Case No: 2204687/20

EMPLOYMENT TRIBUNALS

Claimant	**and**	**Respondent**
Ms U Baz		**Dr X, trading as NLM (Anonymity Order made)**

Heard at: Central London Employment Tribunal On: 24-25 May 2021

Before: Employment Judge Norris, sitting alone (via CVP)(V)[1]

Representation:
Claimant – Did not appear/was not represented
Respondent – Ms G Nicholls (Counsel)

JUDGMENT– PRELIMINARY HEARING

1. The Claimant's claim is struck out under Rules 37(1)(b) and/or (e) (Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013).
2. The Respondent's application for anonymity is allowed and a separate Order is made in this regard.
3. The Full Merits Hearing listed for 3-10 September 2021 is vacated (cancelled).

WRITTEN REASONS

Background

1.1 This was a Preliminary Hearing to consider in the first instance whether either party's case should be struck out. The Claimant in this case started working for the Respondent, a dental practitioner who operates a clinic in North London, as a dental receptionist at the beginning of December 2019. The Claimant describes herself as a gay transsexual male but has asked that the pronouns she/her are used.

1.2 The Tribunal had a core bundle of 337 documents for this hearing. In line with the Court of Appeal's decision in *DPP Law Limited v Greenberg*[2] I do not identify

[1] This has been a remote hearing which was consented to/not objected to by the parties. A face-to-face hearing was not held because all issues could be determined in a remote hearing.
[2] [2021] EWCA Civ 672

every piece of evidence on which I have relied in making my conclusions. However, given the Claimant's absence from the Preliminary Hearing on 24 and 25 May 2021, I have given more detail of the correspondence than I would normally give and have set out in broad terms the reasons why I reached those conclusions, so that the parties can understand what I have decided and why they have won or lost.

1.3 By claim form presented on 30 July 2020, the Claimant brought complaints of sexual orientation discrimination and arrears of pay. The Respondent defended the claim.

Chronology relevant to the preliminary issues

Claimant's representation

2.1 The Claimant had not entered the name of any representative at box 11 of the claim form. However, from 24 October 2020 onwards, emails had been sent to the Tribunal on behalf of the Claimant from the address Zeynep.ackerman@secretary.net. Notwithstanding my findings below in this regard, for the purposes of this chronology I refer to the author of these emails as Ms Ackerman.

2.2 The first of the emails was signed virtually by "Z Ackerman". It described Ms Ackerman as "an advisor" based in Turkey who was representing the Claimant. The email of 24 October 2020 made a number of serious allegations about the Respondent's conduct and said that as a result of a report made by the Claimant about him, Dr X was under investigation by the Metropolitan Police and a charging decision was awaited from the CPS. In addition, it alleged that the General Dental Council (GDC) was conducting three investigations against Dr X, arising from three different individuals' complaints.

2.3 The email required Dr X to contact the Claimant only via his representatives, Ashfords Solicitors, and alleged that he persisted in contacting the Claimant directly for the purposes of a County Court claim, notwithstanding he had instructed his own solicitor, Mr Jacobs. It appears that a communication purporting to come from Ms Ackerman had been sent to Mr Jacobs in that connection on 12 September 2020, again requiring the Respondent to contact only her and not the Claimant.

2.4 The email of 24 October concluded by asserting that the Claimant would present two witnesses and around 500 pages of evidence to the Tribunal, including some evidence from the Metropolitan Police and the CPS.

Schedule of loss issues

2.5 On 27 October 2020, Ms Bowden of Ashfords solicitors, acting on behalf of the Respondent, emailed Ms Ackerman observing that the Claimant had not complied with the first Case Management Order (CMO) in the standard directions sent out to the parties by Employment Tribunal, namely that the Claimant was to send to the Respondent by 19 October 2020 a schedule of loss. Ms Bowden requested a copy to be sent to her by 30 October,

acknowledging that the Claimant might not have had her details at the date when compliance was due.

2.6 An email from Ms Ackerman the following day said that the schedule had been sent to the Employment Tribunal and that although the Claimant would send a further copy to Ms Bowden, it would be at her "convenient time". Ms Ackerman repeatedly referred to the Claimant as her "client". Ms Bowden replied, pointing out that the CMOs required the schedule to be sent to the Respondent rather than to the Tribunal and that she had extended the deadline as a courtesy. She advised Ms Ackerman of her intention to apply to the Tribunal for a specific order in this regard, if the Claimant did not agree to supply a copy in a timely manner.

2.7 Ms Ackerman responded later that day, claiming that Ms Bowden's email had been "aggressive and abusive", although I find that it had been neither. She asserted that the Claimant had been advised by the police not to contact Dr X, to whom she referred as "the suspect". She noted that the Respondent had lodged the ET3 with the Tribunal and had not sent her a copy, and said that accordingly, the Respondent could seek the schedule of loss from the Tribunal as well. She alleged that the response submitted contained "many lies/extreme level of dishonesty" and that Ms Bowden's "scandalous and unreasonable ill behaviors" [sic] were getting out of control, observing that she proposed to apply to strike out the defence.

2.8 Based on that email it appears that there has been a misunderstanding on the part of Ms Ackerman of how the process works in terms of the initial pleadings and subsequent correspondence. The pleadings (ET1 and ET3, or claim and response) are lodged with the Tribunal directly, using the online portal or other appropriate means. The Tribunal is responsible for sending those documents out to the parties. Thereafter, however, the parties are required by Rule 92 of Schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("Rules") to send a copy to the other party of anything they send to the Tribunal (save in connection with an application for a witness order under Rule 32) unless the Tribunal orders a departure from the Rules.

2.9 I also note what may be an obvious point that where a CMO specifically directs that a party must serve something on the other side, that party should comply with the order, or apply to vary, suspend or set it aside under Rule 29. The overriding objective at Rule 2 makes it clear that Rules are aimed to ensure the Tribunal deals with matters "fairly and justly", and the Tribunal must give effect to that overriding objective whenever it interprets or exercises any power under the Rules. Parties are required to assist the Tribunal in furthering the overriding objective and in particular must co-operate generally with each other and with the Tribunal in order to do so. Hence, if Ms Ackerman had in fact sent in a schedule of loss for the Claimant at that point, she should then have sent a copy to Ms Bowden once she received her details.

Disclosure Issues

2.10 On 2 November 2020 (the due date for disclosure in compliance with the CMOs), Ms Bowden forwarded an email with a Mimecast attachment containing the Respondent's disclosure index and bundle. She asked for the Claimant's disclosure. It appears that nothing was received, because the following day, Ms Bowden applied to the Tribunal for an "unless order" under Rules 37(b)(c) or (d) (scandalous, unreasonable or vexatious conduct of proceedings, non-compliance with an Order of the Tribunal and/or claim not being actively pursued by the Claimant).

