EMPLOYMENT TRIBUNALS

Claimant: Ms C Langtry

Respondent: Thomas Roofing (NW) Ltd

Heard at: Liverpool

On: 17 and 18 November 2022

Before: Employment Judge Horne

Representatives
For the claimant: In person
For the respondent: Ms K Barry, counsel

RESERVED JUDGMENT

The claim is struck out.

REASONS

Introduction

1. This judgment follows a two-day hearing on a remote video platform. Neither party objected to the format of the hearing. For the most part, the parties engaged with the hearing politely and cooperatively, for which I am grateful.

2. The purpose of the hearing was set out in a notice sent to the parties on 1 November 2022. As stated in the notice, the purpose was:

   "

   (a) to reconsider the revocation judgment sent to the parties on 26 August 2022 (rule 72(2) of the Employment Tribunal Rules of Procedure 2013);

   (b) to consider the respondent's application for the claim to be struck out [(]under rule 37); and

   (c) to consider whether or not to add Mr Thomas as a respondent to the claim."

3. In advance of the hearing, the claimant made a detailed application to strike out the response. It is the seventh such application that she has made. At the start of the hearing, everyone agreed that I should decide the claimant's application and the respondent application at the same time, once I had heard all the evidence relating to both applications.

Evidence and submissions

4. Prior to, and during, the hearing, I read:

   4.1. a 659-page bundle prepared by the respondent, including two witness statements from Mr Christopher Daly and a witness statement from Mr I J Plumbley;

   4.2. the claimant's witness statement with the filename, "Statement Ms C Langtry hearing 17 November 2022.pdf";

   4.3. a 39-page document submitted by the claimant with the filename, "Appendix 17 Nov.pdf";

   4.4. the claimant's transcript comparison table with the filename, "Video and transcripts.pdf";

   4.5. a Word document submitted by the claimant with the filename, "Repeated Images for Ms Harradine.docx";

   4.6. "video's Meta data.pdf" containing 15 pages of screenshots, also from the claimant;

5. During the afternoon of the first day, I watched four videos taken from Mr Daly's mobile phone. They were played to me by Mr Mould, the respondent's solicitor, by sharing his screen. I then watched five videos that the claimant had uploaded to Vimeo.

6. The respondent called Mr Daly as a witness. The claimant gave oral evidence and called Mr Plumbley. All three witnesses confirmed the truth of their written statements and answered questions.

7. The respondent's bundle also contained a witness statement from Mr Thomas, the respondent's shareholder and director. At the start of the second day, Ms Barry indicated that she was not calling Mr Thomas to give oral evidence and was not relying on any part of his witness statement. I therefore did not take account of any of its contents.

8. During her oral evidence, the claimant shared her screen to show two photographs side-by-side. She later e-mailed a copy of that image to the tribunal. I viewed the image before coming to my decision.

9. The claimant relied on written submissions, which I read. Ms Barry made oral submissions for the respondent, to which the claimant replied in oral submissions of her own.

10. On 19 December 2022 the claimant sent an e-mail to the tribunal with a 7-page attachment. Her e-mail was not copied to the respondent. The claimant asked for the tribunal to waive the provisions of rule 92 of the Employment Tribunal Rules of Procedure 2013. I refused the claimant's request, following which the claimant e-mailed the tribunal on 29 December 2022, confirming that she had copied the respondent into her original e-mail. I waited until 5

January 2023 to see if the respondent raised any objection to my considering the new material. There was no objection. I therefore considered it.

Background

11. This is a long-running case. It arises out of the personal cohabiting relationship between the claimant and Mr Thomas. The relationship began in the summer of 2017 and finally ended on 30 October 2018. It was common ground that, during their relationship, the claimant had worked regularly on a number of different tasks for Mr Thomas' roofing business, for which the respondent became the corporate vehicle. With the claimant's help, the business secured valuable new contracts. For some of that time, the claimant believed that she and Mr Thomas would get married. Mr Thomas had encouraged that belief by giving her a ring, but privately did not intend to go through with a wedding. In May 2018 the couple briefly separated and then reconciled. It later became the claimant's case that, at the time of reconciling, she and Mr Thomas had signed a written contract of employment. On its face, the document, which has come to be known as **"the Disputed Document"**, purported to give the claimant a substantial salary and half the profits of the business. Ever since the claimant first disclosed the Disputed Document, the respondent through his solicitors has maintained that it has been fabricated.

12. By October 2018, it was clear to both the claimant and Mr Thomas that their personal relationship had irretrievably broken down. The claimant continued to take regular payment from the business with Mr Thomas' knowledge and, as I found, his agreement. On 30 October 2018 the claimant says she resigned. She and Mr Thomas then lived apart.

13. The claimant presented a claim to the tribunal alleging, amongst other things, unfair constructive dismissal, disability discrimination, detriment on the ground of protected disclosures, and unlawful deduction from wages. One of the issues in the case was whether the claimant was an employee of the respondent or not.

14. The claimant subsequently applied successfully for an injunction against Mr Thomas in the Family Court.

Procedural history

15. Just as it has been with my previous judgments, it is unfortunately necessary to relate the procedural history at some length. Much of it is already set out in written reasons that I have previously provided. I reproduce relevant extracts here, starting with the history as it appeared in the original judgment. The respondent has changed solicitors during the course of the litigation, so, to avoid confusion, I have referred to the solicitors' firms by name. To make the history of the proceedings easier to follow, I have inserted headings in ***bold italics.***

The claim

> "85. On 14 January 2019 the claimant presented her claim form to the tribunal.
>
> 86. In Box 15, headed "Additional Information", she stated, "I have screenshots, phone call recording, invoices and addresses plus witnesses

to substantiate my claim." The claim form was accompanied by a lengthy document headed "Grounds of the Claim". The scheme of the document was a series of headings corresponding to the different complaints that she was bringing. Under each heading, she set out a series of numbered paragraphs setting out her alleged version of events. At the foot of many of the paragraphs, she briefly summarised the evidence she had in support of those assertions.

…

90. One of the headings was "Breach of Contract – University". In a long paragraph under that heading, the claimant described how Mr Thomas had allegedly agreed that the claimant's debts and university fees would be taken out of the business, because she had put her work before her studies. The paragraph was followed by, "Evidence: Failed University course, proof of debts incurred for the year [2017]/2018. Proof of University attendance and grades prior to meeting Mr Thomas and running his business."

91. The next heading was "Breach of Contract Withheld Pay, Bonus and Holiday Pay". Paragraph 2 under that heading alleged that Mr Thomas had agreed that she could take a "small wage from the company" and that the profits would be split between the claimant and Mr Thomas. Underneath that paragraph she stated, "Evidence: Witness". The following paragraph related the argument on 19 May 2018, and alleged that Mr Thomas had refused her request for her wages and bonus to be paid to her out of the business bank account. This paragraph was followed by "Evidence: Screenshot".

…

93. Nowhere in the claim form or Grounds of Claim was there any reference to the Disputed Document, or any document allegedly signed by Mr Thomas setting out the claimant's entitlement to a weekly wage or share in the profits. This is despite the fact that the claim form and Grounds of Claim both itemised the claimant's evidence in support of her claim.

The response

94. The respondent presented an ET3 response. In its Grounds of Resistance, the respondent denied having employed the claimant. Paragraphs 3 and 5 denied that there had been any contract or any agreement in respect of salary or hours of work.

Case management and related Family Court proceedings

…

101. The case was listed for a preliminary hearing. I heard it on 11 April 2019. At that hearing there was a dispute about whether to list the case for a further preliminary hearing to determine the claimant's employment status. The claimant's position at that time was that such a hearing would be a "waste of time". The claimant explained why she believed this to be the case. She told me that she had evidence that would prove conclusively that she had been employed by the respondent. She said

that the evidence was in the form of a recording. She did not mention the Disputed Document or the existence of any signed agreement

…

102. Despite the claimant's arguments, I listed the case for a further preliminary hearing, scheduled to start on 30 July 2019. As it turned out, that hearing was adjourned.

103. I made case management orders for disclosure of documents for the purpose of the preliminary hearing. Pursuant to those orders, the claimant hand-delivered three files of documents and a USB stick to the respondent's solicitors on 9 May 2019. There is a dispute as to whether or not, two days earlier, the claimant also hand-delivered an audio CD.

104. On 17 June 2019 the claimant delivered a further 450 pages of documents to the respondent's solicitors electronically.

