EMPLOYMENT TRIBUNALS

Claimant: Mr S Arnold

Respondent: Hilary Meredith Solicitors Limited

Heard at: Manchester **On:** 8-11 June 2021

Before: Employment Judge Slater
Mr B Rowen
Mr R Cunningham

REPRESENTATION:

Claimant: In person
Respondent: Mr S Brochwicz-Lewinski of Counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is:

1. The Tribunal has no jurisdiction to consider complaints in relation to matters occurring prior to 22 August 2019 which were presented out of time.

2. The remaining complaints of harassment related to disability contrary to section 26 of the Equality Act 2010 are not well-founded.

3. The remedy hearing provisionally arranged for 2 November 2021 is cancelled.

REASONS

Claims and Issues

1. This hearing was listed to consider the claimant's complaints of harassment brought under section 26 of the Equality Act 2010. It was listed to deal with liability and issues of principle related to remedy. At the start of the hearing, the parties agreed that the Tribunal should deal only with liability. The parties agreed that the issues relating to liability were as follows:

1. Jurisdiction

    1.1. Does the Tribunal have jurisdiction to consider any of the claimant's claims of disability discrimination (harassment) which relate to events that took place before 22 August 2019 (which is the date three months before the date on which the claimant made contact with ACAS in order to commence early conciliation) as they were not presented to the Tribunal within the prescribed limit for presenting such complaints?

2. Disability Discrimination (section 6 of the Equality Act 2020)

    2.1. The respondent accepts that the claimant is disabled for the purposes of section 6 of the Equality Act 2010 ("EA"). The claimant relies on tetraplegia as constituting his disability.

3. Harassment (section 26 of the EA)

    3.1. Did the following occur:

        3.1.1. Offering and/or announcing commencement of pupillage without taking adequate steps to ensure that the claimant could undertake his pupillage and/or primarily utilising the offer for marketing purposes;

        3.1.2. Offering and/or announcing commencement of pupillage for marketing and advertising purposes placing heavy emphasis on the claimant's disability without giving any or any appropriate level of consideration to whether it would be undertaken;

        3.1.3 Withdrawing/reneging on the offer of pupillage on unreasonable grounds;

        3.1.4. Withdrawing/reneging on the offer of pupillage despite using the pupillage, and particularly the claimant's disability, for marketing and advertising purposes;

        3.1.5. Using the claimant's disability for marketing purposes without intending to, or without giving proper consideration to whether it would be able to, undertake the pupillage;

        3.1.6. Informing the claimant that pupillage was not an investment for the firm and that the respondent did not need an in-house barrister, after having offered and publicised the same; and

        3.1.7. Sinead Cartwright insinuating that the claimant would not succeed in getting a pupillage if he applied through the pupillage gateway.

3.2. If so, was the conduct listed at paragraph 3.1 above unwanted?

3.3 If so, was that unwanted conduct related to the claimant's disability?

3.4. Did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for the claimant?

3.4. Was it reasonable for the conduct to have that effect?

Evidence

2. The Tribunal heard evidence from the claimant and from Hilary Meredith and Bob Bion for the respondent.

3. The Tribunal also read witness statements from Sinead Cartwright for the respondent and from Ruby Lake for the claimant. Neither gave oral evidence. We were told that Sinead Cartwright had left the respondent company; Hilary Meredith understood that she had been asked to attend but did not wish to do so. Ruby Lake was willing to come to give evidence. However, Mr Brochwicz-Lewinski did not consider that her evidence was relevant to the issues the Tribunal needed to decide. On the Tribunal's assurance that the Tribunal would not be making findings of fact on matters dealt with in Ms Lake's witness statement which did not relate to the issues we needed to decide, Mr Brochwicz-Lewinski informed the Tribunal that he did not wish to cross examine Ms Lake. Ms Lake was not, therefore, required to attend as a witness.

4. There were written witness statements for all the witnesses, including Ms Cartwright and Ms Lake. The claimant did not object to the Tribunal reading the statement of Ms Cartwright and giving it such weight as the Tribunal considered appropriate. We also read the statement of Ms Lake.

5. There was a bundle of documents in electronic and paper form of 540 pages. During the course of the hearing, a number of additional documents were provided to the Tribunal: the claimant's CV, and copies of emails from Bob Bion to a contact at Times Law relating to an article Times Law published about the claimant.

Summary

6. The claimant worked for the respondent from 1 October 2018 until 21 November 2019 as a paralegal. The claimant has a law degree and had completed the Bar vocational course before joining the respondent. The claimant is tetraplegic following an accident and is a wheelchair user. The claimant had an ambition to qualify as a barrister. The respondent, a firm of solicitors, agreed to assist the claimant to undertake a pupillage, necessary to qualify as a barrister. The non-practising element of the pupillage was to take place at Exchange Chambers, a set of barristers' chambers, and, in the remaining six months, the claimant would work at the respondent firm, the time spent there counting towards his pupillage.

7. There is a dispute about what was agreed, particularly in relation to the provision of funding for the six months to be spent at Exchange Chambers. A number of articles were published in the press about the claimant obtaining pupillage. Unfortunately, the pupillage did not go ahead, wholly or mainly because of

lack of funding for the six months that the claimant would spend at Exchange Chambers. The claimant continued working for the respondent as a paralegal for several months after the pupillage had been intended to begin but then resigned.

8. The claimant's complaints relate in large part to what the claimant asserts was use of his disability for marketing purposes and what the claimant asserts was the withdrawal or reneging on an offer of pupillage. The respondent asserts that the offer had been to pay the claimant for the six months during which he would be working with them but not for the six months with Exchange Chambers, and that they would have been willing to go ahead on this basis, had the claimant been able to secure funding for the six months with Exchange Chambers. The respondent denies that it made use of the claimant's disability for marketing purposes.

Facts

9. The respondent is a solicitors' practice based in Wilmslow, Cheshire, founded in 2003. Hilary Meredith, a solicitor, is the founder and chairman. The respondent specialises in high-value complex litigation for armed services personnel, veterans and their families.

10. The claimant has a law degree. He completed the Bar vocational course before joining the respondent. The claimant is tetraplegic, following an accident.

11. The respondent became aware of the claimant at a personal injury event hosted by Exchange Chambers. He was offered work experience and then a fixed term position beginning on 1 October 2018. The temporary position was extended until he was offered and accepted permanent employment on 18 February 2019 as a paralegal.

12. In December 2018, the claimant mentioned his interest in doing a pupillage to Hilary Meredith, the owner of the respondent firm, at an awards event. Hilary Meredith said to talk to her about it in the New Year. The claimant sent Hilary Meredith an email on 8 January 2019. He wrote that he believed that they had previously employed an in-house barrister and he would be interested in securing a similar position if possible. He wrote, "If I wanted to apply for a pupillage within HMS as suggested how would I go about it?".

13. Hilary Meredith replied on the same day, writing:

> "Thanks for this Simon, very flattered that you would consider us. I know we have done this before in London. I will discuss with the Board and come back to you."