2.11 In response, Ms Ackerman emailed on 4 November, copying the Tribunal, asserting that Ms Bowden was "bombarding" the Tribunal and the Claimant with emails that had no legal merit. She requested a "restraint order" against both Ms Bowden and the Respondent and suggested the emails were part of a campaign of abuse. She did not herself attach any disclosure or say when the Respondent might expect the Claimant's evidence to be sent through. However, she included a highly offensive email (including transphobic language) purportedly sent by the Respondent to the Claimant on 7 July 2020 and again asserted that the Claimant had reported the Respondent to the Metropolitan Police, whose investigations were said to be ongoing.

2.12 Ms Ackerman asserted that the Claimant was suffering from serious mental health issues and, in apparent contradiction to her earlier message, that until the Respondent confirmed whether the Claimant had been dismissed, she could not provide a full schedule of loss. She contended that Ms Bowden had "lied" to the Tribunal in the assertion that she had served a bundle of documents on the Claimant, describing what had been sent as a "weird-looking scandalous unknown" and "scary" document and Ms Bowden/her conduct as "manipulative dishonest", legless/abusive/bullying", "angry, totally deluded and panicking". In fact, as I have noted above, Ms Bowden had embedded in her email a link to a Mimecast attachment. I do not see any reasonable basis for the descriptions in Ns Ackerman's email.

2.13 Ms Ackerman repeated the application to strike out the Respondent's defence and also sought a variation of the orders relating to the supply of a schedule of loss and disclosure between the parties. She applied additionally once more for a "restraining order" against Ms Bowden and the Respondent.

2.14 On 12 November 2020, EJ Stout refused the Respondent's application for an Unless Order on the basis it was not appropriate, given that the full merits Hearing in the case was not until September 2021. However, she did also observe that the Claimant was in breach of the Tribunal's orders and that unreasonable failure to comply might result in the claim being struck out under Rule 37. Accordingly, the Claimant was ordered to comply by 30 November 2020 "at the latest" so that the parties were ready for the Preliminary Hearing (Case Management) (PHCM) listed for 7 December.

2.15 Later that day, Ms Ackerman emailed the Tribunal in response. She again asked that her email address be used for communications about the case, saying that the Claimant was suffering "mentally/emotionally and financially as a direct result of the Respondent's hate crime/unlawful actions". Without saying expressly that the police had rejected any complaint that had been made, she indicated that the matter had been referred under the Victim's Right to Review scheme and that this remained an active police matter.

2.16 On 29 November, Ms Ackerman emailed Ms Bowden (with a copy to the Respondent's personal email address) attaching a schedule of loss in the amount of £273,923; this included over £100,000 for five years' future losses of earnings and £85,000 for injury to feelings. In other words, this is said to be a case of the most extreme and injurious nature. Ms Ackerman indicated that around "300 evidential documents" would follow in various emails over the course of the next day or so, with "around 500 more evidential documents" prior to the main hearing, which she was awaiting from "various sources, including sources in Iran/Turkey/his ex-wife, various third parties, Department work and Pension, NHS, GDC, Police and various other third parties…". Ms Bowden replied the following day indicating that Ms Ackerman should not copy in the Respondent to emails as he was a represented party and noting instead that she awaited the further 20 emails that she had been given to understand would be forthcoming.

2.17 Ms Ackerman sent an email in response to both Ms Bowden and the Employment Tribunal, the following day. Using the word "sickening" repeatedly to describe Ms Bowden/her client's conduct, she asserted that in the face of requests to the contrary, the Respondent had been contacting the Claimant directly both by post and by email. She also claimed that the Respondent had personally delivered post addressed to the Claimant to the house of the Claimant's neighbour, named as Ms Cokgezer and who, it was said, has a child with autism. Referring to Dr X's behaviour as "unlawful, scandalous, pathetic", she said that he could not make such a request not to be contacted directly, that "this is a legal country not a jungle" and that she would continue to "happily [sic] copy emails to X".

2.18 There was a further exchange copied to the Tribunal on 30 November when Ms Bowden asserted that she had forwarded the Respondent's disclosure to the Claimant, who had refused to engage with the process; Ms Ackerman claimed that these were "lies" and that nothing had been served. Ms Bowden sent a further email, again attaching Mimecast links to the bundle but also asking Ms Ackerman to let her know if there continued to be difficulties accessing it. This was later followed up with the bundle and a separate index as pdf attachments to an email of 12.02 on 3 December. I find that the Claimant did receive and could access those documents from the Respondent because there is a subsequent complaint about the extent of the redactions contained within them.

The Preliminary Hearing (Case Management) (PHCM)

2.19 On 7 December 2020, the parties appeared before me via video (Teams) for the PHCM. The Respondent was not present but was represented by Ms Clarke of Counsel. The Claimant appeared as a litigant in person and told me that Ms Ackerman was her adviser but because she is based in Turkey, she was unable to attend. We went through the claim form and drew up a list of issues, confirming the dates for the Hearing that had been provisionally listed for 3 to 10 September 2021. I made CMOs by agreement with the parties. These included, in relation to the Claimant's disclosure, that she was to send the Respondent a copy of the complaints that she said she had made to the GDC and to the police, and, in relation to the Respondent's disclosure, that he was to send to the Claimant a copy of the letter of dismissal (although this was said by Ms Clarke to be in the bundle already disclosed). The Respondent was to prepare the bundle by 12 April and witness statements mutually exchanged by 10 May 2021. The written confirmation of the Summary and Orders was sent to the parties the day after the PHCM.

2.20 I also expressly permitted the Respondent to submit amended grounds of response to the claim, having permitted the Claimant at the PHCM to make two minor amendments to the claim (to include complaints of discrimination because of gender reassignment in the alternative to her complaints of sexual orientation discrimination and to add a complaint of detriment/victimisation arising from her dismissal).

Correspondence after the PHCM

2.21 A number of emails were then exchanged between the parties over the following weeks, the gist of which is that Ms Bowden appears to have told the Claimant again that the letter of dismissal was in the disclosure bundle already supplied, an assertion with which Ms Ackerman took issue; she alleged Ms Clarke had lied about this during the hearing and Ms Bowden was lying then and that the Respondent was "sickeningly" harassing the Claimant with emails and Ms Bowden was the orchestrator of the harassment.

Amendments to the pleadings/strike out applications

2.22 Ms Ackerman on behalf of the Claimant made an application further to amend the claim on 21 December 2020. She accused the Respondent of "extreme dishonesty" in his response and alleged that he had "openly lied" to the tribunal. She repeated the allegations in relation to an email of 7 July 2020, which she replicated from the earlier message, and asserted that Ms Bowden had become increasingly abusive and aggressive.