105. The Disputed Document was not amongst the documents delivered to the respondent's solicitors on either occasion.

106. The claimant made requests for the respondent to disclose various items to her…

107. Whilst making tenacious requests for disclosure in June and July 2019, the claimant did not ask for a copy of the Disputed Document.

…

Proceedings in the Family Court

110. In the meantime, the claimant obtained an interim non-molestation order against Mr Thomas in the Family Court. The parties were required to attend court on 25 March 2019 for a return hearing.

111. In support of her application, the claimant relied, in part, on the messages that she said had been sent to her mobile phone. Mr Thomas denied having sent those messages and alleged that the claimant had fabricated them. In order to resolve this dispute, the claimant was ordered to permit her phone to be forensically examined at Mr Thomas' expense.

112. The claimant sent an envelope by Signed For Delivery to Mr Thomas' solicitors [Levins], who also represent[ed] the respondent. She paid the postage, which was calculated for a declared package weight of 198 grams. An administrator at [Levins] signed to acknowledge receipt of the same envelope on 13 May 2019. It has always been her contention that that envelope contained her mobile phone. But on 24 May 2019, [Levins] wrote to the claimant, denying that a mobile phone had ever been received.

113. The Family Court subsequently made a non-molestation order…

Complaint to SRA

114. The claimant and [Levins] took up entrenched positions over the issue of what had happened to the phone. The claimant complained to the Solicitors Regulation Authority (SRA), [amongst other things] about the phone… The SRA wrote to the firm's Compliance Officer on

17 September 2019 calling for an explanation. Their letter summarised the claimant's complaint in relation to the phone as follows:

> "[The claimant] provides that she sent your firm her mobile phone as evidence … your firm signed for the package … and acknowledged … that it was received but your firm were unable to locate it at the time. [The claimant] explains that your firm now provide it did not receive the phone."

115. In due course the complaint was investigated internally within [Levins], which included checking with the Family Department what packages they had received. The response from the Family Department was that the only incoming package from the claimant contained a black file of documents which were inserted into the Family Court bundle. The firm provided a response to the SRA, who took no further action.

116. It is likely that, however the black file arrived, it was not in the envelope that was received on 13 May 2019. A file of documents would have been likely to weigh more than 198 grams. This leaves a number of possibilities. One of them is that a fee-earner in the Family Department lied about having received the phone. But there are others. One of them is that the phone went astray between the firm's general office and the Family Department. Another is that the phone was never in the envelope in the first place, and the contents of the envelope – whatever they were - were not considered significant enough to be passed to a fee-earner or placed on file.

The Disputed Document

117. On 6 August 2019, the claimant sent an e-mail to the respondent's solicitors. Attached to the e-mail was a PDF file which she described as, "additional documents". The e-mail itself expressed the claimant's confidence in the strength of her claim.

118. One of the documents referred to in the e-mail was the Disputed Document. It bore the date 24 May 2018. It appeared to show the signatures of both the claimant and Mr Thomas. Above the signature block were the following words:

> "I hereby confirm that Clare Langtry is entitled to the following:
>
> - Wages 400.00 per week after deductions
> - Bonus of 50% of profits
> - Repayment of university debts for year 2017/2018
> - I also agree to arrange her pension and backdate to start of employment to May 2017.
> - That she is keeping all wages and bonus in the company banck account from May 2017 and ongoing."

Allegation of fabrication

119. [Levins] replied on 3 September 2019. They accused the claimant, on instructions, of having fabricated the Disputed Document. They proposed that the document be examined by a forensic document expert. Their letter gave the names and addresses of two experts and asked the claimant to choose or provide a further nomination. The parties agreed that the claimant should have until 17 September 2019 to choose.

120. On 19 September 2019, the claimant took a video of herself putting some documents into an envelope. One of the documents was a copy of the Disputed Document.

121. On 20 September 2019, the claimant paid the postage for a package weighing 43 grams to be sent by Royal Mail Signed For Delivery with reference number WM434224652GB.

122. On 23 September 2019, an envelope bearing the same reference number was received in [Levins'] office …. It was signed for by Ms Q, a member of the firm's administrative staff. Ms Q had not been the person who had signed for the envelope on 13 May 2019. The envelope was opened in the firm's general office and found to contain nothing but two sheets of green paper. The contents were immediately given to the partners.

123. On 30 September 2019, [Levins] e-mailed the tribunal, with a copy to the claimant. The e-mail stated, "Regrettably, we have reason to believe that the Claimant has pretended to send original evidence to this firm in the past with the intention of then blaming us for the 'loss' of the evidence." With that strong accusation came a suggested case management order: the claimant should confirm whether or not she had the original version of the document and, if the answer was yes, she should send it "directly" to the expert at a given address.

124. The tribunal never made the order which the respondent sought. The claimant replied on 3 October 2019, stating that she did not have the original, and claiming that she had put the original in Mr Thomas' filing cabinet and that she believed it was still there. She stated that she had a photocopy, which she had kept in the boot of her car. According to her e-mail, she had forgotten about its existence because of her depression. She challenged the respondent's solicitors' assertion that she had pretended to deliver documents to them. She maintained that she had hand-delivered and posted many items to the respondent's solicitors, only for them to deny having received them. She invited the firm to "produce all recorded delivery correspondence contents from myself to date, to show what has been received by yourselves. I will then produce evidence, receipts, photographs and video footage of the contents, upon [the firm] producing what they claim has been sent to them."

125. The claimant subsequently disclosed video file *CL CT1.mp4.* The footage showed the screen of a mobile phone which itself is playing a video. That video file is *CL CT1. Video.mp4.* In turn,

that video showed two copies of the Disputed Document in a black file. Two identity badges were placed on top of the documents. The visual images were accompanied by background music and the sound of the claimant saying, "This isn't working. Turn the telly off and you need to sort my contract out, get a solicitor or some HR person to it…"

Strike-out applications

126. By e-mail dated 11 February 2020, the claimant applied for the respondent's ET3 response to be struck out. I have already listed the grounds on which her application was based. Attached to her e-mail was a series of screenshots apparently showing a message conversation between Mr Thomas and an anonymous third party. She did not say from whom she had received the screenshots. The message conversation included an image of the claimant which had been partially redacted. The accompanying messages, if genuine, amounted to a confession on Mr Thomas' part of that he had committed the serious offence that may have occurred on 1 October 2018. It also appeared to show Mr Thomas telling the third party that he would publicise that image if the claimant continued with her claim. Threatening to publish the image would have been a particularly nasty blackmail. The claimant reported these images to the police, who arrested Mr Thomas. I have not been informed of the outcome of the police investigation.

127. Part of the claimant's 11 February 2020 e-mail contained what the claimant stated was an audio transcript of the *CL CT1.mp4* video. It dated the transcript "24.05.2018 at 23.47". In the transcript, Mr Thomas was noted as saying, "I'm going to bed" and "Yeah, I know". These alleged remarks appeared just before and just after the claimant's statement beginning, "This isn't working."

128. The respondent then applied to strike out the claim on or about 27 February 2020.

Preliminary hearing 2-4 March 2020

129. The preliminary hearing started on 2 March 2020. I relate only those parts of the hearing that are necessary to understand the strike-out applications.

130. At the hearing, the claimant played the *CL CT1.mp4* video. I compared the video footage to the transcript. The video provided by the claimant did not show those parts of the conversation where Mr Thomas was allegedly speaking, even though they would have added only a few seconds to the clip. There was no time stamp and no digital evidence that the video had been taken on 24 May 2018."

The original judgment – claim struck out

16. The hearing was adjourned part-heard and reconvened on a remote video platform on 18 June 2022. In a reserved judgment, which has come to be known as **"the**

original judgment", I made a number of decisions, the most significant of which was to strike out the claim. On the evidence available to me at that time I found that the claimant had forged the Disputed Document. Here were the reasons I gave:

"

151. … I am satisfied on the balance of probabilities that the claimant did forge the Disputed Document. Here are my reasons:

151.1 First, it is, in my view, inherently unlikely that Mr Thomas would have agreed to pay the claimant 50% of the profits of the business plus a weekly wage of £400.00. For tax reasons, his own salary was only the equivalent of £162.00 per week. The Disputed Document, if genuine, would have given the claimant a considerably better remuneration package than his own. He was the founder of the business and the respondent's director and sole shareholder. Even allowing for the possibility that Mr Thomas was pleading for the claimant to come back to him in May 2018, I do not think he would have agreed to the terms in the Disputed Document.