14. It is common ground that there were a number of discussions between the claimant and Hilary Meredith about the possibility of pupillage. No notes of these discussions were taken by either Hilary Meredith or the claimant. It is common ground that Hilary Meredith informed the claimant that they had previously helped someone, who is referred to in these proceedings as "the London pupil" to complete her pupillage by working in their London office during her final six months' pupillage. The arrangements for that had been that the London pupil was overseen by a barrister in nearby chambers. The respondent paid the London pupil whilst she worked for them, but not for any other part of the pupillage, which had been completed prior to joining the respondent. A press release issued about the

London pupil suggests that the intention at the time had been that the London pupil would remain with the respondent once qualified as in-house counsel. At that time, the respondent did fast track work, but they subsequently sold this part of the business and closed the London office. In the event, the London pupil obtained a tenancy in chambers shortly after qualifying.

15. The claimant agreed in cross examination that the respondent was to consider what they could do for him and that the template was what had previously happened with the London pupil.

16. The claimant also agreed in cross examination that there was never an agreement that he would become in-house counsel with the respondent once he qualified as a barrister. This is consistent with the note taken by Sinead Cartwright of a discussion on 21 January 2019 when she informed the claimant that previously in-house counsel had come to them at the end of her training with chambers and it was a one-off, but going forward they might look at it.

17. There is a dispute as to whether, as the respondent says, the respondent agreed to pay the claimant only during the six months of the pupillage when he would be working at the respondent firm as a paralegal or whether, on the claimant's case, Hilary Meredith agreed that they would pay the claimant his normal salary for the full 12 months, including the six months when he would be doing his non-practising stage of the pupillage at Exchange Chambers.

18. We find, for reasons which follow, that the respondent's account of the discussions is more likely to be accurate than that of the claimant.

19. It is more consistent with the London pupil template that the respondent would have agreed only to pay the claimant when he was attending work for the respondent than they would have agreed to pay for the full 12 months, including the time spent at Exchange Chambers. This arrangement would also be consistent with the arrangements the respondent firm has for trainees who need to be seconded to other firms to complete areas of work which are not done by the respondent firm. These trainees are paid, whilst on secondment, by the firm to which they are seconded.

20. Only paying for time spent at the firm is also consistent with there being no agreement that the claimant would work for the respondent as in-house counsel after completing pupillage; it would not be an investment for the respondent to pay for the claimant's training when he was not doing work for them. By the time the claimant was working for the respondent, the respondent did not have any low value work which required counsel (as opposed to work which could be done by solicitors without the same advocacy rights as barristers) on which they would be prepared to try out a newly qualified barrister. We find the respondent had no need for in house counsel, particularly a newly qualified barrister.

21. The respondent's account that they agreed to pay the claimant only during the six months of the pupillage when he would be working at the respondent firm as a paralegal and not the six months to be spent at Exchange Chambers is also more consistent with the correspondence between Hilary Meredith and the respondent's legal cashier in late August 2019 and between Hilary Meredith and Exchange Chambers in August and September 2019 and with email exchanges between Hilary

Meredith and the claimant described later, than with the claimant's account of the agreement.

22. The claimant sent an email on 16 July 2019 to Exchange Chambers asking whether they knew where he could secure funding for carrying out his pupillage. The claimant would have had no reason to write this email if he was confident that the respondent was to provide funding for the whole 12 months of the pupillage. This was before the issue of funding the 6 months with Exchange Chambers had emerged as an issue for the respondent, following an enquiry from the respondent's Legal Cashier on 23 August 2019, which we deal with later in these reasons.

23. On 13 March 2019, Hilary Meredith sent an email to the claimant. She wrote: "I think with your permission we should put something in our next newsletter about you and your pupillage with us?"

24. The newsletter to which Hilary Meredith referred, was the respondent's internal newsletter. However, as set out below, in the event, a press release was prepared.

25. The claimant responded that morning, writing "absolutely, you have my permission. I think that would be great. Thanks."

26. This email correspondence was copied to Bob Bion, the founder and director of a public relations and marketing communications agency, which dealt with public relations, marketing, media relations and social media management on behalf of the respondent.

27. Bob Bion prepared a draft press release, with input from the claimant. In seeking a comment from the claimant to include in the press release, Bob Bion wrote "would it be fair to say your own experience helps you to advise anyone who has suffered a serious injury? If you could give me a comment/your thoughts that would be great." The claimant replied:

> "I am always careful not to assume that I automatically understand how a person with a serious injury feels. However, I do believe that I can relate to someone with a serious and catastrophic injury, and moreover have some idea of the processes and equipment that they might have to endure or require in the future.
>
> "I think it's important to know what to prioritise and focus on, in order to secure the best outcome. Additionally, I think it's essential in the early days of injury to have someone that can plan ahead, because when you are first injured you have no idea of your own abilities or what you might need in the future.
>
> "Hope this helps."

28. On 14 March 2019, Bob Bion emailed the claimant saying he had had a chat to someone from Exchange Chambers to get a comment and they were going to put some words together. He wrote that Exchange Chambers had flagged whether, before announcing the Exchange Chambers' part of the pupillage, they needed to wait until the Bar Standards Board (BSB) had given the claimant the green light. The claimant replied within 10 minutes, writing that he agreed that would be wise. He

wrote that he believed it took up to 10 weeks to receive a decision back from the BSB. Bob Bion replied that he would get everything prepped in the meantime.

29. Bob Bion sent a first draft of the press release to the claimant on 15 March 2019, asking for his thoughts. He wrote: “feel free to make any amends! Once you’re happy with it, I’ll send it over to Hilary for her sign off and will be good to go when the time is right.” The heading of the press release was: “man rendered tetraplegic after horrific accident set to realise his ambition to become a barrister.”

30. On 5 April 2019, Hilary Meredith emailed all staff at the respondent saying there were now free tickets available on a table at an event the next day. This was a gala ball at the Lowry Hotel in aid of charity with which Hilary Meredith was closely involved. The claimant replied within half an hour asking if he and another employee could reserve a ticket. The claimant and some other members of staff and Hilary Meredith duly attended the ball on 6 April 2019. There was a charity auction as part of the event. Hilary Meredith had provided the prize of a week’s internship with the respondent. The auctioneer invited Hilary Meredith on stage to explain something about the firm. Hilary Meredith invited members of staff, including the claimant, to come on stage and said something about these members of staff. We find that Hilary Meredith, in introducing the claimant, mentioned that he would be commencing a pupillage with the respondent. The claimant accepted in cross-examination that this was an achievement he was pleased about and it was sharing good news. At this point, the BSB had not agreed to the pupillage.

31. On 26 April 2019, the respondent had an event for new starters at the firm to meet and get to know each other. Hilary Meredith asked everyone to introduce themselves and say something about their role. In introducing the claimant, Hilary Meredith referred to the intention that the claimant would start pupillage with the respondent. The claimant agreed in cross-examination that this was relevant background about him. He said he was not saying that this was harassment at the time because of disability.

32. On 13 May 2019, the respondent made an application to the BSB for a pupillage advertising and funding requirements waiver in relation to the claimant. The claimant prepared the application and Hilary Meredith signed this. The grounds upon which the waiver was sought, drafted by the claimant, were based heavily on the claimant’s disability. They included the assertion that, if the claimant were to apply through the pupillage gateway, he would be disadvantaged. The application did not say how the pupillage would be funded.