2.23 On 22 December, an email was sent from the account of Ms Ackerman to Ms Bowden (though marked Attention of Judge Norris) contending that from 08.51 that morning, a call or calls had come through to the Claimant's personal number from the mother of a patient at the Respondent's clinic. The caller was said to have told the Claimant that her mobile was the number on the practice's answering machine. In the email, which was signed "Umut" (the Claimant's first

name), it was asserted that this was serious harassment and had been reported to the police. The application to strike out the response was repeated.

2.24 On 5 January 2021, Ms Bowden emailed Ms Ackerman to observe that the Claimant had not given full disclosure, and specifically, the complaints to the GDC and the police, relied on as protected acts, had not been disclosed by 21 December or at all, in contravention of my Order. She asked for copies to be sent by 12 January 2021.

2.25 On 7 January 2021, Ms Bowden emailed the amended grounds of resistance and objections to the Claimant's applications to the Employment Tribunal and to Ms Ackerman. In light of my conclusions as to the Claimant's conduct, I do not go into the objections in detail. However, I do note that part of the Claimant's application to amend the claim had included the assertions that the Respondent is wanted for "rape and theft in Iran" and "theft and sexual assault in Turkey" and that these assertions were vehemently denied by the Respondent. I include these points to illustrate the very serious nature of the complaints being advanced by the Claimant, on the face of it without any relevance whatsoever to the issues before the Tribunal and without any evidence in support thereof. It was noted more generally by Ms Bowden that despite my express exhortation that the Claimant and/or Ms Ackerman were to refrain from using intemperate and inflammatory language, they had continued to do so, including in relation to these new allegations.

2.26 The following day, Ms Ackerman emailed the Tribunal objecting to the amendment of the grounds of response (even though I had expressly permitted it at the PHCM) and seeking to rely on the case of *Base Childrenswear v Otshudi*[3] in the Court of Appeal. It was asserted that if the Respondent objected to the (further) amendments to the claim, it was unreasonable and indeed unlawful for the Respondent to amend the ET3.

2.27 Again, this is a fundamental misunderstanding of the position, both in relation to the *Base Childrenswear* case and in relation to this claim. In *Base Childrenswear,* the Tribunal found in the Claimant's favour in her claim of race discrimination. This was not least because the Respondent had advanced a defence of redundancy in its original ET3 but had subsequently sought to amend that to assert that it had suspected the Claimant of and dismissed her for theft. Whatever the true reason for the dismissal, the Court of Appeal upheld the Tribunal's findings that the burden of proof had passed to the Respondent, which had however failed to show that race played no part in its conduct. It is not authority for the proposition that there is a "legal wall" to a Respondent amending its response in any situation, particularly where it has the Tribunal's permission to do so in response to an amended claim.

2.28 In this case, the Respondent was permitted to amend its response to reply to the way in which the Claimant had relabelled/added to her claim at the PHCM. The alternative labelling of the complaints of direct sexual orientation

[3] [2019] EWCA Civ 1648

discrimination as complaints of direct gender reassignment discrimination were simply that – relabelling – and as such, sensibly had not been opposed by Ms Clarke during the December PHCM. So far as the new complaint relating to the dismissal was concerned (the allegation that this was an act of detriment or victimisation following a protected act, or more than one), the Claimant was still in time to lodge a fresh claim which would then almost inevitably have had to be consolidated with the existing claim, so again Ms Clarke needed little encouragement from me to accept it as an amendment so that it could be dealt with at the same time.

2.29 By contrast, what the Claimant was seeking to do in the amended claim submitted on 21 December 2020 was to add numerous new complaints that were out of time, and to those the Respondent objected. That was neither "extreme dishonesty"/"serious extreme deceptions" on the Respondent's part as alleged nor was it unreasonable. In other circumstances, the parties would have been invited to attend a further PHCM to present argument about the amendment application and the objections thereto. The *Base Childrenswear* case was of no relevance to this matter.

2.30 Ms Ackerman's email of 8 January however continued in extreme terms. It accused the Respondent of lying to the Tribunal about a complaint apparently made to the Solicitors' Regulation Authority about Mr Jacobs (as to which as far as I am aware I have seen neither a complaint nor any assertion in relation thereto, nor does it appear it would be relevant to the case before me); it claimed that the Respondent is harassing the Claimant by giving out her number to patients and getting them to call her at antisocial hours; that Dr X is angry, aggressive and dangerous; that he had copied in the Claimant to an email which was described as "extreme behaviour", said to "humiliate [the Tribunal's] authority, intimidate and provocate the Claimant in a very extreme way" [sic]; that he was intentionally lying and refusing to co-operate with the Claimant, fabricating documents and inventing allegations about the Claimant, seeking to humiliate her and prevent her from bringing evidence for a fair trial. It repeated the assertion that the Respondent's conduct was so extreme as to render strike out of the defence a proportionate response.

2.31 It appears that on 11 August 2020, the Claimant had lodged a claim with the High Court for libel and defamation against the Respondent, seeking damages of £95,000. I return to the significance of this below; otherwise it is of little relevance to the present proceedings. There was an email exchange between the parties in January 2021 about who might be called as a witness to those proceedings and who was representing the Respondent. I do not need to consider that exchange.

<u>Unless order/strike out applications</u>

2.32 On 14 January, Ms Bowden applied on behalf of the Respondent for an unless order. The Claimant had still only disclosed 56 of the 800 documents she had indicated would be forthcoming and they did not include the complaints I had specifically ordered her to disclose. Ms Ackerman replied the same day,

asserting that the Claimant had posted "some documents". She did not seek to assert that what had been sent included the documents specifically ordered, nor that all of the documents had been sent subsequently. She did however contend that Ms Bowden was "well known" for making "spurious, legless, time wasting unless applications all the time" (notwithstanding this was only the second such application Ms Bowden had made) and that Ms Bowden "simply wish to feed her sick ego". She accused the Respondent of "lying with sick intentions". She claimed to have applied to the High Court to subject the Respondent and Ms Bowden to Limited Civil Restraint Orders with immediate effect. There was then a recitation of the previous contentions relied on in support of the application to strike out the response.

2.33 The Post Office receipt supplied does show that "an item" was sent on 19 December to the address of Ashfords, Ms Bowden's firm, from a post office in Enfield (where the Claimant lives). It does not say how much the postage was or how much the parcel weighed. It does not, therefore, assist me in understanding what was posted to Ashfords on that date. I am however satisfied that if there had been just short of 750 documents, as the correspondence would suggest there should have been, it is likely there would have had to be at least two packages. Accordingly, I am satisfied that the Claimant has not complied with her disclosure obligations, or at least not fully. So far as I am aware, she has not sought to provide further copies even though she is aware that Ms Bowden has not received everything that should have been sent.