151.2 Second, if the Disputed Document were genuine, I would have expected the claimant to have mentioned it before August 2019. I remind myself that I must make allowances for the effect of her depression on her memory. Even so, if she had forgotten that the hard copy was in the boot of her car, she would, in my view, still have remembered: (a) that the document existed, and (b) that she had kept a copy of it somewhere. This was, on the claimant's version, the only signed document recording the claimant's entitlement to wages, and she had obtained it from Mr Thomas within days of telling him that all financial matters would be sorted out through solicitors. If she was telling the truth, she thought the Disputed Document was so important that she needed to take a photograph of it (which turned out to be a video) and a separate hard copy. She would not have forgotten that she had gone to such lengths to keep such an important document.

151.3 If, as would surely be the case, the claimant had remembered that the document existed, I would have expected her to mention in her claim form that Mr Thomas had agreed in writing that she was an employee. The claimant would, I think, have told me at the first preliminary hearing that her conclusive proof of the employment relationship was a signed agreement and not just an audio recording. I would also have expected her to ask for disclosure of the Disputed Document if she did not think that she had kept a copy.

151.4 If, as I also find would have happened, the claimant had remembered that she had taken a copy, it is highly likely that she would have thought of the Disputed Document as an important piece of evidence at the time she presented her claim. It would have been an obvious candidate for inclusion in the claimant's lists of evidence in her Grounds of Claim.

151.5 Third, the claimant's version of events is inconsistent with her own actions. If she is correct, she sent her best copy of the Disputed Document to the respondent's solicitors, knowing that that particular piece of paper would be needed for forensic testing, and that no other copy would do. In her written closing submissions, the claimant stated that she sent them her copy so that the "ink and print type be confirmed to [the respondent's] printer". Her evidence is that, knowing the importance of that piece of paper, she sent it directly to the respondent's solicitors, whom she already believed had falsely denied receiving another key piece of original evidence. Such was her distrust of the respondent as a reliable custodian of original evidence that she had complained about that precise issue to the SRA. I do not understand, why, if the claimant's version was accurate, she chose to send the Disputed Document directly to the respondent's solicitors. The obvious thing to do would have been to send it to the forensic analyst directly.

151.6 Fourth, the claimant has overstated a key piece of evidence supporting her case as to when the Disputed Document was created. That is the video *CL CT1.mp4.* The claimant's transcript sets out remarks allegedly made by Mr Thomas on the video. If Mr Thomas had been talking at the time she took the video, it would have been powerful evidence that the Disputed Document was in existence whilst the claimant and Mr Thomas were still in a relationship. But the video footage disclosed by the claimant does not include any of those remarks.

151.7 Fifth, I found Mr Heath's evidence to be reliable. He would have had just as much to lose by lying to the tribunal as the claimant had to lose by forging a document. But he would have had far less to gain. As soon as I accept that he was trying to be truthful, it follows, I think, that I must also accept that a member of his firm's administrative team brought him the green sheets of paper as soon as they were received by the firm, and that they were brought to him in the envelope that the claimant had posted. I think it very unlikely that an administrator would have planted the green sheets in that envelope. There is no evidence of any personal link between the firm's administrative staff and Mr Thomas or

> his family. Like Mr Heath, the staff would have had nothing to gain by their actions. Once it is established that the green paper, and nothing else, was in the envelope when it was delivered to the firm, it has to follow that the claimant, or somebody on her behalf, put the green paper in the envelope before posting it. That was a strange thing to do. The claimant had videoed herself putting the Disputed Document and other items into the envelope, then weighed the envelope and paid the postage. Before the envelope was posted, someone must have knowingly removed the contents and replaced them with the green paper. The only explanation I can think of is that the claimant sent the green paper deliberately to the respondent's solicitors, hoping that they would think of it as worthless and dispose of it. [Levins] would be driven to admit that they had received the envelope because they had signed for it. They would be blamed for losing its contents. The claimant would then rely on her video, and the weight of the package, to convince the tribunal that the envelope had contained the Disputed Document. It would appear to the tribunal, she hoped, that she had been willing to have the Disputed Document forensically analysed and had been deprived of that opportunity by the respondent's solicitors actions. I do not think that the claimant would have gone to such lengths if she believed that the Disputed Document was genuine."

17. As the written reasons also record, once I had found that the claimant had forged the Disputed Document, I formed the view that a fair hearing was no longer possible. Before coming to that conclusion, I attempted to resolve as many of the issues as I could by applying the law to the uncontroversial facts. That exercise exposed a fundamental problem. Before the tribunal could decide whether or not any part of the claim was well-founded it would have to make many further disputed findings of fact. These findings depended on the reliability of documentary evidence and evidence of the recollection of witnesses. As I saw it, the claimant's forgery of the Disputed Document had fatally undermined the reliability of her evidence on these disputes. I therefore struck out the claim.

18. The original judgment was sent to the parties on 6 August 2020.

19. The respondent did not make any application for costs.

20. What happened next can be seen from my later judgment which has come to be known as **"the revocation judgment".** Here is how the written reasons took up the procedural story:

> "

First reconsideration application

> 9. On 15 August 2020, the claimant applied for reconsideration of the original judgment. I will call this "the first reconsideration application". She also

appealed to the Employment Appeal Tribunal on 15 September 2020. Her appeal has been stayed pending her reconsideration applications.

10. Part of the first reconsideration application was based on the video. Unfortunately, due to the tribunal's data security policies, the only way I could watch the video was to list the reconsideration application for a hearing where the claimant could play the video on her own equipment. That hearing took place on 23 March 2021. The respondent was informed of the date of the hearing, but also informed that there was no need for the respondent to attend.

11. I refused the first reconsideration application under rule 72(1) of the Employment Tribunal Rules of Procedure 2013. Based on the evidence and arguments put forward at that stage, my view was that there was no reasonable prospect of the strike-out paragraph being revoked. My judgment refusing the first reconsideration was sent to the parties on 11 May 2021.

Second reconsideration application

12. The claimant then made her second reconsideration application. Among the grounds for reconsideration was that she had discovered an important new source of evidence. According to her application, the claimant discovered an SD card in her mailbox on 29 April 2021. The application was accompanied by a file of appendices. Each appendix was a set of images which the claimant said had been taken from the SD card. The claimant added arrows to some images and redacted others.

Images of the missing phone

13. At Appendices 1 to 4 there are photographs of a mobile phone. Everyone agrees that this phone is the claimant's phone and that it is the same phone that is alleged by her to have been sent to Levins in July 2019. The photographs show images on that phone's screen. These include a still image from what looks to be the video CL CT1.mp4. As shown in Appendix 1, the phone is photographed against a sheet of paper on which someone has written an address. The claimant told me that she has traced this address and that it is linked to the respondent.

Images of the Disputed Document

14. Appendix 18 is a photograph of a computer screen. Displayed on the screen are the contents of a folder within a USB drive (such as a memory stick). The folder is called "meetings and notes". One of the files shown in that folder is a word document with the filename, "Thomas Roofing Clare Langtry 24.05.2018". Another image in Appendix 18 shows file creation properties for that document. According to those properties, the document was created using Mr Thomas' Microsoft account, last modified at 23.35 on 24 May 2018, and last printed at 23.57 on 24 May 2018.

Other images

15. Some of the appendices are redacted images of photographs of the claimant. She says that these images are of a sexual nature and were taken without her consent. These images appeared on the SD card as screenshots from an unknown computer device. She redacted the images herself.

16. Other appendices showed further images of numerous files apparently also stored on a USB drive. These files appear to be purchase orders, invoices and credit notes for various customers of the respondent's business. Many of these documents bear reference numbers in their filenames.

17. A further set of images appended to the application are also said to have been taken from the SD card and show pages apparently torn out from a notebook. There are handwritten drawings on the pages. The claimant says that these drawings came from a pink notebook which was in the possession of Levins.

Reconsideration hearings

18. I caused the second reconsideration application to be listed for a hearing. The hearing took place on 13 September 2021. Unfortunately, the respondent did not attend. The claimant made a lengthy strike-out application based, in part, on the respondent's non-attendance and the explanations for their absence given by him and Levins. I refused to strike out the response and gave my reasons."

The revocation judgment

21. Eventually, the second reconsideration application was heard on 22 to 27 July 2022. The claimant represented herself. The respondent was represented by Ms Ferrario of counsel on a directly-instructed basis.