33. On 28 May 2019 the BSB wrote to Hilary Meredith concerning the application for waiver of the pupillage funding and advertising requirements she had made. They wrote that in order to consider the application she would be required to provide:

(1) Evidence confirming that the pupillage offered to the claimant by the respondent would be sponsored and confirmation of the amount of funding that would be made available for this pupillage; and

(2) A copy of the agreement between the respondent and Exchange Chambers in relation to the non-practising period of pupillage being offered to the claimant and/or confirmation from Exchange Chambers

> that they had agreed to accommodate the claimant in his non-practising period of pupillage.

34. Hilary Meredith forwarded this email to her PA asking:

> "Can you reply advising how much we pay Simon for his pupillage (his salary) and that we have been authorised in the past?"

35. Following those instructions, Hilary Meredith's PA wrote to the BSB on 29 May 2019. In relation to funding, she wrote:

> "We can confirm the amount of funding made available to Mr Arnold to be £22,000 per annum."

36. These email exchanges were not copied to the claimant, so he was not aware of them at the time and they could not have informed his understanding or the arrangements at the time. We consider that the email from Hilary Meredith and the subsequent email from her PA to the BSB could be read either, as Hilary Meredith says in her evidence they should be read, which is that it is the rate they would be paying him when he was working at the firm, or it could be read as meaning that Hilary Meredith Solicitors was providing funding of £22,000 for the 12 month period of the pupillage, including the non-practising six months to be spent with Exchange Chambers. We find that the meaning suggested by Hilary Meredith is more likely to have been her intention than an intention to fund the claimant during the whole pupillage, including the time spent at Exchange Chambers, when the claimant would not be working for the respondent. This is more consistent with the agreement that they would be following the template for the London pupil and with what Hilary Meredith said to the respondent's Legal Cashier, to the claimant and to Exchange Chambers from late August 2019 onwards.

37. On 31 May 2019, the BSB emailed the respondent asking for a copy of the agreement between the respondent and Exchange Chambers. Hilary Meredith wrote to her PA that they did not have an agreement and asked her PA to ask the claimant to contact Exchange Chambers to say they needed a quick written agreement to say that the respondent was, with them, providing a pupillage. Hilary Meredith's PA contacted the claimant about getting a written agreement and he replied that he would speak to them. The claimant contacted Exchange Chambers by email.

38. On 4 June 2019, Exchange Chambers informed the claimant that the BSB had asked Exchange Chambers to complete an application for waiver of pupillage funding and advertising requirements and that Exchange Chambers had done that.

39. On 26 June 2019, the BSB wrote to Exchange Chambers about their application for a pupillage funding and advertising waiver in respect of the claimant. They asked for confirmation that the claimant would have funding available to him from another appropriate source and to provide evidence to support that if applicable. Exchange Chambers replied, writing that the claimant would have funding available to him from Hilary Meredith Solicitors. We find, based on the subsequent correspondence between Hilary Meredith and Exchange Chambers in late August and September 2019, that this understanding was based on information provided by the claimant to Exchange Chambers and was not as a result of information supplied by the respondent to Exchange Chambers. Until late August

2019, the respondent did not get involved directly with Exchange Chambers in making the arrangements for the claimant's pupillage; this had been dealt with by the claimant.

40. On 27 June 2019, Exchange Chambers informed the claimant that their application had been successful and that they could now start the process of getting the claimant's pupillage registered.

41. The successful application was the application made directly by Exchange Chambers to the BSB. As previously noted, the respondent had also made an application.

42. On 26 June 2019, Hilary Meredith's PA emailed the claimant asking whether he had heard back from Exchange Chambers in relation to the information sought. The PA wrote that she did not want the BSB to assume that the respondent did not want them to consider their application and reminding the claimant that there were only 2 ½ working days left before 1 July, which was the deadline the BSB had given. On 1 July, the PA wrote again, writing that if they did not put something in that day, they would have to start the process all over again. The claimant replied that day, saying that it had all been officially approved now.

43. The BSB wrote to the respondent on 1 July 2019. They wrote that their records showed that Exchange Chambers had also applied for a waiver from the pupillage funding and/advertising waiver in relation to the claimant and that had now been approved. They wrote that, as a waiver in relation to the claimant had already been considered and approved by the BSB, the respondent's application for waiver from the pupillage funding and/or advertising waiver would be withdrawn.

44. The claimant emailed Hilary Meredith's PA on 2 July 2019 to say that he had spoken to the BSB and they had officially accepted his application.

45. On the same day, the claimant emailed Hilary Meredith asking whether they needed to let Bob Bion know about his pupillage, so that he could do the press release. Hilary Meredith then emailed Bob Bion, copying the claimant, saying: "we now have the green light to provide pupillage for someone can we do some PR around this? Simon we need a photo?"

46. Bob Bion replied, sending the draft press release to Hilary Meredith, copied to the claimant.

47. On 4 July 2019, Bob Bion emailed a contact at the Times, with the subject "potential exclusive for Times Law hard copy?" He attached the press release about the claimant's pupillage. Times Law expressed interest and asked for a photo. The claimant supplied some photos. An article appeared in Times Law on 8 July 2019. Bob Bion emailed the claimant and Hilary Meredith early that morning to alert them to the article, attaching a copy. Bob Bion wrote that everything was linked through on social media and he would ask another contact if they could retweet for them as well. The claimant replied that morning: "great article, which should help to highlight the difficulties of working if you are less able, but particularly at the Bar. Hopefully it will make a difference somewhere."

48. The press release sent out retained its original title of "man rendered tetraplegic after horrific accident set to realise his ambition to become a barrister."

49. The story was picked up by a number of other publications. Articles included a photograph which had been supplied by the claimant.

50. We find that the publicity was done because the respondent believed at the time that the pupillage would go ahead. Having been told that the BSB had given the green light, and the lack of funding issue not coming to the respondent's attention until late August 2019, the respondent had no reason, at the time the press release was sent out, to believe that the pupillage would not go ahead.

51. On 8 July 2019, the BBC contacted Hilary Meredith about the possibility of the claimant going on the Victoria Derbyshire show. Hilary Meredith was away at the time but offered that Bob Bion could accompany the claimant for support. The claimant replied: "excellent, do you have a list of company achievements that I can have." He ended with a smiley face emoji. In the event, for reasons which are not clear to us, the claimant did not go on the Victoria Derbyshire show. However, the BBC expressed interest in filming a documentary about the claimant's experiences as a pupil barrister.

52. On 18 July 2019, the claimant was asked, via Bob Bion, whether he would like to contribute to Counsel magazine, a publication aimed at barristers, writing an article for this series called "an extraordinary day in the life of…." They asked if he would be willing to write about a day in his life in the first few weeks of pupillage. They suggested a deadline of 20 September. The claimant responded enthusiastically.

53. The claimant has asserted in evidence that he was uncomfortable disclosing his disability in publicity but did so because he was encouraged to do so by Bob Bion. If the claimant had any reservations about this, he did not display them at the time. Based on the claimant's responses to suggestions about publicity, we consider it more likely than not that the claimant was a willing participant at the time although, with hindsight, given that the pupillage did not go ahead, the claimant now has regrets about the publicity.

54. On 23 August 2019, the respondent's Legal Cashier wrote to the Board saying that she had never had a decision about the claimant's pay once he goes to Exchange Chambers. She wrote:

> "Am I paying him from here (and maybe billing Exchange for a portion?), are Exchange paying him, do I need to give him a P45?"