2.34 In February there was correspondence between the parties that was not seen by me until closer to the hearing in May. I say little about it here, but note that the assertions by Ms Ackerman of "sickening" conduct and direct harassment of the Claimant by the Respondent continued. On 4 February, for instance, she told Ms Bowden: "This is not your jungle, you do not terrorize people the way you have been doing. This is not your dictatorship where you rule with your sick rules… your erratic/pathetic behaviours are getting out of control…". This appears to have been triggered by a one-line email from the Respondent that morning, in which he forwarded to the Claimant by way of service an application he had filed at the High Court (and hence arguably not caught by the prohibition on contacting her direct in these proceedings). Ms Ackerman also forwarded a number of messages to the Tribunal asserting that Ms Bowden had "sickeningly refused" to warn her client not to contact the Claimant direct and instead "glorify her client's terrorism" on the Claimant.

2.35 On 9 and 10 February further emails were sent by Ms Ackerman to the Tribunal, this time asserting that the Respondent had been posting empty envelopes to the Claimant's home in order to "create stress, seek revenge" and retaliate against the Claimant for bringing her claim and that he was continuing to bully the Claimant by having patients call her personal number.

2.36 On 18 February in another email Ms Ackerman described Ms Bowden's assertion that the Claimant had failed to comply with the disclosure order as

"hallucinative legless ideas" [sic] and that she was "air[ing] an empty balloon". In another lengthy email, she made further assertions about the Respondent, including that he was "totally mentally sick", was acting in breach of his lease agreement, committing tax evasion (describing him as a "sick fraudster" and Ms Bowden as his "hallucinative representative") and lying to the Child Maintenance Service, repeating once more the application to strike out the response. It appears that she attached copies of a letter to the Respondent from the Child Maintenance Service Team dated 8 July 2020 and a section 146 LPA notice from solicitors acting for the Respondent's landlord. She did not say how she had come by these documents.

Preliminary Hearing listed for March 2021

2.37 On 19 February 2021, at my instigation, the Tribunal wrote to the parties to fix a Preliminary Hearing (PH) to be heard by CVP on 16 March, at which I intended to consider the Claimant's application to strike out the response and the Respondent's application for an Unless Order. I made orders for skeleton arguments to be exchanged on 9 March and for the Respondent to produce a small bundle of relevant documents and send it to the Employment Tribunal and to the Claimant by 12 March. I reminded the parties again of the requirements of the overriding objective.

2.38 Later that day, Ms Ackerman wrote to the Tribunal (copying in both Ms Bowden and the Respondent, in the face of previous instructions) applying for a witness order for the Respondent to give evidence at the PH in March. Once again, she used highly inflammatory language in her allegations about the Respondent's conduct: "all aim to terrorise the Claimant… in such mafia style way… deep black dirty intentions… extreme measures/abuse…". I caused a response to be sent indicating (as I had previously informed the Claimant at the PHCM) that the Tribunal does not make orders so that a party can cross examine a witness, but making provision for either party, if they wished to give evidence at the PH, to exchange a witness statement in prescribed format by 4 pm on 2 March 2021. Yet again, I referred to the overriding objective and the requirement of co-operation, noting that intemperate or abusive correspondence is not an example of co-operation and "**must not occur**". I asked the parties to be "professional and courteous to each other".

2.39 At 09.41 on 3 March 2021 (i.e. after the deadline for exchange of statements had passed), Ms Ackerman emailed applying for an extension of time to 6 pm on 12 March for the Claimant "and the three other witnesses" to supply their witness statements. She repeated that she is based in Turkey and is a friend of the Claimant with no resources including "computer/printing/scanning facilities". The Respondent had, I understand, served two witness statements on the Claimant shortly before the deadline the previous day. I refused the Claimant's application but varied the order to the extent that her witness statement was to be served by 4 pm on 4 March.

2.40 Somewhat surprisingly, the reaction from Ms Ackerman was to send an email to the Tribunal (although addressed "To the Employment Appeal Tribunal

(separate application is logged at the Court of Appeal against judge norris)") seeking to set aside my orders on the basis they were unlawful and materially "flow and breach the Claimant's fair trial rights". It was asserted that it is the Claimant's "constitutional right to cross examine the defendant" and that I had lied and "misled the justice" in saying that the Claimant made her application to vary after the deadline (notwithstanding that Ms Ackerman appears to acknowledge that the deadline was 4 pm on 2 March and must appreciate that she did not ask to vary the order until the following morning, some 17 hours after it expired). There were several similar assertions that I was lying, unsuitable to hold any office as a judge and held personal prejudices against the Claimant and similar. The contention was that the Claimant must be able to "act to protect herself against Judge Norris's personal hate and abuse". The hope was expressed that I would get a "legal lesson" from the Court of Appeal. I observe merely that since the Claimant had by now received a witness statement from Dr X, she did not require a witness order and would have been entitled to cross examine him herself or through a representative if he sought to rely on that statement at the PH, but the fact remains that otherwise the Tribunal would not have made a witness order to compel his attendance purely so that the Claimant could cross-examine him.

2.41 On 4 March, Ms Ackerman nonetheless forwarded three witness statements, said to have been made by Ms Filiz Cokgezer, Mr Ridvan Seber and Mr Veli Baz. There was no statement from the Claimant but there was an assertion that she does not have a PC, laptop or any facility to join the hearing remotely, nor did she have to have them. It was asserted that the PH therefore had to go ahead face to face. A separate email on 8 March also requested that the hearing take place in person. This followed an email sent at my instruction on 5 March in which I noted that it was necessary to proceed with the PH so that the case management issues could be considered and any further orders made in order that the September Hearing was not jeopardised. I suggested that, since the Claimant was represented by Ms Ackerman, she could make submissions via CVP on the Claimant's behalf or that either (or both) of them could attend the hearing by phone; alternatively that I would consider conducting the hearing in person at another venue since Victory House was closed at that time. I asked for the parties' comments so that I could consider how to proceed.

2.42 Both parties having expressed a preference for an in-person hearing, I concluded that the PH would take place at Fox Court on 16 March. I ordered that the Respondent was to ensure the Claimant received a hard copy of the bundle, in light of what had been said as to her lack of suitable device.