22. Having heard evidence and the parties' arguments, I decided that the original judgment should be revoked. In short summary, I decided that it was possible that the SD card might be genuine. The images of the Disputed Document on the SD card – if they had not themselves been fabricated – would tend to suggest that the Disputed Document existed in May 2018. If that fact could be established, many of my reasons for concluding that the Disputed Document was a forgery would fall away.

23. I was asked to provide written reasons, which were sent to the parties on 26 August 2022.

24. My written reasons explained why I concluded that the SD card might be genuine:

"

45. To get to the truth of how the data came to be on the SD card, there needs to be a careful analysis of the data on the card and of the circumstances existing at the time.

46. The groundwork for such analysis includes the following:

46.1 It is highly likely that the SD card creator had copies of the PDF and Word document files containing the respondent's purchase orders, invoices and credit notes for the respondent's major clients. It is hard to imagine the SD card creator being able to make all that information up. It would be too great a risk. Dates, amounts and reference numbers could be easily checked with the supplier. It not realistic to think that the SD card creator had records other than the purchase orders and invoices.

46.2 The SD card creator also had access to numerous photographs of the screen of the claimant's original phone.

46.3 The SD card creator must have had in-depth knowledge of the issues in the case, the significance of the Disputed Document, and the importance of establishing the timing of its creation.

47. If the claimant was not the SD card creator, it would help her case to put forward a credible theory about who else the SD card creator could have been. Her suggestion that the SD card creator was Mr Thomas is unconvincing. I cannot see why he would have wanted to give the claimant all that information. I acknowledge that there are unresolved issues about alleged controlling conduct by Mr Thomas, which might be consistent with his wanting to taunt the claimant after he had won. But the claimant's theory does not fit with the procedural history of the case. The respondent, up to now, has not demonstrated any willingness to prolong the employment tribunal proceedings, for example, by applying for costs. For the whole of the time that the SD card could have been put in the mailbox (January to April 2021), there was a pending EAT appeal and a pending reconsideration application. The last thing that Mr Thomas is likely to have wanted to do would be to prolong the proceedings by giving the claimant further ammunition.

48. It is possible that Mr Thomas' subsequent partner might have wanted to help the claimant if she had separated from Mr Thomas. At first glance, that explanation seems plausible. It would still need to stand up to analysis, particularly against some of the images on the SD card. Why, for example, would Mr Thomas' partner have wanted to lay such a cryptic trail of information, such as the handwritten address at Appendix 1? Neither the claimant nor the respondent has made any submissions on that point, or any other points to do with Mr Thomas' partner.

49. If the SD card creator was someone other than the claimant, that person must have acquired the photographs of the claimant's mobile phone shown in Appendices 1 to 4. This means that the SD card creator either had the phone itself, or someone had provided the SD card creator with a selection of photographs. The claimant's evidence has always been that she sent her phone to Levins in July 2019. According to the claimant, the most likely explanation for the photographs reaching the SD card creator is that Levins gave the phone to Mr Thomas. It might be thought that the logical consequence of that submission is that Levins would have had to have lied to the tribunal and to the SRA when they said that they had not received the phone. Neither party addressed me on whether this was a logical consequence of the claimant's submission or not. Nor did they make submissions on whether Levins were likely or unlikely to have lied in that way. The respondent's express position is that the images of the phone are irrelevant to the reconsideration application.

50. I turn to the possibility of the SD card creator being the claimant herself. In my view, I cannot fairly make such a finding. Here are my reasons:

50.1 The respondent does not advance a positive case that the claimant was the SD card creator.

50.2 I cannot reach a finding that the claimant saved the data onto the SD card without at least some understanding of how the claimant could have acquired the data in the first place. Many of the images are from a USB drive, and appear to contain the kind of material that the claimant had consistently been asking to have disclosed to her. I have already discounted the notion that the SD card creator could have fabricated all the invoices, purchase orders and credit notes from scratch. An alternative explanation is that the claimant had the USB drive all along. If that is correct, the claimant must have made a tactical choice to make dishonest strike-out applications based on a false accusation of alleged failure to disclose the USB drive to her. Such a tactic (if the claimant had employed it) would have been highly elaborate, highly risky and of dubious benefit when she could simply have relied on the USB material in the first place. More fundamentally in my view, the respondent has never suggested this as a possibility. In fact, the respondent has never engaged with any arguments about how the claimant could have acquired any of the data on the SD card.

50.3 Had the point been argued, I might have made a finding that the claimant was the SD card creator based on the images of her phone in Appendix 1-4, and the likelihood (or unlikelihood) of Levins having given the phone to Mr Thomas. But that point was not argued, and the evidence in support of it is stated by the respondent to be irrelevant.

50.4 In conclusion, I cannot find that the claimant was the SD card creator without constructing detailed arguments for myself, which go considerably beyond the respondent's case. That would, in my view, be going too far beyond the proper bounds of judicial intervention, even on a reconsideration application. It would be passing the limits of what is necessary to achieve the public interest in finality of litigation. A party represented by counsel can be expected not to need significant assistance in articulating its case. If I were to make a serious finding against the claimant that goes beyond the respondent's positive case, based on the arguments identified above – on which I heard no submissions – it would give every impression that I had taken the respondent's side."

Case management orders about the SD card

25. Once I had decided to revoke the original judgment, the reconsideration hearing continued on 27 July 2022 as a preliminary hearing for case management.

26. Mrs Ferrario indicated that she would not be representing the respondent after the hearing.

27. At the conclusion of the hearing, I orally made a case management order relating to the SD card. My order prohibited the claimant from modifying the data on the SD card in any way without the consent of the respondent or the permission of the tribunal. It also required the claimant to state, by 4pm on 30 July 2022, that she had the SD card in her possession.

Arrangements for forensic analysis of the SD card

28. On 30 July 2022, the claimant confirmed by e-mail that she had the SD card in her possession. Her e-mail was copied to Ms Ferrario.

29. Shortly after the reconsideration hearing, the respondent instructed a new firm of solicitors, Slater Heelis. On 2 August 2022, Mr Mould of Slater Heelis wrote to the tribunal. His e-mail incorrectly stated that the claimant had not provided the required information about the SD card by the deadline.

30. Mr Mould e-mailed the claimant on 3 August 2022. His e-mail forwarded a copy of his previous day's e-mail to the tribunal. He proposed that the SD card should be forensically analysed. In explaining the respondent's proposal, Mr Mould's e-mail said this:

> "As you are aware, the Employment Judge relied heavily on the evidence you provided (**purported** to be from this SD card) in deciding to re-instate your claim."

31. The claimant has applied for the response to be struck out, in part, because Mr Mould's use of the word, "purported" (which I have highlighted in **bold**) betrayed a pre-determined decision to discredit the claimant's SD card by fair means or foul. I do not agree. Mr Mould was expressing the respondent's scepticism about the genuineness of the SD card, but was also proposing an appropriate method of assisting the tribunal to determine whether it was genuine or not.

32. The claimant replied the same day, confirming that she had in fact notified the tribunal that she had the SD card.

33. By e-mail on 17 August 2022, Mr Mould put forward a list of three organisations specializing in expert forensic analysis, and invited the claimant to choose one organization from the list. The three organisations were:

    33.1. Zentek Digital Investigations Ltd ("Zentek")

    33.2. CYFOR Corporate Forensics ("CYFOR") and

    33.3. Aequitas Forensics.

34. The claimant chose CYFOR. Her reason for rejecting Zentek was that she believed that Zentek had an inappropriate connection with the respondent. The connection was based on material that the claimant found on the internet. According to that material, Zentek had been used by Greater Manchester Police to investigate the suspected hacking of a mobile phone, and Mrs Ferrario had at one time been in-house counsel for Greater Manchester Police. The claimant rejected Aequitas Forensics also on the ground of a perceived connection with the respondent. Another barrister at Mrs Ferrario's chambers had once recommended Aequitas Forensics in connection with a different case.

35. I do not have to decide whether the claimant was right or wrong to choose CYFOR over the other two organisations. The significance of the claimant's reasons for rejecting Zentek and Aequitas Forensics is that, in my view, the

respondent could not realistically have foreseen that the claimant would reject those organisations for those reasons. At the time of proposing the three expert providers, the respondent had no way of knowing which one the claimant would choose. This is important, because of what the claimant subsequently alleged that CYFOR had done.

