Duncan were doing a lot of work on the case for client A and (b) at this time he was being more closely supervised by the Respondent in his work for client A than he had been before. But we think this was insufficient to make it unreasonable for him to hold the view that he did, that is to say that there was less work done for client A in the team than had been submitted on the invoices to client A. This is because the he was aware that (a) and (b) was largely not to be billed to client A, because it largely arose from the need to sort out problems which had arisen from the service on behalf of client A of a defective claim form.

35. Relevant to our view on this first disclosure is what happened at a meeting in Stuttgart. That was a meeting held with client A which the Claimant attended. There is a dispute about whether the Claimant was in attendance at the meeting throughout or whether he attended later in the meeting. We accept the Claimant's evidence that he attended later in the meeting. We say that because it is more consistent with what was said by other attendees at the time when he said he arrived. We believe that anything to the contrary in the transcript arises from

[1] The numbers being on the top right hand corners.

inaccuracies in the transcript which he described to us in his evidence. The relevance of this dispute was that if he had attended earlier in the meeting he would have become aware of work done by other fee earners for client A which he was not previously aware of. He knew from the part of the meeting he did attend that he would remain as solicitor with conduct of the case. We note in passing that he was praised for his work for client A at the meeting by the Respondent in his absence, a matter which would be of relevance when we consider why his consultancy agreement was terminated.

36. We turn therefore to the question whether the Claimant reasonably believed that the disclosed information was in the public interest. We do not think that the email demonstrates that the Claimant believed when he sent it, that the information disclosed in the email would enhance the protection of the public or a section of the public from solicitors who in their interim bills overstated the hours spent on working on cases. Instead, the Claimant's belief as appears on the face of the email was that by disclosing the information the prospects of client A in an assessment of client A's costs following a successful court action and a costs order in client A's favour, would be enhanced. Also we note that there was nothing in the email showing that the Claimant was talking about a solicitor-client assessment of costs, that is to say an assessment of costs between client A and the firm itself. So there is nothing to show he had a reasonable belief that the disclosure of information in the email would affect such an assessment. If that had appeared in the email it might have required us to take slightly different approach.

37. Hence it is our finding that email did not disclose information which demonstrated that the Claimant held a reasonable belief that it was in the public interest. It demonstrates that he had a reasonable belief that it was a private matter only.

38. We have had regard to the Claimant's detailed discussion of this issue in his witness statement and in his oral evidence and as submitted before us. But this is all after the event. Although case law does suggest this is not irrelevant and therefore we have taken it into account, we have also had to take into account the way he has prepared this case generally and the way he gave evidence. It is clear that he has applied considerable research and consideration into this and into other issues and we think it was difficult for him as it for us, to separate the thoughts which emerged from that work from his reasonable belief when he wrote that email. For this reason we get most help in assessing his reasonable belief at the time, from the wording of the email itself, taking it of course in its context as known at the time to the parties which includes the email to which he was responding (that is, the email of 26 February 2016 at Q440).

39. Our conclusion on the first alleged protected disclosure therefore, it is that it was not within section 43B.

40. Turning to the email relied on as the second protected disclosure which is the email of 2 March 2016 at Q451, the Claimant alleges that he gave information in this email that the Respondent was billing client A incorrectly and that the Respondent had misrepresented to client A in an email that an expert insurance litigator had been engaged. Dealing with that second point first, the email the Claimant was talking about is 9 February 2016 at R668, written by the

Respondent to client A. It informed the client that the Respondent had acquired one of the best insurance litigators in the country 'to assist me in the case'. The Claimant says that the Respondent had misrepresented this fact to client A, because he believes that the expert insurance litigator had not in fact been appointed. The Claimant says that this tended to show a breach of a legal obligation owed by the Respondent to client A. But on our findings it is difficult to discern that this information was given in this email. When considering this it is necessary to consider it in its context. That is to say what was known to the sender and the recipient at the time including the earlier correspondence which includes the earlier alleged protected disclosure. This email was either saying what the Claimant now says it said or alternatively it was merely expressly his concern that (a) his confidence in the firm and the firm's apparent trust in him had been undermined by not being told of any such appointment, and (b) about the client being told about the firm's intention to manage him off the case. We think the email merely says (a) and (b) and does not say that the Respondent had misrepresented to client A the fact of the appointment of the expert insurance litigator. Further we do not think this email discloses information about incorrect billing as contended for in the list of issues. We cannot see this in this second disclosure.

41. So on our findings the second alleged protected disclosure does not come within section 43B either.

42. The third disclosure is an email dated 4 March 2016 and is at Q464. That is said to disclose information that the Respondent was billing client A incorrectly, that the Respondent has misrepresented the engagement of an expert insurance litigator to client A and that the Claimant had suffered an unlawful detriment on 3 March 2016 as a whistleblower.