2.43 On 9 March 2021, however, the Respondent applied for a postponement of the PH on the basis of the Claimant's conduct. The content of the three witness statements served by the Claimant was said to be "extreme" and to make "serious and grave new allegations against Dr X". Further, it was said that examination of the IP addresses used by the Claimant and by Ms Ackerman suggested that they were the same even though Ms Ackerman is said to be

based in Turkey and the Claimant in Enfield. When taken with other factors, there was said to be a genuine concern that "Ms Ackerman" did not exist. It was also concerning that the Claimant had produced envelopes in support of her application for a strike out of the response on the basis that they were empty and that this constituted harassment of her by the Respondent but they had been sent in unrelated matters at different times; and finally it was suspected that the witness statements themselves had been fabricated by the Claimant at her home in Enfield on 4 March and were untruthful, as was her assertion to have no access to a computer.

PH postponement to May

2.44 I considered that it was in the interests of justice to postpone the hearing and to relist it for two days (24-25 May 2021). It was now the case that the Claimant was seeking the strike out of the response and the Respondent the strike out of the claim. I made orders so that the Claimant could have additional time to produce a witness statement herself in relation to the allegations now made against her (detailed at paragraph 2.43 above), to be served by 4 pm on 8 April and for the Respondent to be able to seek expert evidence in relation to the matter of the IP addresses and the production of the witness statements, to be served by 29 April. Separate orders were made for the production of a bundle.

2.45 Ms Ackerman emailed back to claim that I had continuously supported anything the Respondent said and rejected anything the Claimant said, that my decision to postpone the PH was "ambushed, biased and unlawful"; that the Claimant could not attend in May and could not do a video or phone hearing and that she would be vigorously challenging the decision. Notwithstanding it was signed virtually "Z Ackerman", this email had been sent from the Claimant's personal account. Ms Ackerman also emailed Ashfords the following day from her own account to claim that the case (or possibly only my handling of it) "smells totally unlawful top to bottom".

2.46 On 12 March at my instruction, the Employment Tribunal administration emailed the Claimant and Ms Ackerman's addresses to say that if the Claimant emailed evidence of prior engagements on 24 and 25 May and also gave any other dates to avoid, I would consider re-listing the PH. No such dates were received. I also observed that the Claimant's email ended "sent from my iPad", which device would be sufficient to give her access to the hearing, and that the witness statements she had served (and many of the previous communications from Ms Ackerman) complained of contact from the Respondent/his patients to the Claimant's personal mobile phone – again, a device via which she could have attended the PH.

2.47 Ms Ackerman's response was that she has access to the Claimant's BTopenworld account and that it was not correct to assume that because the Claimant had had phone access in February she would have it in May; nor that because Mr Veli Baz (said to be the Claimant's father and living in Turkey) had "spoken" to the Claimant, he must have done so on a phone She asserted that this was only my "personal unlawful interpretation" and that I should be

independent and mind my own business since the Claimant does not live in my "jungle" and will openly fight me on legal platforms higher than me.

2.48 At 11.34 on Friday 21 May 2021, Ms Ackerman emailed the Tribunal to say that she was unable to get hold of the Claimant, who was said to be in Turkey with no internet connection or phone. Joining details for Monday 24 May were nonetheless sent to both the Respondent's representative and to Ms Ackerman later that day.

2.49 At 23.31 that night, an email was sent from Ms Ackerman attaching a redacted High Court order and three new witness statements, none of which was from the Claimant. At 09.33 on 24 May, Ms Ackerman emailed claiming that the Claimant was in a "rural area abroad" (said to be in Turkey following the death of her grandmother) and had no tablet, PC or laptop, but that the joining instructions had not given adequate information to enable her to join by phone. There was no suggestion that either she or the Claimant had contacted the Tribunal or the CVP helpline to request a phone number for the PH. Ms Ackerman did not explain her own non-attendance nor why this email appeared to contradict her previous assertions (including as recently as 21 May) that the Claimant did not have a phone. There was no evidence to support the statement that the Claimant had left the UK (notably, for a "red list" country to which she should not have travelled in any event) or when she went. Nothing was provided to support the previous assertion that the Claimant "could not" attend on 24 or 25 May in any case.

The Preliminary Hearing

3.1 The Claimant did not in fact attend the hearing. Nor did Ms Ackerman do so on her behalf, or indeed any of her six witnesses. The Respondent attended himself, as did Ms Bowden. The Respondent was represented by Ms Nicholls of Counsel on this occasion, who supplied written submissions which she briefly orally supplemented. The assertion of Ms Ackerman that the Respondent had dishonestly suggested his Counsel was not available is misplaced; clearly, Ms Clarke is not the only barrister who might be instructed to carry out Employment Tribunal advocacy. Unfortunately, the Respondent's request for a postponement due to Ms Clarke's unavailability was not passed to me until late the previous week, but in any event, it was refused as I considered it was not in the interests of justice to delay the PH further merely for the unavailability of the Respondent's preferred advocate, and she was replaced accordingly.

3.2 We waited until 10.20. I was satisfied that the Claimant had had ample opportunity to attend the hearing by virtual means to which she had access, whether as a litigant in person or via her representative of record Ms Ackerman. I decided in the circumstances to proceed in her absence.

3.3 I indicated that I would be first considering the Respondent's application to strike out the claim and then, if that was not successful, would consider next either the Claimant's application to amend the claim or her application to strike out the response; then finally I would consider the Respondent's application for

an unless order if the claim proceeded and if the Respondent had not been struck out. I then adjourned to read Ms Nicholls' submissions and, on reconvening, both the Respondent and Ms Bowden took the oath and confirmed that the contents of their witness statements were true to the best of their knowledge and belief.

3.4 I asked the Respondent a small number of questions in relation to the High Court proceedings of which the Claimant had produced a redacted decision late on Friday of last week. He told me that he and the Claimant participated in a remote High Court hearing on 5 May 2021. He did not receive the Court's written decision himself until the morning of the PH and therefore had not had time to consider it by comparison with the redacted version produced by the Claimant. In any event, his evidence on oath was that the Claimant had attended those proceedings by a computer link and could be heard without difficulty.

3.5 Since it was the Claimant who had put the document into evidence, I find that it had been possible for her to attend a virtual hearing less than three weeks ago, and certainly at a time when it was being asserted on her behalf that she was unable to attend Employment Tribunal proceedings because she lacked any form of device on which to do so, and I conclude accordingly that this assertion was false.

3.6 Ms Bowden answered a supplemental question as to how the Respondent's expert had come to be instructed, and I return to his report below.

3.7 The witness statements served on behalf of the Claimant late on 21 May 2021 were not served in accordance with my previous orders and I gave them no weight for evidential purposes. I return to this below and also deal below with the three statements served on the Claimant's behalf on 4 March 2021. As I have indicated, none of the makers of those six statements attended to swear to the truth of their contents or to subject themselves to cross-examination, nor was there any explanation for their absence given that joining instructions for the PH had been supplied to the Claimant's representative of record.

3.8 I adjourned to consider my decision on the question of whether the claim should be struck out. We reconvened on day two, and I gave this decision orally.