36. The terms of CYFOR's work on the SD card were set out in a written proposal to Slater Heelis dated 6 August 2022. The proposal was written by Mr Andy Coleman, CYFOR's Corporate Investigations Manager. Because of the criticisms that the claimant has subsequently advanced in relation to CYFOR's evidence handling, I set out some of the terms of the proposal here:

> "Transport of Device Secure transportation of specified exhibit by a secure, in-house CYFOR courier to and from our head offices in Manchester." (page 1)
>
> Under the heading, "Proposed Solution", "Transport of Device – Secure transportation of specified exhibit by a secure, in-house CYFOR courier to and from head offices in Manchester." (I call this the **"Secure Transportation Clause"**.)

37. On 24 August 2022, the claimant informed Mr Mould that the SD card would be available for collection from her home on 30 August 2022 and that the collection would be "recorded". Mr Mould replied, stating that the SD card would be collected by courier.

38. The "courier" was Mr Christopher Daly. He was employed by CYFOR as a Quality Manager. He had no connection to the respondent and no previous involvement with the claimant's claim.

39. On 25 August 2022, the claimant informed Slater Healis that she had found a new SD card on her doorstep the previous evening. I will call this **"the doorstep SD card".** According to the claimant's e-mail, the doorstep SD card contained "503 items including 3 videos". She proposed that the doorstep SD card should be analysed at the same time as the first SD card. Mr Mould replied the same day, declining the invitation to have the doorstep SD card examined.

40. The claimant says that the respondent deliberately tried to prevent the SD card being submitted into evidence. But I find that Mr Mould's stance here to have been entirely appropriate. This is for two reasons. First, the respondent was paying the entire cost of the analysis at the claimant's insistence. It was for the respondent to decide which SD card to analyse. Second, the revocation judgment had been based on the first SD card and it was that card that particularly needed analysing. If the first SD card was found to be genuine, it contained plenty of material to support the claimant's case without her having to rely on the doorstep SD card as well. If, on the other hand, the SD card was found to be fabricated, the respondent would not need to pay an expert to say that the doorstep SD card was untrustworthy.

41. Mr Daly collected an SD card from the claimant on 30 August 2022. He took an SD card to CYFOR's premises. CYFOR later imaged and analysed a Kingston SD card, which they claimed to be the same one as Mr Daly had collected from the claimant. They found it to be blank.

The card-switch dispute

42. This exposes a fundamental dispute of fact that is central to both parties' strike-out applications. I call it "the card-switch dispute". What card did the claimant give to Mr Daly? Was it a SanDisk SD card? Or was it a Kingston SD card? It is common ground that the claimant had a SanDisk SD card at home and that CYFOR analysed a Kingston SD card. Both parties positively assert that the cards could not have been mixed up by mistake. Each party says that, at some point in the process of transmitting the evidence, the SD cards were deliberately swapped. The claimant accuses Mr Daly of swapping the cards between leaving her address and arriving at CYFOR. She told me she could not think of anyone else who could have done it. The respondent points the finger at the claimant herself. It is the respondent's case that the claimant videoed a SanDisk SD card in an envelope so that she could pretend that it was the card she had given to Mr Daly, but then secretly swapped the cards and gave Mr Daly the Kingston SD card instead.

What happened on 30 August 2022

43. To get to the bottom of the card-switch dispute, I must now relate the events of 30 August 2022 in considerable detail.

44. Mr Daly arrived at the claimant's house at about 4.30pm. The claimant was at home. So was her son. It is the claimant's case that Mr Plumbley was also there. I will return to the question of whether he was there or not.

45. By the time Mr Daly arrived, he had been told that the claimant would be video-recording the collection of the SD card. He had been asked to make his own video recording. He had never had such a request made to him before and had never tried to video any previous collections. He used his mobile phone to make the recording.

46. The claimant opened the door. Mr Daly could tell that the claimant was very nervous. She was holding an open white envelope. She had an object in her hand, but it could not be seen clearly from where Mr Daly was standing because of the way the claimant was holding it. The claimant put the object into the envelope and sealed it. Meanwhile, Mr Daly stood in front of the door, holding an evidence bag. The evidence bag was made of transparent plastic. It had a bar code, a prominent serial number and a tamper-evident seal. The claimant put the object into the white envelope, sealed it and wrote her signature across the seal. She then went back indoors for some "Sellotape" (I will use the brand name for convenience). As the claimant was looking for the Sellotape, Mr Daly said, "If you want you can just pop it straight into this evidence bag, it has a tamper proof seal on it. You can record yourself putting that in if it helps." The claimant then Sellotaped the envelope over her signature.

47. Just before she put the envelope into the evidence bag, the claimant asked Mr Daly, "Did you get it going into the envelope?" Pausing there, that was an odd thing for the claimant to ask. She had been told that the bag had a tamper-proof seal. It would not matter whether or not there was video footage of the item going into the envelope, because she knew that there would be video footage of the envelope going into the evidence bag, which would remain sealed until the contents were analysed.

48. The claimant then put the envelope into the evidence bag. Mr Daly gave her a form to sign. The claimant then asked Mr Daly, "Can I just see your video of it

going into the envelope, please?" Mr Daly agreed. The evidence bag was sealed. Both the claimant and Mr Daly then stopped their video recordings. Mr Daly did not start recording again until 6 minutes later.

49. There is a dispute about what happened when the cameras were off. Did Mr Daly show the claimant his video, as he says he did? Or (as the claimant tells me) did Mr Daly keep distracting the claimant until she gave up trying to see the video?

50. I find that Mr Daly did show the claimant the video. Quite apart from the conclusions I was able to reach about the reliability of Mr Daly's evidence as a whole, Mr Daly's account is consistent with the timings of the videos. Even if it was technically possible for his phone to record one video whilst playing back another one (and it was not put to him that his phone was capable of multi-tasking in that way), it is entirely plausible that Mr Daly did not know how to play a video without turning off the recording. It was clear from what the claimant had already said that it was important to her to see the video footage of the item going into the envelope. When the cameras were turned back on, the claimant did not ask Mr Daly why he had gone back on his agreement to show her the video.

51. Having seen Mr Daly's video, the claimant went back into the house and closed the front door. Whilst inside, off camera, and out of view of Mr Daly, she fetched some more white envelopes. She ripped open the evidence bag and took out the white envelope.

52. Shortly afterwards, the claimant started making another video recording. It showed a white envelope on her doormat, just inside the front door. The envelope was open. The camera showed the contents clearly. Inside the envelope was a SanDisk SD card with its logo and serial number visible. It was next to the ripped evidence bag. The claimant could be seen sealing that envelope, still on the doormat with the front door closed.

53. The camera was then moved away from the envelope. There was no visible footage for a few seconds. Rustling sounds could be heard. The next image was of the claimant holding a sealed white envelope and the ripped evidence bag. She opened the door and showed the envelope to Mr Daly.

54. Before continuing, I briefly address a dispute about the evidence of Mr Plumbley. The respondent does not accept that Mr Plumbley was even in the house. I was not able to reach a conclusion one way or the other. It is a serious step to find that a witness has lied about even being present at the scene. What I did find was that, if Mr Plumbley was there, he could not reliably say whether the envelope that the claimant showed to Mr Daly contained the SanDisk SD card or the Kingston SD card. Here are my reasons:

    54.1. I found important parts of Mr Plumbley's evidence to be unreliable. For example, he said that the claimant put the SanDisk SD card into an envelope in the lounge, and that he believed that the envelope was already sealed when the claimant left the house for the first time. Mr Daly's video shows this to be incorrect.

    54.2. Mr Plumbley cannot be seen or heard on any of the videos. His explanation for that is unconvincing. Mr Plumbley told me that, when the claimant had come back into the house for the second time, and he knew that something had gone wrong, he had "said" to the claimant that he needed to witness what was being put in the new envelope. He then told me that he had

not said it out loud, but had gestured silently. That would be a strange thing to do and hard to communicate in hand gestures. It is also hard to fit with what Mr Plumbley says he did next. He says he stood near the vestibule door whilst the claimant videoed herself putting the SanDisk SD card into the envelope. But, if thought it was important that this step should be "witnessed", there were simple things he could have done to witness it more effectively. He could have stood facing the claimant. He could have held the claimant's phone to achieve a continuous video. He could have made his presence known to Mr Daly, as he did on 12 September 2022 when Mr Daly returned. Or he could have advised the claimant, as he accepts he should have done with hindsight, to put the SD card in the envelope with the door open, or just to put the SD card in the evidence bag.