55. Hilary Meredith replied within the hour, writing:

> "Sorry, I thought I answered Exchange pay him not us."

56. Sinead Cartwright then spoke to Tom Handley at Exchange Chambers. She wrote to Hilary Meredith that evening, writing:

> "I spoke to Tom Handley about this and he said they weren't paying him, they would be in trouble with the Bar Council if the [sic] did, as it would be seen as not an open competition."

57. Two minutes before sending that email to Hilary Meredith, Sinead Cartwright wrote to the Legal Cashier, copied to the respondent's Board:

> "My understanding is that we are paying him whilst he is at Exchange Chambers as he is on a secondment there and they are providing some of his training for his pupillage in order to satisfy the Bar Council. We should change his contract to a one year fixed term – pupil barrister in the way since his job role has now changed, similar to what we do for trainees."

58. Sinead Cartwright did not give oral evidence to this Tribunal but provided a witness statement. In that statement, she writes that this understanding was based on what the claimant had told her. Given the conversations Hilary Meredith had had with the claimant about following the London pupil template, and given Hilary Meredith's reply on 23 August 2019 that Exchange were paying the claimant and they were not, it seems unlikely that Sinead Cartwright got the information that the respondent was to pay the claimant during his time at Exchange Chambers from Hilary Meredith. The more likely source of information is directly from the claimant. This would be consistent with what we have found about the claimant telling Exchange Chambers that the respondent would be paying him when he was doing his six months with Exchange Chambers.

59. On 28 August 2019, the Legal Cashier wrote to Hilary Meredith, writing that she assumed that Hilary Meredith had not seen Sinead's email (referring to the email that Sinead Cartwright's understanding was that the respondent was paying the claimant whilst he was at Exchange Chambers). The Legal Cashier wrote:

> "She has said that we are to pay him the same rate as he is now. Is this ok?"

60. Hilary Meredith replied the same day as follows:

> "Ok, not my understanding and I would never have agreed to this. I fail to see why we are paying for him not to be here and they have the benefit. We have never done this before."

61. Hilary Meredith asked Sinead Cartwright to arrange a meeting with her, Sinead and the claimant to discuss this.

62. A meeting took place on 28 August 2019 at which Hilary Meredith told the claimant that the respondent would not be paying him whilst he was at Exchange Chambers.

63. Hilary Meredith wrote to Exchange Chambers on the same day. She wrote that there seemed to be a misunderstanding that they were not paying him a salary for the six months' pupillage with them:

> "…as you have to open up the position and advertise, but Simon obtained an advertising waiver from the Bar Council in view of his disability and can now be paid by Exchange.
>
> "Can you please confirm this is the position as he clearly cannot go without pay for six months."

64. Tom Handley replied on the same day:

> "We can definitely not pay Simon, it would break every rule in the book and Bill would be struck off!

> "We have done three of these pupillages where we look after the first six months and then the pupil goes to work for the firm/organisation to finish the pupillage and then work there full-time, and we haven't paid any of these pupils – (1) because the BSB only allow it on the basis the person is not paid by chambers otherwise it needs to be advertised, and (2) we haven't budgeted for it and putting it bluntly we do it as a favour. There is nothing in it for us as the pupil isn't staying with us, they are going to do their advocacy work for their firm or organisation.
>
> "He's really your employee that we are looking after the six months for you so he can become a barrister."

He wrote that he also agreed that the claimant could not go without pay.

65. Hilary Meredith relied, also on 28 August 2019:

> "Oh dear, that causes us a problem as we haven't budgeted either."

She wrote:

> "I don't understand the other implications but Simon would not work for us full-time after qualifying as a barrister, I had presumed that he might be working with you, but I haven't been involved in any of this, I'm not even sure how the whole proposition came about."

66. On the morning of 29 August 2019, Tom Handley of Exchange Chambers wrote to Hilary Meredith as follows:

> "I'm sure he believes he is being kept on at HM to be your in-house advocate! That's what we thought as well, we were happy to do you a favour by training him and looking after the first sixth but then he comes back to you. We have to apply for two waivers to allow us to do this for you – one for advertising and the other re funding – if we said we were funding it they wouldn't allow it. Oh dear, what a pickle."

67. On 29 August 2019 Sinead Cartwright wrote to Hilary Meredith, writing that her understanding was that the claimant "sets" this with Exchange; the respondent had never agreed that he would become their in-house counsel; he would do his six months with the respondent, under the supervision of a barrister from Exchange, and at the end of that he would then have to look for tenancy; this would be done under a 12 month fixed term contract, similar to trainees, and at the end of the six months he would not return to his former job.

68. Hilary Meredith wrote to Sinead Cartwright shortly afterwards:

> "So Exchange are refusing to pay him saying they cannot as it breaches their rules and we certainly can't, is Simon fully aware of this?"

69. Hilary Meredith wrote to Tom Handley of Exchange Chambers on 29 August 2019 referring to the arrangements with the London pupil. She wrote that they did not have lower end work they could let a junior barrister work on and that remains the case. She wrote:

> "Our understanding was that Simon, once he decided he wanted to qualify, would arrange the same training so we would simply fulfil six months pupillage for him working for us but overseen by way of weekly meetings by someone at Exchange.
>
> "There remains no in-house position for a junior barrister at HMS and Simon is fully aware that, once he is qualified he takes his chances that circumstances may have change[d] here or he applies to various chambers for a tenancy.
>
> "What we were not aware of is that he is spending six months out of our offices with Exchange Chambers with no pay, I don't think he was aware of this either and is now talking about trying to obtain a loan to fund his pupillage."

70. Hilary Meredith wrote that "what started out as a kind favour by both of us seems to have become difficult to achieve".

71. The correspondence with Exchange Chambers is more consistent with Hilary Meredith's account of the discussions between her and the claimant than that of the claimant. The exchanges between the respondent and Exchange Chambers are also consistent with the claimant having made the arrangements with Exchange Chambers directly rather than Hilary Meredith having spoken to anyone at Exchange Chambers about the arrangements.

72. On 29 August 2019 Hilary Meredith wrote to the claimant. She began writing that she realised this was very upsetting for the claimant and it was for her too, and that she was trying to sort this out for him. She wrote:

> "For the avoidance we tried to sort out a pupillage for you as a nice favour to help you on the first rung of the ladder to becoming a barrister, it was never seen as an investment by the firm as it has never been anticipated that we would employ an in-house barrister for a number of reasons I will come on to.
>
> "A few years ago we assisted another person who for reasons, had problems in her pupillage and we wished to also help her get her feet on the first rungs of the ladder to qualification.
>
> "We agreed to complete her last six months' pupillage with us in our London office, working for us and paid by us, assisting a partner on his cases but overseen two hours a week by a local barrister. She worked as a paralegal also picking up slack from other fee earners as and when required.
>
> "At the end of her pupillage with us she obtained a tenancy with chambers as, we as a Solicitors' Practice, could not comply with Bar Standards requirements and offer her the number of hours advocacy required in the first two years of her qualification.
>
> "In addition the firm did and does not have sufficient lower valued work for a junior barrister to 'cut their teeth on'."