The law in relation to strike out

4.1 The Respondent relies primarily on Rule 37(1)(b) which as I have said above is relevant where it is considered that a claim or the manner in which it is pursued is scandalous, unreasonable or vexatious. In the alternative, he relies on Rule 37(1)(c) (non-compliance with the Rules) or an inability to have a fair hearing (Rule 37(1)(e).

4.2 Ms Nicholls fairly acknowledges that the threshold for strike out is a high one; the Court of Appeal in *Blockbuster Entertainment Limited v James*[4] described

[4] [2006] EWCA Civ 684

the discretion as a Draconian measure, not to be readily exercised. The authorities confirm that a claim (or indeed a response) may not be struck out unless the party in question has had the opportunity to make representations in writing or at a hearing. I am satisfied that the Claimant in this case has had the opportunity to do both, either in person or through "Ms Ackerman", though I return to the latter's identity below.

4.3 The Rules require a two-stage test, first considering whether any of the grounds has been established and then, if one or more grounds are present, whether to exercise the discretion to strike out.

4.4 In *Bennett v London Borough of Southwark*[5], Sedley LJ said that the meaning of "scandalous" in the ground for strike out embraces both the misuse of the legal process in order to vilify others and the giving of gratuitous insult to the court in the course of such process. Vexatious, as considered by Bingham LJ in the (family court) case of *Attorney General v Barker*[6], means proceedings that have little or no discernible basis in law, with the effect of subjecting the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the Claimant and involving an abuse of the process of the court, i.e. using the court process for a purpose or in a way significantly different from the ordinary and proper use thereof.

4.5 The EAT upheld a decision in *Sud v London Borough of Hounslow*[7] to strike out a claim where the Claimant had tampered with medical evidence and tried to mislead the Tribunal when applying for a postponement, finding that the tribunal was "entitled to decide that it had lost trust in her veracity and there could therefore no longer be a fair trial". Before finding that a fair trial is no longer possible, it is necessary to consider whether scandalous, unreasonable or vexatious conduct has occurred, but even then, if it is possible, the case should continue unless no lesser penalty would suffice against the offending party (*Bolch v Chipman*[8]).

4.6 Where there is non-compliance with an order, the Tribunal should consider the magnitude of the default; whether the default is that of a party or their representative; whether disruption, unfairness or prejudice has been caused and whether a fair hearing is still possible, guarding against indignation that might lead to a miscarriage of justice *(Weir Valves & Control (UK) Limited v Armitage*[9]).

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[5] [2001] EWCA Civ 711
[6] [2000] I FLR 759
[7] UKEATPA/0182/14/DA
[8] [2004] IRLR 140
[9] [2004] ICR 371

4.7 I referred myself additionally to *Masood v Zahoor (Practice Note)*[10], in which a claimant had forged documents and given false evidence to support his claim. Mummery LJ said in the Court of Appeal's judgment:

> "71 …this decision is authority for the proposition that, where a claimant is guilty of misconduct in relation to proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim, then the claim may be struck out for that reason. In the *Arrow Nominees*[11] *case*, the misconduct lay in the petitioner's persistent and flagrant fraud whose object was to frustrate a fair trial. The question whether it is appropriate to strike out a claim on this ground will depend on the particular circumstances of the case. It is not necessary for us to express any view as to the kind of circumstances in which (even where the misconduct does not give rise to a real risk that a fair trial will not be possible) the power to strike out for such reasons should be exercised. There is a valuable discussion of the principles by Professor Adrian Zuckerman in his Editor's Note entitled "Access to Justice for Litigants who Advance their case by Forgery and Perjury" in (2008) 27 CJQ 419.
>
> 72. We accept that, in theory, it would have been open to the judge, even at the conclusion of the hearing, to find that Mr Masood had forged documents and given fraudulent evidence, to hold that he had thereby forfeited the right to have the claims determined and to refuse to adjudicate upon them. We say "in theory" because it must be a very rare case where, at the end of a trial, it would be appropriate for a judge to strike out a case rather than dismiss it in a judgment on the merits in the usual way.
>
> 73. One of the objects to be achieved by striking out a claim is to stop the proceedings and prevent the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined. Once the proceedings have run their course, it is too late to further that important objective. Once that stage has been achieved, it is difficult see what purpose is served by the judge striking out the claim (with reasons) rather than making findings and determining the issues in the usual way. If he finds that the claim is based on forgeries and fraudulent evidence, he will presumably dismiss the claim and make appropriate orders for costs. In a bad case, he can refer the papers to the relevant authorities for them to consider whether to prosecute for a criminal offence: we understand that this was done in the present case."

4.8 In *Hughes Jarvis Limited v Searle & Another*[12], the Court of Appeal said (referring to *Masood* and *Arrow Nominees*): "Although as these judgments make clear, the exercise of the strike out power contained in CPR 3.4(2) does involve as a relevant consideration wider questions such as the use of court time, the proper exercise of the jurisdiction will usually depend upon conduct by the claimant or other party which makes the conduct of a fair trial and therefore a judgment on the merits practically impossible. In *Arrow Nominees* where the petition was struck out the forgery of the disclosed documents coupled with the

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[10] [2010] 1 WLR 746

[11] [2000] 2 BCLC 167

[12] [2019] 1 WLR 2934

petitioner's own false evidence made it impossible for the trial judge to distinguish between forged and authentic evidence and created a real risk of substantial injustice."

Evidence relied on by the parties

5.1 Following the postponement of the PH from March, the Respondent instructed an Analyst, Mr C Collier, to produce a Digital Forensic Analysis Report. That report was in the bundle before me, dated 20 April 2021. I accept the unchallenged evidence of Ms Bowden that this report was produced with the approval of the Respondent's insurers and at their expense.

5.2 Mr Collier sets out his duties and the instructions he was given in the production of the report. He is clearly an experienced and qualified person in connection with data recovery and analysis, having worked in the field for over a decade, including ten years as Digital Forensic Technician with Humberside Police Force where he says he conducted investigative analysis of mobile phones and tablets and the presentation of data in evidential form suitable for a court of law. He also holds a Batchelor's degree in Criminology from Sheffield Hallam university.

5.3 I find Mr Collier's credentials, skills and experience to be entirely satisfactory in the areas relevant to the questions I have to decide. His audit was conducted in compliance with the ACPO Principles in respect of electronic evidence, which he sets out in his report. He also includes an expert's declaration. No challenge is made to his evidence by the Claimant so that although I did not hear from him in person, I accept his evidence.