54.3. On Mr Plumbley's own account, at its highest, he saw the claimant by the front door with a number of envelopes. This was in between the SanDisk SD card going into an envelope and before the claimant opened the front door. He was not able to say which envelope the claimant gave to Mr Daly.

55. What happened after the claimant opened the front door is captured on video. The claimant asked if there were any more evidence bags, to which Mr Daly replied that he did not have any more. She then signed the white envelope and put a strip of Sellotape over her new signature. The envelope was then placed back into the ripped evidence bag. Mr Daly held the bag up to the light. He could see that the envelope contained an SD card. The ripped evidence bag was sealed with another piece of Sellotape. Satisfied that he had collected what he had come for, Mr Daly signed the evidence bag and took it to his car.

56. Shortly before he left, Mr Daly said that he would get the SD card "back to our branch". He may or may not have added the word, "now".

57. Mr Daly put the evidence bag into a pelicase and took it home. He only lived a few minutes' drive away. Once home, he put the bag into his safe. He stayed at home all night on his own. The next day, 31 August 2022, he took the evidence bag from the safe and drove it to CYFOR's premises in Manchester. On arrival, he placed the evidence bag (with the white envelope still inside) into a brand-new tamper-evident bag which he signed and sealed.

58. At this point I step out of the timeline again to deal with three points raised by the claimant:

58.1. The first two points are about Mr Daly's video number 1496. This is the video that begins with the claimant emerging from her front door with the ripped evidence bag. The claimant has produced a large number of screen shots, purporting to show the metadata of Mr Daly's videos, including number 1496. According to the claimant, the metadata show that this video has been "cropped", in that two minute's worth of footage has been "edited out". This conclusion is evident, she says, from comparing the time stamp of Mr Daly's video when a particular event happens (such as a passage of speech) with the time stamp on her phone at the time of the corresponding event. For all the previous videos, Mr Daly's time stamps match the claimant's time stamps, but for video 1496, Mr Daly's time stamps are about two minutes out. I considered whether it would be proportionate to examine the metadata more closely to see if they made good the claimant's argument. I decided that the exercise would not be proportionate. This was because the claimant was unable to tell me

what could have happened in those missing two minutes that Mr Daly might have wanted to keep secret. Nor did she put to Mr Daly what the missing footage might have shown. This was despite the fact that the claimant already knew what had happened and what the video could have captured. She was facing him in the doorway. It is possible that the missing two minutes might have captured some of the time when the claimant was inside the house with the door closed, but nobody suggested that Mr Daly would have been able to film anything of interest during that time, let alone anything that he would then want to delete.

58.2. There is a second argument about the metadata for video 1496. They appear to show that someone edited the video on 6 September 2022. Mr Daly did not accept that he had edited it. Again, I was not able to resolve that particular question. I might have looked into it more closely if the claimant had been able to identify something that the video might have shown that could shed light on the card-switch dispute. She could not.

58.3. According to the claimant, Mr Daly breached the Secure Transportation Clause by taking the evidence bag home. To my mind, it does not especially matter whether he complied with that clause or not. This is not a claim for damages against CYFOR for breach of contract. The fate of the claim and the response hangs on the card-switch dispute. If it were necessary to make a decision about this, I would find that that the Secure Transportation Clause was not breached. The clause required Mr Daly to take the exhibit securely "to and from our head offices". That is what he did. I accept his evidence that CYFOR sometimes agrees in writing to take an item to its premises directly from the point of collection. CYFOR undertakes this obligation where an item is particularly sensitive.

Imaging and analysis of the Kingston SD card

59. The new bag was booked into CYFOR's electronic case management system by Mr James Wight at 10.57am on 31 August 2022. It was given CYFOR's reference number CD1-2022AUG30-01. Mr Wight signed the physical bag and put it in a storage location at CYFOR's pre-imaging station.

60. On 2 September 2022, Ms Ellie Horler of CYFOR took the sealed evidence bag and photographed it. The photograph showed the ripped bag inside the sealed bag and the envelope inside both of them. Ms Horler opened the outer bag and took the ripped bag out of it. She then removed the envelope from the ripped bag. She photographed the seal of the envelope. It was still sealed with Sellotape. Underneath the Sellotape was the claimant's signature.

61. This is a convenient opportunity to mention two of the points made by the claimant about Ms Horler's photographs:

61.1. The claimant has compared those photographs with a still image from one of Mr Daly's videos. She told me that the still image could be seen "from 4.12 seconds onwards in Mr Daly's video 1496". That video was of the claimant re-emerging from her front door with the ripped evidence bag. The still image is of the evidence bag on the doormat, with a white envelope inside it. The white envelope on the doormat appears to have fewer creases than the white envelope photographed by Ms Horler. The top of the evidence bag on the doormat appears to be folded down differently from the same evidence bag

in Ms Horler's photograph. The claimant says that this comparison proves that someone must opened the ripped evidence bag and re-sealed it with Sellotape. This must have been done, she says, after Mr Daly collected the bag and before Ms Horler photographed it. I deal with this point a little later in this judgment, because it is affected by events that happened after my hearing had concluded.

61.2. Ms Horler's photographs of the envelope seal do not show the whole of the envelope. There is a little bit missing towards the right edge. The claimant says that this is suspicious. Presumably her suspicion is that someone could have opened the right-hand corner of the envelope to swap the SD cards, and a person looking at Ms Horler's photograph would be none the wiser. I do not think that this happened. This is for two reasons. First, it was evidently Ms Horler's intention to photograph the Sellotaped signature to demonstrate that the seal of the envelope was intact. It is in the centre of the image. Second, the envelope was sealed before the Sellotape was put on it. No-one could have swapped the SD cards through the corner of the envelope without visibly disturbing the seal. Had that happened, I am sure Ms Horler would have noticed it. That means either that the corner seal was unbroken or that it was broken and Ms Horler has deliberately covered it up. I cannot think why Ms Horler would have wanted to do that.

62. Ms Horler opened the white envelope. Inside it was a Kingston SD card. It was not SanDisk branded, and had a different serial number from the one that the claimant had videoed herself putting into an envelope. At that time, Ms Horler would have had no reason to find these details in any way significant. She had no reason to think that the claimant had given Mr Daly anything other than the Kingston SD card that she had in front of her. Having photographed the Kingston SD card itself, she took a forensic bit-for-bit image of it. The image was later analysed. The results of the analysis are set out the report of Mr Robert Gallagher, a CYFOR senior digital forensic investigator. His report is dated 6 September 2022. These were Mr Gallagher's findings:

> "A review of the contents of the drive was undertaken. No live user data was identified on the drive. An in-depth forensic analysis of the drive was undertaken, to identify and recover any potentially deleted files on the drive. No deleted data was found to be present.
>
> Following this analysis, it appears that the drive which has been provided to CYFOR is either empty or has been wiped of all data".

63. It will be seen that Mr Gallagher outlined CYFOR's findings in the passive voice. That might have cast doubt on the reliability of Mr Gallagher's opinion if the claimant had challenged the forensic image analysis, or suggested that the Kingston SD card had been incorrectly imaged. But that is not what is in issue. Both sides positively contend that, by the time Ms Horler imaged the Kingston SD card, the cards had been switched. It is therefore unsurprising that the Kingston SD card was found to be blank. The card would not contain the claimant's data whether it was the claimant or someone else who had switched the cards.

Aftermath of the CYFOR analysis

64. On 5 September 2022, Mr Coleman of CYFOR e-mailed Mr Mould with a summary of Mr Gallagher's findings. Later that day, Mr Mould informed the

claimant by e-mail that the SD card was "completely empty" and asked for an explanation. The claimant replied the same day, expressing her disbelief. Her e-mail criticized the delay of 6 days between the collection of the SD card and her being informed that it was blank.

65. Mr Mould respondent the next day by forwarding Mr Coleman's e-mail to the claimant. He added, "CYFOR are a busy team and only started work on your SD card yesterday."

66. Two points of detail in Mr Mould's e-mail are relevant to the claimant's strike-out application:

66.1. According to the claimant, Mr Mould was lying about when CYFOR had started work on the SD card. I disagree. In one sense, the e-mail was inaccurate, in that the SD card had been imaged on 2 September 2022; if imaging counted as "work" on the card, then the work had started three days earlier than Mr Mould's e-mail stated. But if the "work" was the analysis, then Mr Mould's date would be correct. In my view, this is a hair-splitting point. It does not expose Mr Mould as a liar. I do not see what Mr Mould could have wanted to achieve by pretending that CYFOR had started work later than they had. Mr Mould had no delays of his own to want to conceal; he had informed the claimant of CYFOR's findings on the day that they had been provided to him.