73. Hilary Meredith wrote that, from a firm's risk point of view, they would never instruct a junior newly qualified barrister on their high value, complex military cases

or to represent military clients at inquest. She said they had never mooted the idea of an in-house counsel but would be open to any proposals the claimant might wish to put forward on this towards the completion of his pupillage. She wrote that she understood that the claimant was to go to work with Exchange Chambers for six months but this required the firm to recruit a replacement for him at a cost to the firm. She wrote:

> "We would never envisage circumstances where we would pay you to work for someone else and had presumed that Exchange would be paying you."

74. She also wrote:

> "Upon your return after your time with Exchange you would either take up your position in AFCS or work as our trainees do and as our previous pupil did, as a quasi paralegal to a partner but picking up slack from other fee earners. In addition we would undertake to keep you on the pay you are currently on, on your return, and not reduce this to the Bar Council minimum wage as we do with our paralegals who work here first."

75. She wrote that she was wondering if he should approach alternative chambers on a six month pupillage who might be willing to pay for him and they could maybe help him with the approaches for this. She concluded:

> "I'm sure Simon this can be sorted one way or another and we remain keen to help you achieve your goal."

76. The claimant has suggested that Hilary Meredith was being disingenuous and did not really intend to help him. We find no evidence that this was the case. All the correspondence is consistent, up to and beyond the claimant's resignation, with Hilary Meredith trying to sort out what was a very problematic situation. From the evidence of the emails, Hilary Meredith and other Board members clearly spent a very considerable amount of time trying to find a solution to enable the claimant to achieve his aspiration of qualifying as a barrister. We do not consider it credible that Hilary Meredith would have done this as some sort of charade.

77. The claimant, in subsequent correspondence, never asserted that Hilary Meredith had reneged on earlier promises to him. It is possible that, as the claimant has stated in evidence, this was because he did not wish to antagonise Hilary Meredith who he needed to help him. However, given the weight of evidence which suggests strongly to us that the respondent had never agreed to pay for the claimant during the six months he was to spend with Exchange Chambers, the claimant's failure to accuse the respondent of reneging on a deal is, rather, consistent with what we find to be what had been agreed.

78. On 31 August 2019, following a meeting the previous day, the claimant proposed a possible solution. He suggested that if the Bar Standards Board's minimum funding requirement for pupillage of £15,728 was deducted from his present salary of £22,000, the difference between the two could be applied towards the funding requirement of the first sixth.

79. Sinead Cartwright wrote to Hilary Meredith and the Board on 2 September 2019, noting the claimant's assessment of how they could pay him. She suggested another way of looking at it was that they could reduce his salary to the minimum of

£15,728 and agree to pay that for the whole 12 months as a way of covering his six months with Exchange. She suggested there could be some negotiation to be had there. Hilary Meredith replied, asking Sinead Cartwright to sort this out.

80. Sinead Cartwright wrote to the claimant on 4 September 2019, writing that, following on from his email to Hilary Meredith:

> "We need you to advise us what the full requirement of the Bar Council is as regards provision of training so we can assess whether on your proposed six months with us that can be met. That will determine where you do your six months, who pays for that.
>
> "Once you have determined this with the Bar Council we can try to move things forward and then a contract set up for your new role (pupil barrister?) as your current role will cease. Obviously the term of that contract and salary cannot be determined until these things are clarified.
>
> "At the end of the term of the contract as you will be a qualified barrister then your employment with the firm ends since, as explained, we are not looking for an in-house barrister art the present time."

81. The claimant replied, providing some detail about supervision, and writing that no obligations were placed on the respondent in his second sixth, describing the second sixth as supervisory only.

82. The claimant has given evidence that there was a meeting between him and Sinead Cartwright in which Sinead Cartwright agreed, on behalf of the respondent, that they would meet the minimum funding of £15,728. This evidence is not consistent with the correspondence. We find that the respondent never agreed that they would pay this amount over 12 months. There were some discussions, but this did not result in an agreement. An email from the claimant of 4 September 2019 to Exchange Chambers, in which he refers to what he describes as a "provisional offer" suggesting a 12 month fixed term contract as pupil barrister with provisions to cover the minimum funding for pupillage of £15,728, is more consistent with no agreement having been reached than with a binding agreement having been reached.

83. On 6 September 2019, Hilary Meredith spoke to Exchange Chambers. They informed her that the claimant had phoned them and said that the respondent was paying his salary whilst with them. Hilary Meredith wrote to the claimant on 6 September, writing that no salary or terms had been agreed with her, Sinead Cartwright or any member of the respondent. They had asked the claimant to find out what the training requirements were and were waiting for this information. She wrote that, in the light of the continuous misunderstandings going on, they would now take over communications with Exchange so that there was no confusion. She set out the information which they required him to provide to Sinead Cartwright, and wrote that, once Sinead Cartwright had been fully informed, the Board would make a decision. The claimant replied, apologising for any miscommunication that had occurred. He provided information about the arrangements for pupillage.

84. On 9 September 2019 Hilary Meredith and Sinead Cartwright had a telephone conference with members of Exchange Chambers. This discussion revealed a difference in understanding between Exchange Chambers and the respondent about

the arrangements for the claimant's pupillage. The discussion included Exchange Chambers informing Hilary Meredith and Sinead Cartwright that the claimant's six months pupillage with the respondent would need to include doing advocacy.

85. Hilary Meredith and Sinead Cartwright then had a meeting with the claimant. Hilary Meredith and Sinead Cartwright referred to the "disconnect" which they had discovered between Exchange Chambers and the respondent as to the arrangements for the pupillage. Hilary Meredith spoke about the respondent never having done a full 12 month pupillage before.

86. Hilary Meredith emailed Exchange Chambers the same day. She wrote that, having undertaken a mini pupillage in the past, they had understood this was a similar situation but clearly it had now transpired that it was not. She referred to the arrangements for the London pupil. She wrote that they had no intention of employing an in-house barrister, they did not have the work type for a very junior barrister to "cut their teeth on" and this had never been their intention or business model. She wrote that they only intended to help the claimant get his foot on the ladder to qualification and, with hindsight, she should have been more involved. She set out a number of reasons why they could not employ someone for six months working away from them in Chambers. These were as follows:

> "1. We haven't budgeted for this and had no intention of ever paying someone not working within HMS.
>
> "2. We have to employ a permanent replacement for Simon
>
> "3. Simon would come back to us as a quasi-trainee/paralegal to Gina [sic – gain?] experience for 6 months and finish his pupillage
>
> "4. He would then apply for a tenancy at a Chambers."

87. She wrote that the claimant had discussed with them a reduced salary over 12 months, but this would still leave them £8000 out of pocket plus the cost of his replacement. She also questioned whose professional indemnity insurance would cover the claimant if he continued to work with the respondent whilst with Exchange Chambers for six months. She concluded: "I'm afraid unless this can be sorted without considerable financial loss to us it's going to be a not [sic] starter, is there any possible solution to this to help?"

88. Tom Handley of Exchange Chambers replied later the same day. He wrote that clearly there had been some confusion as to what Exchange Chambers were doing for the respondent and the claimant. He wrote that they thought they were supervising the first six months for the respondent. He wrote that this was not something they like doing because it's very time-consuming for the people supervising with nothing for Chambers at the end of it. However, they would do it for firms with which they have strong ties. They have to make an application to the Bar Standards Board setting out what they are looking for. He attached a copy of their application to the Bar Standards Board. He wrote that the respondent would see that they made it very clear that the claimant was employed by the respondent and would go back to working for them. He wrote:

> "I fear that they will disallow it without the assurance that he is not only employed by you but you have the requisite people to supervise him.