5.4 Mr Collier conducted analysis of twelve emails sent in connection with the case, and of the three pdf witness statements produced on behalf of the Claimant and referred to in paragraph 2.41 above. He explains the process by which emails acquire the metadata, including the Internet Protocol (IP) address in the email header. Referring to the IP addresses, Internet Service Provider (ISP) and location identified using an online lookup tool, he has ascertained that between October 2020 and March 2021, in eight emails purporting to originate from Ms Ackerman, who it will be recalled is said to be based in Turkey, and sent from her email address, and three emails sent from the Claimant's own email address, each of them was in fact sent from the UK; and, further, that seven of the eight "Ackerman" emails were sent from an area around the EN3 postcode. The Claimant lives in Mapleton Road, Enfield, EN1.

5.5 Mr Collier's conclusion is that several emails emanating from the address used by "Ms Ackerman" and those purporting to be sent by the Claimant herself in fact originate from the same physical network. In more than one instance, it is notable that the first nine digits of the 12-digit IP address are identical in both sets of emails. On balance of probabilities, it is therefore likely that they were sent from the same physical location, in the UK.

5.6 In addition, the metadata in the pdf witness statements produced to the Tribunal on 3 March 2021 shows conclusively that the three documents were all created within 25 minutes of each other, and it is Mr Collier's conclusion, which I accept, that they were created on the same device; and these three documents were sent using the Ackerman email address from the EN3 postcode in the UK on 4 March 2021. This was notwithstanding that Ms Ackerman had said on 3 March that the Claimant "cannot" produce any statement before the requested date and that neither the Claimant nor Ms Ackerman herself had any computer/printing or scanning facilities. No explanation has been given for their production in those circumstances, or indeed for the lack of production by Ms Ackerman of a witness statement for the Claimant.

5.7 Turning then to the three witness statements that were produced in March, the first, purporting to be from Mrs Cokgezer, claims that the Respondent hand-delivered a letter to her and that then, on 23 February while Mrs Cokgezer was helping the Claimant to clean her house, the Respondent caused a young woman to ring the Claimant and then took the phone and made a serious threat of physical violence to her, causing the Claimant to "start a nervous breakdown".

5.8 The second is from Mr Seber who claims to be the Claimant's landlord. He says that the Respondent rang him on 3 March 2021 and asked him to evict the Claimant, referring to the Claimant as a "bitch" and "toxic" and, when Mr Seber questioned why he should evict the Claimant, suggested instead that he cut off her electric and gas. He asserts that the Respondent then said he was going to ring the Claimant's father in Turkey to tell him "his son is getting his ass fucked" (the statement uses ellipses but I infer that these are the actual words alleged to have been used).

5.9 The third indeed purports to be from Mr Baz, who gives an address in Turkey. He says he is the Claimant's father and knows the Respondent from when the Claimant worked at the Respondent's clinic; he says that the Respondent spoke to him about ordering gloves and hand sanitiser at the beginning of the pandemic. He says the Respondent did ring him and say in Turkish "your son is getting his ass fucked…" (again, using ellipses in the same manner as Mr Seber). He says he informed the Claimant of the matter the same morning.

5.10 I note that it was later asserted by or on the Claimant's behalf that I had reached an impermissible conclusion in suggesting that the Claimant had a mobile phone on 4 March 2021 simply because the statement says that Mr Baz "spoke to her" on that date. Ms Ackerman said in this regard, "Veli Baz does not say he called the Claimant's mobile or line. He says he spoke to the Claimant". This is correct. However, given that Mr Baz is said to be in Turkey and the Claimant in Enfield, it is impossible to discern how else he spoke to her unless by phone or other electronic device.

Respondent's submissions on strike out and conclusions

6.1 The Respondent makes a number of submissions in connection with these issues, which I summarise. The first is that, based on Mr Collier's report, there is reasonable and credible evidence that "Ms Ackerman" is a fictional construct or is at least somebody operating from the UK and is not "based in Turkey".

6.2 I accept this submission. The IP addresses and metadata of the files, according to the independent expert Mr Collier, quite clearly place the sender of all these emails in the UK, and indeed within Enfield, where the Claimant lives.

6.3 Further, as I have noted above, on occasion, emails are sent from the Claimant's own account but signed by "Ms Ackerman" or from Ms Ackerman's account but signed by the Claimant; whilst, in the absence of other evidence to support the conclusion that Ms Ackerman is either a construct or at least present in the UK, I could accept that a representative who is also a very close friend might be given access to the Claimant's email account, including having knowledge of her password, I can see no reason why the reverse should be so, and indeed, "Ms Ackerman" has not suggested that she has given the Claimant access to her email account. I can think of no circumstances in which the Claimant, who is said to be too traumatised to deal with the case herself, would be logging in to Ms Ackerman's account and drafting and sending emails.

6.4 The second point made is that the Claimant has misrepresented to the Tribunal her lack of IT resources so as to suggest she was unable to attend the PH that was listed for March or the relisting in May. Again, I accept this. It would be perfectly understandable that a party or their representative might have produced or received witness statements in Word or other format and converted them to pdf before emailing them to the Tribunal or to the other side. That is not the significant element of Mr Collier's report in this regard. However, again the fact is that they were emailed from the same Enfield, UK, IP address (indeed the metadata is the same as the Claimant's own address in Mapleton Road) and not from Turkey. It is reasonable to conclude that the Claimant had access to a device throughout the proceedings and that the protestations as to her inability to attend a hearing remotely are a smokescreen. This is reinforced by the fact that she did indeed attend a remote High Court hearing less than three weeks ago without difficulty.

6.5 I do not accept that any of these three witness statements is genuine. Further, objective evidence, namely the Respondent's mobile phone records, shows that he made no call at 9 pm on 3 March 2021 as alleged by Mr Seber; his last outgoing call started at 19.56 on that date.

6.6 I note for completeness that the three statements, sent at 23.31 on Friday before the PH, are of no assistance to the Claimant in this matter. They were not produced in accordance with my order and only after the Claimant had seen Mr Collier's expert report; none of their makers attended to give evidence although one of them (Mr Ariti or Mr Baros, or Mr B_pmq – his name is spelled in several different ways in the statement) says he offers freelance computer

support so one would expect him to have access to a suitable device and thus to have attended to give evidence if it was a genuine statement. This statement says that its maker met the Claimant "around November 2019" at the Respondent's Swiss Cottage premises although the Respondent points out that the Claimant only commenced employment with him in December (in fairness "Mr Baros" does not purport to be giving a precise date). He claims that the Respondent rang him to procure an expert report which by implication untruthfully would say the Claimant used fabricated addresses and false documents, but that he refused to do so. One of the other statements, purporting to be made by a Sevinj Orudjova, claims that the Respondent tried to bribe the witness to help "finish off" the Claimant in the Tribunal.