43. We accept that in paragraph 4 of this email there is a restatement of the allegation made in the first alleged protected disclosure but on our reading it does not enlarge on what was said in the first one and there is nothing here enabling us to find that in this respect it was written in the reasonable belief that the disclosure was in the in the public interest.

44. As for the suggestion that the email disclosed that the Respondent had misrepresented to client A that the Respondent had appointed an expert insurance litigator, although the appointment is mentioned at point 5 on Q468 we cannot see that this contention is made out.

45. As for the suggestion that the email disclosed that the Claimant had suffered an unlawful detriment on 3 March 2016 as a whistleblower, the email does suggest there were certain detriments suffered by the Claimant such as not being fully paid, being locked out of his emails and no longer being invited to attend witness interviews, but on our findings since there was no earlier protected disclosure this is clearly only a private matter and therefore nothing to suggest that the Claimant believed it was in the public interest.

46. So our finding is that the third alleged protected disclosure is not in section 43B either.

47. We need to point out that in our findings about the protected disclosures we have taken into account that it is possible that the Respondent when giving evidence accepted that the emails were accusatory as the Claimant says. But we think that in her mind there was a blur between the emails alleged to be protected disclosures and later emails and complaints (for example to the Solicitors Regulatory Authority) which the Respondent found difficult to distinguish between when answering these questions. Ultimately we were not helped by this evidence. As we have said, we concentrated on the specific emails themselves taken in the context in which they were written in so far as that context appears in the oral evidence and from documents.

Conclusion on protected disclosure claim

48. On our findings therefore none of the alleged protected disclosures were protected disclosures under section 43B and the claim based on them must be dismissed.

Consideration of detriment in the alternative

49. We did hear however, a considerable amount of evidence and read many documents and received submissions about the detriments to which the Claimant was alleged to have been subjected as a result of these disclosures.

50. The most important of these detriments was the termination of his consultancy agreement and we propose to make a finding on whether or not the termination of the consultancy agreement was as a result of any of the alleged disclosures or any combination of them. We approach this by reaching a conclusion about why the consultancy agreement was terminated. On this question, we had some difficulty disentangling the evidence given by the Respondent about the complaints about the Claimant arising from events after his termination and this was not helped by different explanations given at different times by the Respondent about why the consultancy agreement was terminated. These explanations were given in the email terminating it, in the ET3, in her witness statement, and in her oral evidence given to the tribunal. Despite this, we have been able to make a clear conclusion on this issue.

51. We find that the Respondent decided on 15 March 2016 or soon before this to terminate the consultancy agreement. This appears from the fact that she signed a complaint to the Solicitors Regulatory Authority about the Claimant on that day, that is at BSB380 and accords with her evidence that she had decided to terminate some time before doing so. Over the next few days after 5 March 2016 the Respondent gathered together information and thoughts enabling her to create the email of 15 March 2016 which terminated the consultancy agreement. Certain things happened between the two dates, and also she did not tell client A nor the Claimant himself of her decision to terminate the consultancy agreement. We think these things are not inconsistent with our finding on this issue.

52. We do not think that the Respondent's reasons given in the email of 15 March 2016 for the termination were wholly accurate. Instead, we assess the true reasons for the termination of the consultancy agreement from the totality of the

evidence we heard and documents we have seen and from the likelihoods which appear from them.

53. We think the main reasons for terminating the consultancy agreement in order of importance to the Respondent are these.

54. Firstly the Claimant's insistence and persistence in his claim to be paid double his usual monthly fee for working on client A's file in January and February 2016 and continuing on an ongoing basis, which culminated in his issuing an invoice on 29 February 2016 for £27,126 which included a claim for £10,000 for each month instead of the usual £5,000 a month.[2] This demand culminated in his email of 15 March 2016,[3] in which he stated that he would do no further work for the firm unless the invoice was paid. The Respondent was unhappy about this because she believed that the invoice was excessive and had not been agreed between them. We believe that the Respondent regarded this with more seriously because she feared that potentially the Claimant could undermine client A's confidence in the firm if he informed client A about this dispute. And we think that the importance of this issue is indicated by the speed with which the termination email followed the Claimant's email of 15 March 2016 in which he said that he would do not more work unless this amount was paid. The Respondent's evidence about the importance of this issue also leads us to this view.