> "They would I'm sure see this as going round the back door to get into Chambers - if someone obtained pupillage with us in this way.
>
> "We will have to go back to them to explain the position, do I take it this is your final position and you are happy for us to repeat this to the BSB?
>
> "I'm absolutely sure the BSB would not allow us to fund Simon in any way or do anything that might result in him remaining in Chambers after his pupillage that would fly in the face of all the pupillage regulations.
>
> "Simon is of course welcome to apply to us next year for pupillage under the normal arrangements - competition as you know is very fierce so I would not want to build his hopes up - we normally have over 400 applications.
>
> "I know we have both tried to help Simon achieve his ambition but for some reason we seem to have been working at cross purposes.
>
> "We will need to go back to the BSB and confirm the position as soon as possible so if you could just let me know you are happy for me to repeat what you have stated in your last email."

89. On 13 September 2019, the claimant emailed Hilary Meredith, asking if she had heard anything from Exchange Chambers. He wrote that he thought the most significant obstacle preventing him from completing his first six was having an agreement in place with the respondent for funding. If this could be agreed, he would be able to progress as expected. He wrote that, in relation to his second six, he was positive that between the respondent and Exchange Chambers they would be able to resolve any compliance issues imposed by the Bar Standards Board. He also wrote that the BBC had again been in contact with him in relation to covering his story. He wrote that they now wished to film a more comprehensive documentary, filming him in the workplace and covering various elements of his pupillage.

90. Hilary Meredith replied within the hour. She wrote:

> "Simon having spent a great deal of time on this now for you and met with you, these are the hurdles you need to sort out before this can go ahead.
>
> 1. The main obstacle is HMS being able to comply with the skills set required for Exchange Chambers (not us) to sign you off as fit to qualify.
>
> "You cannot assume that Exchange will sign you off and we cannot assume we can support the skill set required as we have no suitable cases for a junior barrister to work on. This I think cannot be underestimated and needs to be sorted before you can go ahead to the satisfactions of Exchange/HMS.
>
> 2. Secondly HMS cannot pay you for the six months you don't work here and pay a second salary to cover your work, simply, as a small practice, cannot afford this. You need to therefore consider how you can support yourself during six months with Exchange Chambers?"

91. The claimant's pupillage, if it had gone ahead, would have started on 16 September 2019. It did not start on that date or any other date. The claimant continued working for the respondent as a paralegal until his resignation.

92. We accept the claimant's evidence that he was highly embarrassed at having to explain to colleagues, friends and family who had previously congratulated him, that he was no longer starting pupillage.

93. The claimant explored other possibilities for funding his pupillage without success. Self-funding is prohibited by the Bar Standards Board rules.

94. One of the enquiries the claimant made was to Gray's Inn for a possible scholarship on 2 October 2019. In his email, he wrote that his pupillage had been publicly announced in December 2018 and received much publicity nationwide, as they would see by searching Google. In seeking funding for the first sixth with Exchange Chambers, the claimant wrote that further publicity was anticipated and "I would provide a fantastic marketing opportunity should it be positive."

95. The claimant had agreed to provide an article for Counsel magazine by 20 September 2019. He missed the deadline but, on 1 October 2019, Counsel magazine said they were still keen to have his article. Bob Bion, who was unaware that the claimant had not started his pupillage, emailed the claimant on 1 October, asking if he was still up for the article. The claimant replied the same day, writing: "Absolutely, yes." He wrote that he had started the article although it still required quite a lot of work. Bob Bion asked the claimant what he would be comfortable with in terms of a timeframe. A new deadline of 7 October was agreed.

96. At 22.34 on 7 October 2019, the claimant sent Bob Bion a draft copy of his article. This followed reminders from the magazine passed on from Bob Bion. The draft article he sent included a statement that he had secured a pupillage. The claimant and the respondent had not informed Bob Bion that the pupillage was not going ahead. The claimant had already sent the article directly to Counsel. Early on 8 October 2019, Bob Bion, with the agreement of the claimant, added some material to the article, taken from the original press release. We accept the evidence of Mr Bion that he did so because the article did not meet the required word count and this was to "pad it out". Counsel published the article in October 2019, although it was not quite what they were expecting.

97. In an email dated 22 October 2019, the claimant informed Sinead Cartwright that he was hoping to secure some kind of sponsorship to cover the obligatory funding requirement of pupillage, which the BSB had now agreed could come from any source. He wrote that, once this was secured, he then needed to work with HMS to secure the relevant experience to be signed off.

98. On 5 November 2019, the claimant emailed Sinead Cartwright and Dianne Yates, another director of the respondent, asking whether they had any ideas as to how he could secure funding for his pupillage. He wrote that he could not be self-funded as this was prohibited by the regulations but the BSB had conceded that he could be sponsored. He asked whether there was a firm or charity that sprung to mind which might be able to help.

99. Sinead Cartwright and Dianne Yates met with the claimant the same day. Sinead Cartwright wrote in her witness statement that this was to discuss the claimant's email and possible sponsorship sources. She wrote that they brainstormed ideas on how the situation could be resolved. The claimant recorded, in a note written and emailed to himself the next day, "firm unable to support me"

about this meeting. The claimant gave evidence that he raised in this meeting that Hilary Meredith and Sinead Cartwright had agreed to fund his pupillage and had reneged on the agreement and he had made it clear he was unhappy at how the firm was treating him. We find that the meeting was to discuss ideas for sponsorship, with the purpose of trying to assist the claimant. We do not accept the claimant's evidence that he made allegations at the meeting that Hilary Meredith and Sinead Cartwright had agreed to funding and then reneged on the agreement. It is more consistent with the claimant's email preceding the meeting that funding ideas would have been discussed, rather than the meeting proceeding as the claimant has suggested. This finding is also consistent with our findings that no agreement had been reached for the respondent to fund the claimant during the six months to be spent at Exchange Chambers. If the claimant had hoped that the respondent would volunteer to fund the six months with Exchange Chambers, despite the respondent's previously stated position, he would have been disappointed that this offer was not made.

100. The claimant has alleged that Sinead Cartwright insinuated that he would not succeed in obtaining a pupillage if he applied to the pupillage gateway. It is not clear from his evidence when he alleges this took place. It appears that paragraph 51 of his witness statement is his only evidence in relation to this allegation. He writes in this that Sinead Cartwright said that he could always apply through the pupillage gateway if he wanted, which she knew was a very competitive process. He writes: "the inference was that I would be disadvantaged and unable to secure a pupillage because of my disability." We find that, if this inference was drawn by the claimant, it was not one which was reasonable to draw on the basis of his evidence as to what was said by Sinead Cartwright. Sinead Cartwright denies in her witness statement that she insinuated that he would not succeed in applying for a pupillage due to his disability. She wrote that, during her conversation with the claimant and Dianne Yates, they discussed applying for pupillage's directly to chambers as an option and she may have mentioned it was a competitive process but she did not suggest to the claimant that he would not succeed or that he would not succeed due to his disability. The evidence, at its highest, in relation to this allegation, is that Sinead Cartwright told the claimant he could apply for pupillage through the Pupillage Gateway, which is the normal method of application, and said that it was a competitive process, which is a factually correct statement. We find that Sinead Cartwright did not insinuate that the claimant would not succeed in obtaining a pupillage if he applied through the pupillage gateway.