6.7 I consider all six statements produced by the Claimant to be wholly unreliable and place no weight on them at all. I accept the Respondent's unchallenged evidence (supported again by his phone records) that he made no call to Turkey on 4 March 2021 and hence could not have called the Claimant's father as alleged; I accept his evidence that Mr Seber is not a patient of the Respondent's practice and that he does not know Ms Cokgezer and has never visited her property to deliver a letter; once again, his phone records confirm that he did not make the call as she purports to allege in her statement.

6.8 I also accept that copies of the letter from the Child Maintenance Service and the section 146 notice were taken from the Respondent by the Claimant without his knowledge or consent and have been used (particularly in relation to the Respondent's children) by the Claimant in a damaging and hurtful manner. I accept the Respondent's unchallenged evidence that where he has copied in the Claimant to emails since I indicated that this should not be happening, it was an inadvertent error where (for example) she was an addressee in an email from a third party and the Respondent "replied all"; and I accept that it was the Claimant herself who had set up the forwarding system to her own phone when the practice phone was not answered, an issue since rectified by the Respondent; I agree with his assertion that it would be extraordinarily counterproductive for his business purposely to have patients ringing the Claimant in the circumstances in which the parties finds themselves.

6.9 I further accept Ms Bowden's evidence that the Claimant has failed to make disclosure of the documents that she was expressly ordered to produce. Whether the complaints to the GDC and/or police even exist cannot therefore be ascertained by the Employment Tribunal.

6.10 Finally, I was reminded that the Claimant has previously been the subject of a civil restraint order but Ms Nicholls properly accepted that this had expired some time before the Claimant lodged these proceedings.

Conclusions

6.11 In the circumstances:

6.11.1 I am entirely persuaded that the Claimant's conduct in this matter has been scandalous, vexatious and indeed unreasonable. She has clearly behaved in

a manner wholly calculated to vilify the Respondent, by her assertions of his professional and personal misconduct, including but not limited to allegations of rape, sexual assault and theft in other countries and fraud and tax evasion in the UK, as well as lesser but nonetheless no doubt hurtful allegations of a breach of his lease and allowing his children to "suffer from hunger". All these allegations are not only unsupported but even if true would be entirely unconnected with the case before the Tribunal.

6.11.2 I have set out some of these assertions above and summarised others, but some of the very conduct of which the Claimant accuses the Respondent (such as falsifying documents and using "ghost" witnesses) is conduct of which she is herself guilty, on the evidence before me.

6.11.3 I have also set out above several examples of the Claimant's wholly insulting and offensive language not only to the Respondent but also to his representatives. Where she disagrees with any point made, she appears to attack them personally and professionally (as indeed she has done to me when I have made decisions with which she disagrees) using language of the most extreme and insulting nature, including as to the other party's probity. While asserting that the Respondent has failed repeatedly to comply with orders, she has herself completely failed to comply with those in relation to disclosure, whether general or specific, and to witness statements.

6.11.4 As such, it is the Claimant's assertion that the response should be struck out; she appears to acknowledge that behaviour of this nature is such as to render a fair trial impossible, though asserting that it is the Respondent's behaviour and not hers. I have found to the contrary, but I agree with the principle that such conduct is likely to make it extremely difficult, if not impossible, to have a fair trial.

6.11.5 I would not strike out the claim merely because the Claimant has failed to comply with case management orders to date, no matter how grave the default. The allegations against the Respondent in the original claim form were very serious. The Claimant ought to be given an opportunity to pursue them provided she conducted her case in line with the Rules of Procedure, and to have a finding in her favour if they are true. In turn, if they are untrue, the Respondent deserves to have such a finding in his favour. There remains ample time for the Claimant to comply between now and September so that the matter would be trial ready. If for example the Claimant still did not produce the documents relied on as protected acts, the Tribunal might nonetheless be able to form a view as to whether the acts had taken place and/or whether the Respondent had acted because of them, their very absence tending to support the Respondent's case. Alternatively, an unless order in relation to some or all of the case (e.g. with a view to striking out the victimisation complaint if disclosure was not forthcoming) would have been a proportionate and appropriate response at this stage.

6.11.6 However, the issuing of further orders, and even the making of an unless order, would not, in my view, ensure a fair hearing of this case. I have found on the

balance of probabilities that the Claimant has fabricated both her representative and six witness statements. The evidence shows she has wilfully attempted to deceive both the Respondent and the Tribunal at multiple stages of the proceedings and on multiple points and refuses to behave in a manner even remotely conducive to dealing with the case justly or fairly. The Claimant has behaved in a fashion that has repeatedly deplored by the Courts, including in the authorities cited above. It is no longer possible to have a fair trial leading to a decision on the merits.

6.11.7 The allegations within the claim form are very serious indeed, and the Tribunal must be able to rely on the written and other evidence put before it by the Claimant in making findings of fact and reaching conclusions. I consider it could not rely on that evidence, because the Claimant has repeatedly presented false evidence, containing allegations that are either untrue or deliberately misleading, just as the other evidence is also aimed to mislead the Tribunal; for example the assertion that the order for disclosure had been complied with and that the Claimant's disclosure had been sent in full to Ashfords.

6.11.8 Far from focusing on the content of the claim, the Claimant has sought to widen the scope of her allegations in the most extreme, false and malicious fashion. As in *Sud v London Borough of Hounslow*, the Tribunal has accordingly lost trust in the Claimant's veracity and there can therefore no longer be a fair trial. No lesser penalty than strike out will suffice. In the circumstances, the claim is struck out in accordance with Rules 37(1)(b) and/or (e), and I do not go on to consider the remaining applications.

Anonymity application

7.1 Following the giving of oral judgment striking out the claim on the morning of 25 May 2021, the Respondent made an application for anonymity pursuant to Rule 50.

7.2 I have reminded myself of the relevant authorities in this regard and have given full weight to the principle of open justice and the Convention right to freedom of expression. Ms Nicholls acknowledged on the Respondent's behalf that he entirely understood why I had set out all the background of the case and had included the allegations of rape and sexual assault made by the Claimant, in order to contextualise the extremely serious nature of the allegations being made by her against the Respondent. However, she submitted that such allegations are not only unrelated to the case and have been made for vexatious purposes, they are unfounded and therefore the publication of them can only be highly prejudicial to him, both personally and professionally, and would undoubtedly constitute a breach of his Article 8 right to a private and family life.

7.3 It seemed to me that the making of a Restricted Reporting Order in this instance would not suffice, because the Respondent's anonymity should be preserved not only until the promulgation of this decision but also thereafter. In the

circumstances, I allowed the application and made an anonymity order pursuant to Rule 50(3)(b).

Employment Judge Norris
Date: 5 June 2021
JUDGMENT SENT TO THE PARTIES ON

07/06/21.

FOR THE TRIBUNAL OFFICE