55. The second reason for the ending of the consultancy agreement of importance to the Respondent is the Respondent's disagreement with the Claimant about how he had handled his parents claim. In particular he claimed to have agreed with the Respondent that he would be receiving 100% of any fees owed to the firm by the parents on this retainer, which the Respondent believed was not agreed. The Respondent's position was that the Claimant was only entitled to 50% of those fees which was the usual arrangement in the consultancy agreement for introduced clients.

56. Allied to the Respondent's disquiet about this issue was the Claimant decision not to bill the parents after all following the successful mediation of their dispute with the builders. The Respondent considered that this decision put the integrity of the firm and of herself at risk because she had attended the mediation meeting and had stated to counsel on the other side that there was a true indemnity in place between the parents and the firm. Closely connected to this issue was that the parents were disputing the bill of counsel who had been instructed on their behalf which at that time remained unpaid. Since counsel had been instructed by the firm and not directly by the parents it meant that the firm was exposed to sanction arising from the non-payment.

57. The third reason we think for the termination of the consultancy agreement in order of importance is the Respondent's concern over the Claimant's competence, and this arose in particular from the way in which he had handled the service of an earlier claim form for client A which resulted in considerable

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2 Bundle C page 1893.

3 Bundle R page 730.

unpaid work which had to be done by the Respondent herself and by Claire Duncan.

58. We do not think the complaints alleged to have been made about the Claimant by third parties played any great part in the Respondent's decision to terminate the consultancy agreement. Nor do we think that the other matters referred to in the email of 15 March 2016 played any great part in the decision to end the consultancy agreement.

59. It follows that on our finding the disclosure of the information alleged to be the protected disclosures in the issues, had little influence on the decision to terminate the consultancy agreement.

Claimant's prospects with the firm

60. A final question which is before us is how long the Claimant would have remained with the firm had the alleged protected disclosures had not been made. Bearing in mind our finding that the alleged protected disclosures had little influence on the ending of the consultancy agreement, our finding on this is that it would have been terminated at the same time had the alleged protected disclosures been omitted from his correspondence.

61. That's our finding in this matter and we now invite the parties to address us on what is remaining in the case.

Costs

62. After giving our decision in this matter and after making case management orders to deal with the final part of the claim which is the unauthorised deduction of wages, an application for costs was made on the Claimant's behalf in respect of an order made on 2 May 2019 by Employment Judge Walker. That order was made to try to ensure that a sensible bundle for the hearing was prepared.

63. What is being said is that the Claimant has received a bill from Legastat for £3,000. As stated in paragraph 9.4 of the case management order made by Judge Walker, the idea was that each side would be jointly responsible for the cost of copying by Legastat so each side would pay half each of the bill. The Respondent is saying today that she is unhappy to pay half of the £3,000 bill. So a costs order is being sought today to give effect to the previous order that each side should pay half, on the basis that the Respondent is being unreasonable in conducting the proceedings by refusing to pay this.

64. The Respondent blames the Claimant for the bundle problems. The starting point for the bundle was the original bundle prepared for the status hearing. The Respondent says that the Claimant removed parts of that bundle, and so the Respondent needed to do her own bundles. She said she needed to add more documents and then she had to copy her bundles in house rather than rely on the Claimant to produce the bundles for the hearing. This is why the tribunal ended up as we say, with 16 loose leaf bundles.

65. On behalf of the Claimant it is pointed out that pursuant to the order, the Claimant did have some responsibility to identify what he thought was relevant and what was not relevant in the original status hearing bundle, and then to liaise with the Respondent about the final bundle, but that did not work as we know.

66. Both sides want the tribunal to deal with this in a summary way. It may well be that we have not had all the information or seen all the documents which would enable us to reach a very firm decision about what happened and who was to blame for the problem.

67. The summary view that the tribunal has reached is that neither side was responsible for the problem. The real problem arose from the order itself which was unworkable in the light of the fact that the parties were not cooperating in any way whatsoever, which was known to the tribunal hearing on that day. So we do not think that anyone is to blame. On that basis we think that this application can be dealt with by a simple adjustment of the amount to be paid.

68. We do think that the Respondent is now acting unreasonably in refusing to pay half the Legastat bill or an adjusted amount. On that basis we think that a costs order against her is appropriate.

69. We are going to say that there should be a deduction from the Legastat bill to allow for some of the copying done by the Respondent, which as we say is not her fault and not the Claimant's fault either. We think that the bill should be reduced by a quarter to allow for that, which means the Legastat bill is reduced to £2,250, and then the Respondent should pay half of this to accord with the original order which anticipated that copying costs should be shared equally. So we will be making a costs order in the Claimant's favour in the sum of £1,125 bearing in mind that he is legally responsible to pay Legastat in full.

Employment Judge Gordon

Dated: 4 December 2019

Sent to the parties on:

5 December 2019

For the Tribunal Office