101. On 6 November 2019, the claimant emailed notes he had made to his personal email account. These were disclosed by the respondent, having been found on the claimant's work computer and were not disclosed by the claimant. The claimant said in evidence that he had forgotten about the notes.

102. On 14 November 2019, the claimant emailed Sinead Cartwright, resigning from the respondent. He wrote:

> "Unfortunately, I feel that due to the way that Hilary Meredith solicitors have treated me, along with the absence of any resolution to the issues that you have raised retrospectively in relation to my pupillage my position with the firm has now become untenable."

103. Although the wording of the claimant's resignation was somewhat ambiguous as to whether he was giving notice or resigning with immediate effect, the claimant continued to work for the week following his email (save for the final afternoon, when he left the respondent's premises at lunchtime, and did not return, without informing anyone at the respondent that this was his intention).

104. Hilary Meredith was out of the country on holiday at the time of the claimant's email of resignation, but, on 14 November 2019, having been told of the claimant's resignation, she emailed him. She wrote that she was shocked and deeply saddened that he had done this and was at a loss to understand why. She asked if he could wait until she was back in the office to get together for a chat to discuss a way forward. The claimant replied, thanking her for her email and saying he would speak to her upon her return.

105. Hilary Meredith met with the claimant on 20 November 2019. She tried to persuade him to stay with the respondent while he looked for another position, on the basis that it is easier to get other employment whilst in employment. It appears from the subsequent emails, that she said she would approach Exchange Chambers again to see if they could help.

106. On 20 November 2019, Hilary Meredith emailed Exchange Chambers. She wrote that the claimant had handed in his notice despite her trying to advise him to stay, on the basis that it is easier to obtain a job whilst in one. She wrote that the claimant was adamant that he needed to concentrate his efforts in obtaining a pupillage. She asked if there was any way Exchange Chambers would fund his first six months pupillage whilst the respondent funded his last six months working with them.

107. Exchange Chambers replied the same day saying they could not. They wrote: "apart from the BSB not allowing us we have six people starting next time so you can imagine the cost implications of that, I couldn't add a seventh!"

108. Hilary Meredith emailed the claimant on 21 November, informing him of the reply from Exchange Chambers. She wrote that, as they discussed the previous day, the only possibility would be for the claimant to apply via the Bar Council. She wrote:

> "We as a small firm could never afford to pay you whilst you left us for six months and we employed someone else to take on your role.
>
> "What we can do as we have always said is help you by completing your last six months was to work for us as we have done in the past?
>
> "I'm still very concerned that you want to leave no other position to go to and as I have said it's always easier to obtain another position whilst still currently working.
>
> "Is there any way you can continue working here and apply to the Bar Council for a pupillage in a Chambers to qualify as a barrister, once you have secured your pupillage you then leave to become a barrister?"

109. She concluded by inviting the claimant in to discuss. The claimant replied that he would call in.

110. The claimant and Hilary Meredith had a further discussion. The claimant alleges that Hilary Meredith said, in this conversation, “if they won’t provide your funding, they mustn’t think much of you.” Hilary Meredith denies this. We prefer the evidence of Hilary Meredith in finding that she did not say this. This would have been inconsistent with the tone and content of her email exchanges with the claimant and Exchange Chambers.

111. The claimant’s employment came to an end on 21 November 2019. The claimant left the respondent’s premises at lunchtime and did not return for the afternoon.

112. The claimant referred us to an advert which the respondent had placed. We cannot tell from the document when this position was advertised, although the printout is dated 15 May 2020. The advertisement is for a solicitor with 2 to 5 years post qualification experience with advocacy experience or a willingness to undertake advocacy work in a tribunal court to assist a partner with a large caseload. Essential skills and experience included experience in advocacy or an interest in developing in this area and being able to handle their own caseload autonomously and be confident undertaking their own advocacy.

113. The claimant notified ACAS of a potential claim on 21 November 2019 and the early conciliation certificate was issued on 21 December 2019. The claim was presented on 20 January 2020.

Submissions

114. Mr Brochwicz-Lewinski produced written submissions. The Tribunal and the claimant read the submissions before hearing oral submissions from both parties. The written submissions can be read in their entirety if required so we provide only a very brief summary.

115. In summary, the respondent submitted that, factually, what the claimant asserts, did not occur. The claimant has reinterpreted events through the prism of hindsight and reconstructed a version of events which is very different to what happened at the time. In addition, the respondent submitted that what had occurred does not fit into the framework of harassment.

116. In relation to jurisdiction having regard to the relevant time limits, the respondent submitted that events before 22 August 2019, (or possibly later) are out of time. This covered arranging the second six with the respondent and all publicity apart from Counsel magazine.

117. The claimant made brief oral submissions only. These repeated, to some extent, the claimant’s evidence on factual matters. The claimant did not explain how, on the basis of the facts, he considered the Tribunal could find harassment related to disability. In answer to a question from the judge, the claimant said that he was saying that, if the Tribunal found that he was happy at the time with publicity, the Tribunal could still find there was harassment related to disability. Unable to assist the Tribunal with any legal authority effect that something which would not have considered harassment at the time could become harassment because of subsequent events.

118. In a brief reply to the claimant submissions, Mr Brochwicz-Lewinski said he had not been able to find any authority addressing the retrospective conversion of unwanted conduct to unwanted conduct. He referred the Tribunal to an Employment Tribunal decision mentioned in the IDS Handbook on discrimination which appeared to focus on what was felt at the time in a case where someone said they had been harassed by a question at a disciplinary hearing which, at the time, they had regarded as a good thing; the Tribunal had found the conduct was not unwanted and did not violate the claimant's dignity.

The Law

119. Section 26 of the Equality Act 2010 (EqA) defines harassment as follows:

> "(1) A person (A) harasses another (B) if –
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) The conduct has the purpose or effect of –
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> ……
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
>
> (a) the perception of B;
>
> (b) the other circumstances of the case;
>
> (c) whether it is reasonable for the conduct to have that effect."

120. Subsection (5) lists relevant protected characteristics which include disability.

121. Section 40 prohibits harassment by an employer of an employee.

122. Section 136 EqA provides:

> "(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision."

123. Section 123 EqA provides that proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.

Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.

124. Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the normal time limit.

Conclusions

125. We consider first the merits of all the complaints because the decision in relation to the merits will be relevant to whether there was a continuing act of discrimination and, therefore, whether the Tribunal has jurisdiction to consider certain complaints. We will return to the issue of jurisdiction, having regard to the relevant time limits, after dealing with the merits of the complaints.

126. All the complaints are of harassment related to disability. We will deal with each of the complaints of harassment in turn.

3.1.1 Offering and/or announcing commencement of pupillage without taking adequate steps to ensure that the claimant could undertake his pupillage and/or primarily utilising the offer for marketing purposes

127. The respondent offered the claimant pupillage and announced that it was to commence at the charity ball at the Lowry Hotel on 6 April 2019 and, internally within the respondent company, at the “meet and greet” event on 26 April 2019 and then, by means of a press release, beginning on 4 July 2019.