66.2. When the claimant received Mr Mould's e-mail, she noticed that at the foot of the e-mail there was a "dot inside a square". She clicked on it and a large amount of plain-text data appeared. The code included IP addresses. After some correspondence between the claimant and Mr Mould on the topic, Mr Wilkinson of Slater Heelis' IT department examined the data and concluded that it was the header information that was "publicly available on any e-mail". I have no reason to conclude otherwise.

67. On 12 September 2022, Mr Daly delivered the Kingston SD card to the claimant inside the white envelope that the claimant had given him. By this time, someone had put some additional Sellotape on the envelope. The claimant says that this was done to make it more difficult to tell how many times the envelope had been opened. I am unpersuaded by the claimant's theory. The white envelope had been opened at least once by Ms Horler. That would have involved breaking the seal. With or without additional Sellotape, it would be hard to tell if the corner of the envelope had also been opened at some earlier stage.

68. The exchange was recorded on video. Mr Plumbley was there as a witness, this time out in the open. They talked as they went about their business. To compress the conversation, the claimant did not openly challenge Mr Daly or say that she was getting back the wrong card. Instead, she and Mr Plumbley asked questions designed to catch Mr Daly out, based on research that they had already done on him.

69. The parties made many points about the significance of what the claimant said or did not say. Little of it matters. It does not help to resolve the card-switch dispute. The claimant's behaviour is consistent with her knowing all along that she had given Mr Daly the Kingston SD card and trying to find ways to build a case that Mr Daly had swapped the cards. It is equally consistent with her believing that she had been seriously wronged by CYFOR and trying to expose their deception.

Likewise, if she believed she had given Mr Daly the SanDisk SD card, she might have been expected to point out that she had been given back the wrong one, but she might well have wanted to make the exact-same point if she had been trying to pretend that someone else had swapped her SanDisk SD card for the Kingston SD card.

70. I need to mention one particular exchange in more detail. This is because the claimant has attached a great deal of significance to what was said.

70.1. Mr Plumbley asked Mr Daly, "When you take them in, so say for instance you had picked that up today you take it to the office and he signs it that its in today?"

70.2. Mr Daly replied, "Er yeah, erm, so you'd have to clarify that with, because, I'm only the courier, so I don't know the process when it gets passed to him, I haven't got sight of the process, but it does go into secure evidence store and then he would be responsible for signing it."

70.3. The claimant asked Mr Plumbley, "When did you take it back into the office?"

70.4. Mr Daly said that he would have to check his records, and then added, "But I can advise that it was sealed throughout."

71. I will return to the impact, if any, of Mr Daly's replies later in this judgment.

72. In the meantime, CYFOR reviewed its transportation procedures. An internal policy document was updated and given the date 6 September 2022. Paragraph 4.4 stated:

> "All exhibits are to be safely stored in a …carrycase …This case will remain secure during travel by use of a high security lock to be attached around the chassis of the vehicle for theft protection."

73. The claimant says that Mr Daly did not comply with this procedure. He failed to secure his pelicase to the chassis of his car as he drove home. (It may also have been the claimant's case that he committed a similar breach the following day as he drove to Manchester, but Mr Daly told me that he did in fact secure his pelicase for that journey. There is no evidence to contradict what Mr Daly had to say about that.) I assume in the claimant's favour that paragraph 4.4, or its equivalent, existed in August 2022 and the 6 September 2022 document merely restated it. Working on that assumption, Mr Daly did not comply with this requirement. It makes no difference. The pelicase was loose in the car for a journey of a few minutes. Mr Daly did not get out of his car on his way home. He never left the pelicase unattended in his car. Nobody could have touched the pelicase without Mr Daly knowing. Whilst the claimant was questioning Mr Daly about this, I asked her whether she would be suggesting that somebody other than Mr Daly could have switched the SD cards as a result of Mr Daly's failure to secure the pelicase to the chassis. The claimant did not reply.

74. Paragraph 4.5C(a) of the same procedure document stated, on 6 September 2022,

> "A supply of evidence **bags** will be provided to any person responsible for the collection of evidential items."

75. I assume, again, that the same requirement existed in August. I have added **bold** text to emphasise, as the claimant does, that the word "bags" is used in the plural. Mr Daly should have been provided with more than one bag. Had he been given a spare, he could have sealed the second bag and it would have been harder for the claimant to maintain that the Kingston SD card was not the card she had given Mr Daly. But I must not lose sight of what I actually have to decide. The claimant's case is that someone deliberately swapped the cards. If that person was Mr Daly, he could not have known in advance that the claimant would tear his only evidence bag open.

76. The claimant has done some further research on connections between CYFOR and the respondent. I was unable to pinpoint the precise dates on which she discovered particular pieces of information, but it does not matter. The connections that she has discovered are:

    76.1. CYFOR's Managing Director is Mr Tobias. He went to the same high school as Ms Ferrario. He and she were 3 school years apart. The school is near a place of worship. Both the school and the place of worship are dedicated to the same religion. (It is irrelevant what religion it was. If the identity of the religion has any significance at all, it is that it has historically been associated with the negative stereotype that people who share that religion have a tendency to conspire with one another. I should add that the claimant did not expressly invite me to reach any conclusions based on such a stereotype.) The claimant says she was "horrified and appalled" when she discovered these facts.

    76.2. To the claimant's "disgust and disbelief", Mr Gallagher, the author of the report, was employed by Greater Manchester Police (GMP) at a time when Mrs Ferrario was in-house counsel for the same organization.

77. The claimant suggests that CYFOR had a conflict of interest as a result of these connections. She goes on to allege that Slater Heelis acted unreasonably by failing to request a conflict check from CYFOR and by failing to complete one themselves.

78. I do not see any conflict. Nor do I think that there was anything that could have alerted CYFOR or Slater Heelis to any possible conflict. There is nothing in these facts to suggest that Mr Tobias and Ms Ferrario were friends, even as children. It is more difficult still to infer that they maintained any friendship through to adulthood, let alone a friendship strong enough to make Mr Tobias want to do Ms Ferrario any favours in conflict with his duty to ensure that CYFOR acted impartially.

79. Likewise, I cannot see how anybody, Slater Heelis or otherwise, could reasonably have suspected that Mr Gallagher's independence was compromised by his work for GMP. That organization has thousands of office-holders and employees. There is no particular reason for thinking that he and Mrs Ferrario worked closely with each other.

80. There are two additional factors common to both alleged conflicts.

    80.1. Mrs Ferrario had stopped representing the respondent at the time when Slater Heelis instructed CYFOR. There is nothing to suggest that she retained any personal interest in the case.

80.2. Mrs Ferrario is a barrister in independent practice. Her conduct is regulated by the Bar Standards Board. Experts have a duty of impartiality. The claimant is implying that CYFOR analysts might have been biased towards the respondent because of a personal connection with Mrs Ferrario or, worse, that there was a risk that Mrs Ferrario might use her personal connection with people at CYFOR to influence them to produce a report favourable to her former client. Either way, it would involve a professional person being in serious breach of their professional duty. There is no evidence that this happened. Nor was there anything that could have alerted Slater Heelis to the risk of it happening.

81. On 21 November 2022 – after I had reserved my judgment – the claimant made a written complaint to CYFOR. Her complaint was copied into the CYFOR's accrediting body, UKAS. As evidence in support of her complaint, she sent CYFOR the photographs of the evidence bag that I have already mentioned at paragraph 61.1 above. She also highlighted written procedures that she alleged had not been followed.

82. On 16 December 2022, the claimant received a reply from Mr Paul Beechinor, CYFOR's Finance and Operations Director. His reply included a summary of his report:

> "Firstly there are elements of the CYFOR Evidence Transfer Procedure that are ambiguous and as a result the procedure is being updated to be clearer.
>
> Secondly, I am disappointed with the way in with [sic] Chris Daly handled the evidence in this case and as Quality Manager of CYFOR he should have known better. In his capacity as a courier he should have had a spare evidence bag and when the bag was ripped open, without a replacement bag, the collection should have been aborted and re-arranged. Had Chris been staying with CYFOR I would have placed this on record, but he is leaving CYFOR on 23rd December."