128. The respondent was relying on the claimant to make the necessary arrangements for the pupillage, as it did with trainees to make their arrangements for secondments. We have found that the respondent did not agree at any time to pay the claimant for the six months he would spend at Exchange Chambers. We do not consider there were any steps which the respondent should have taken at the time to ensure that the claimant could undertake his pupillage before making the offer and/or announcement of the pupillage. The respondent held back from issuing a press release until they were informed by the claimant that the Bar Standards Board had approved the application.

129. We do not consider that the respondent primarily utilised the offer for marketing purposes. The offer was made to assist the claimant to achieve his ambition of becoming a barrister. Any publicity was done with the expressed agreement of the claimant at the time.

130. The offer of pupillage and the announcement of this were not unwanted by the claimant at the time. We do not consider that the feelings the claimant has about this in retrospect, since the pupillage did not go ahead, can turn what was not unwanted at the time into something which is unwanted for the purposes of satisfying the requirements of harassment in the Equality Act. We consider that, on a normal reading of section 26, we must assess whether the conduct was unwanted at the time it occurred. We are not aware of any authority which would lead us to take a different approach to this part of the test. We consider that it would be an unusual, and practically unworkable, interpretation of the law for something which was not unlawful at the time, to be converted into something unlawful in retrospect. In any event, we have rejected the suggestion that Hilary Meredith was being disingenuous and did not really intend to help the claimant (see paragraph 76). There would,

therefore, be no factual basis for an argument that conduct was unwanted even though it was not unwanted at the time, because the claimant's reaction at the time was due to misinformation, even if there were, in law, scope for such an argument. We do not need to decide whether there would be any scope in law for such an argument, given our findings of fact.

131. This conclusion that the conduct was not unwanted is sufficient for the complaint to fail. However, we go on to consider the other requirements for harassment related to disability to be established.

132. The conduct must be related to disability. The claimant suggests that the offer of pupillage was made because Hilary Meredith wanted to make use of his disability to obtain publicity for the respondent. We do not agree with that suggestion. The evidence suggests that any publicity was a by-product of the offer having been made, rather than a cause of it. Hilary Meredith had assisted the London pupil in the past to complete pupillage. We have not heard any evidence to suggest that the London pupil was disabled and was assisted for reasons related to disability. It may well be that Hilary Meredith would have assisted another non-disabled person with pupillage. The respondent was seeking to assist the claimant to achieve his ambition of becoming a barrister by offering pupillage. However, disability does not have to be the only or principal reason for the offer, for the making of the offer to be related to disability. On the basis of material drafted by the claimant himself included in the application to the Bar Standards Board, which was then signed by Hilary Meredith, the claimant was not applying for pupillage by the normal route of using the pupillage gateway because he considered that he would be disadvantaged in that application route because of his disability. We conclude, therefore, that there was some relationship between the offer of pupillage and the claimant's disability.

133. We conclude that the announcement of the pupillage was not, per se, related to disability; it was announced because, it was thought it was going ahead. However, the angle taken in the publicity was related to the claimant's disability, as indicated by the title on the press release. We conclude, therefore, that the announcement was related to disability.

134. To constitute harassment within the meaning of the equality act, the conduct must have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We conclude that, at the relevant time, the conduct did not have that effect. The claimant was happy to be made the offer of pupillage and the email exchanges demonstrate that the claimant was a willing, and apparently enthusiastic, participant in publicity at the time.

135. For these reasons, we conclude that this complaint of harassment is not well founded.

3.1.2 Offering and/or announcing commencement of pupillage for marketing and advertising purposes placing heavy emphasis on the claimant's disability without giving any or any appropriate level of consideration to whether it would be undertaken

136. This complaint is essentially the same as the part of complaint 3.1.1 about announcing commencement of pupillage. For the same reasons as given in relation to that complaint, we conclude that this complaint is not well founded.

3.1.3 Withdrawing/reneging on the offer of pupillage on unreasonable grounds

137. We have found, as a matter of fact, that the respondent did not renege on any offer made. The respondent had never made an offer to fund the six months the claimant would spend at Exchange Chambers. It was the lack of funding which meant that pupillage could not begin at Exchange Chambers. Without completing this first six, the claimant could not go on to complete his pupillage whilst working for the respondent, as had been anticipated.

138. Since the factual basis of this allegation has not been established, we conclude that this complaint is not well founded.

3.1.4 Withdrawing/reneging on the offer of pupillage despite using the pupillage, and particularly the claimant's disability, for marketing and advertising purposes

139. This complaint is essentially the same as complaint 3.1.3. Since the factual basis of this allegation has not been established, we conclude that this complaint is not well founded.

3.1.5 Using the claimant's disability for marketing purposes without intending to, or without giving proper consideration to whether it would be able to, undertake the pupillage

140. This complaint is essentially the same as the part of complaint 3.1.1 about announcing commencement of pupillage. For the same reasons as given in relation to that complaint, we conclude that this complaint is not well founded.

3.1.6 Informing the claimant that pupillage was not an investment for the firm and that the respondent did not need an in-house barrister, after having offered and publicised the same

141. This relates to an email sent by Hilary Meredith to the claimant on 29 August 2019 (see paragraph 72). The statement by Hilary Meredith that the claimant's pupillage was not seen as an investment for the firm, but rather as a favour to help him on the first rung of the ladder, may have been unwanted by the claimant. However, there is no evidence to suggest that the making of this statement was in any way related to disability. The respondent did not have a need for any in-house barrister, let alone a newly qualified one, and, therefore, no need to invest in the claimant's training to become a barrister. The advertisement the claimant included in evidence was not for in house counsel (see paragraph 112). Since the conduct was not related to disability, we conclude that this complaint is not well-founded.

3.1.7 Sinead Cartwright insinuating that the claimant would not succeed in getting a pupillage if he applied to the pupillage gateway

142. We have found, as a matter of fact, that Sinead Cartwright did not insinuate that the claimant would not succeed in getting a pupillage if he applied to the pupillage gateway (see paragraph 100). Since the factual basis of this allegation is not established, we conclude that this complaint is not well-founded.

Jurisdiction – time limits

143. ACAS conciliation was begun on 21 November 2019. A complaint about any act of discrimination prior to 22 August 2019 would not benefit from any extension of time for presentation because of early conciliation. The Tribunal does not have jurisdiction to consider complaints about matters prior to 22 August 2019 unless they form part of a continuing act of discrimination ending with the matter in respect of which the complaint was presented in time or unless the Tribunal considers it just and equitable to consider the complaint about that matter out of time.

144. Since we have decided, for the reasons we have given, that complaints of harassment are not well founded, none of the acts prior to 22 August 2019 can form part of a continuing act of discrimination. The claimant has not provided us with any evidence or arguments on the basis of which we could find it was just and equitable to consider the complaints out of time. We, therefore, conclude that the Tribunal does not have jurisdiction to consider matters which occurred prior to 22 August 2019. This means we do not have jurisdiction to consider the allegations set out at 3.1.1, 3.1.2 and 3.1.5 (with the exception of matters relating to the article in Counsel magazine).

Employment Judge Slater
Date: 18 July 2021

RESERVED JUDGMENT AND REASONS SENT TO THE PARTIES ON 19 JULY 2021

FOR THE TRIBUNALOFFICE