83. The report dealt specifically with the claimant's photographs of the evidence bag and the fold marks. This is what Mr Beechinor found:

> "I agree that the image of the bag in your letter… is different from when it was opened in our lab. Chris Daly advised that when he returned to CYFOR in order for the evidence bag, with the envelope inside, to fit inside a second evidence bag, the sellotape of the ripped tamper bag was moved further down to allow for a larger fold. In hindsight Chris Daly accepts this should not have been done."

Lies allegedly told by Mr Daly

84. I now go back over these events to examine the claimant's assertion that Mr Daly has told lies about what happened.

Alleged lie on 30 August 2022 – "back to the branch now"

85. The next point the claimant makes is about the significance of Mr Daly's remark, "back to our branch", or "back to our branch now" (see paragraph 56).

86. The claimant says that Mr Daly did use the word "now" and, in using that word, he was lying to her about his intentions. As we know, Mr Daly did not take the evidence bag directly to CYFOR, but took it home first. Mr Daly denies having said "now". It might have been possible to resolve that dispute by replaying the video.

Nobody asked Mr Mould to do that. I did not think it was necessary to ask him on my own initiative. This is because, even if Mr Daly had said, "back to our branch now", it did not mean that he lied to the claimant. He was not necessarily saying that he would take the SD card to the office directly and non-stop. The word "now", if he used it, was equally consistent with Mr Daly simply telling the claimant what would happen next.

Alleged lie on 12 September 2022 about being a courier

87. The claimant says that Mr Daly told her a lie on 12 September 2022 when he told her that he was "only the courier". Mr Daly was employed as a Quality Manager. As the claimant sees it, this is another reason why the response should be struck out.

88. I do not think Mr Daly was lying. He could not have hoped to get away with it. He knew that his words were being captured on his and the claimant's own videos. In any case, his reply has to be understood in its context. He was explaining that he was not involved in the handling of evidence once it was booked in. So far as his dealings with the claimant's SD card were concerned, his only responsibility was to take it to CYFOR's office and return it to the claimant. That is what a courier does. He was not saying that he had no other role in CYFOR. He was saying that he had no other role in the journey of the claimant's SD card.

Alleged lie on 12 September 2022 about the seal

89. The claimant says that Mr Daly lied to her again on 12 September 2022, by saying, "I haven't got sight of the process," and "But I can advise that it was sealed throughout" (paragraph 70).

90. These statements are alleged to be inconsistent with what Mr Daly told Mr Beechinor (paragraph 83).

91. Whether Mr Daly's remarks are consistent or inconsistent with what he appears to have told Mr Beechinor depends on what, precisely Mr Daly was talking about. Was he saying that the ripped tamper-evident bag had remained sealed throughout? Or was he saying that the thing that had remained sealed was the white envelope which he was in the process of returning to the claimant? If it was the white envelope, there would be no inconsistency. If he was referring to the ripped tamper-evident bag, that is different from what he is reported as having told Mr Beechinor. In my view, the difference does not expose him as a liar. If Mr Beechinor has correctly reported Mr Daly, all Mr Daly was saying was that there was a moment when Mr Daly took the Sellotape off the ripped tamper-evident bag, so that that bag could re-folded to put in another bag. If that was a breaking of the seal, it was momentary and in CYFOR's office.

Alleged perjury at the hearing about the seal

92. The claimant accuses Mr Daly of perjuring himself whilst answering her questions during the hearing.

93. The claimant's notes of the exchange read as follows:

> "CL no Right hand side
>
> CD no coment – not spoken to
>
> CL envelope sus plastered, no pic took

CD handled by him

put in back

not opened in his possession

94. My notes are broadly consistent, but may have rolled up the two questions and answers. They read (with expansion of abbreviations):

> "Q – Would it be suspicious that a photo has been taken of everything else except the right-hand side of the envelope and then plastered in Sellotape?
>
> A – The exhibit when it arrived at CYFOR was handled by me. It was put in a tamper evidence bag. With certainty I know it was not opened in my possession."

95. The claimant says that Mr Daly was perjuring himself, because this evidence is inconsistent with what he is reported as having told Mr Beechinor. I disagree. First, from the claimant's own notes, Mr Daly was being asked about the envelope, not the ripped tamper-evident bag. Second, the claimant did not ask Mr Daly if he had taken the Sellotape off the ripped tamper-evident bag before re-folding it to put it into the second tamper-evident bag. Third, even if Mr Daly was talking about the tamper-evident bag, I have not heard directly from Mr Beechinor and the respondent has not had the opportunity to ask him questions. I briefly considered whether it would be worthwhile to re-list the hearing so that both Mr Daly and Mr Beechinor could be questioned on these points. In my view, the exercise would be disproportionate. This is only one small part of the overall evidence in relation to the card-switch dispute.

Finding on the card-switch dispute

96. Having gone into an unusual amount of detail, and rejected the claimant's specific allegations of lies told by Mr Daly, I am now in a position to make a finding on the card-switch dispute.

97. My finding is that it was the claimant who swapped the SD cards.

98. She did it behind her front door so Mr Daly could not see. She videoed the SanDisk SD card inside an envelope, then moved her phone so her camera would not record her picking up a second envelope. That second envelope contained the Kingston SD card. It was that envelope that she had in her hand when her phone camera was next pointed at what was happening. It was a risky and complicated sleight of hand. That is why she was so nervous. But, I find, she found herself forced into this deception because she had been cornered. She knew that, if she handed over a SD card with data on it, there was a high risk that CFYFOR would analyse it and conclude that the data was not genuine. By "not genuine", I mean it was not what the claimant had represented it to be in her second reconsideration application.

99. I reached this conclusion from the same starting point as I recorded in the original judgment (at paragraph 148):

> "My starting point is that it is an extremely serious matter for a party to forge documents, seek to rely on them at a tribunal hearing, and then to try and cover up the forgery. Any party to a tribunal claim must know that. They would also know that they would face serious consequences if their behaviour was discovered. It will be very unusual for a party to

> run that risk. Persuasive evidence is needed to prove that such an extraordinary event has occurred."

100. The evidence in this case is beyond persuasive. In fact, it is compelling. I have formed that view for the following reasons:

100.1. First, I found Mr Daly's oral evidence to be reliable. Contrary to the claimant's submissions, he did not lie to her on video. I do not think he lied to me either. I have explained that, if there were inconsistencies in what Mr Daly said at particular times, those inconsistencies were not deliberate lies. They do not fundamentally discredit his evidence.

100.2. Mr Daly had no connection to either party. I do not see what Mr Daly had to gain by swapping the SD cards.

100.3. I have considered the possibility that Mr Thomas might somehow have secretly induced Mr Daly to pervert the course of justice on his behalf. That possibility is fanciful in my view. Assuming Mr Thomas to have been of a mind to interfere, he could not have known whom to nobble until the claimant had chosen from the respondent's list of three analytics providers. He could not have known that the claimant would choose CYFOR. There may be criminals in the world who are powerful enough to nominate three separate forensic analytic organizations, in the confident belief that they could persuade any one of them to pervert the course of justice. I do not think that Mr Thomas wielded that degree of power.

100.4. Mr Daly could not have predicted that he would have any opportunity to swap the SD cards. He had a tamper-evident bag, which he sealed. Had the claimant not ripped that bag open, he would not have had any chance to swap the SD cards without breaking the seal. CYFOR's analysts would inevitably discover the broken seal and know that the exhibit had been compromised. As it turned out, he ended up taking the envelope to CYFOR's office in a ripped evidence bag, but he had no way of knowing in advance that the claimant would rip the bag.

100.5. The claimant's evidence of what happened on 30 August 2022 is inconsistent with her own behaviour on that day.

100.6. She told me that her purpose in videoing the handover was:

> "Because of what Mrs Ferrario said in March 2020 in the hearing; she said, 'Why didn't you record it better, why didn't you put yourself in the video?' I was recording it for my own protection and my own records and I'm glad I did."

100.7. In other words, she wanted unassailable video footage of her handing over her item of original evidence, so that the respondent could not later turn around and accuse her of handing over something different.

100.8. If that is what she wanted, she could have videoed the SD card going straight into the bag. She could have avoided using an opaque envelope at all. She could have held up the SD card to her camera, or Mr Daly's camera, whilst she was outside on the doorstep. There would then have been footage of the SanDisk logo and even the serial number, and that footage would have been continuous with the shot of the SD card going into the envelope or bag. Once

the tamper-evident seal had been closed in front of her, she could have just let Mr Daly take the sealed bag away.

100.9. The claimant ripped open the bag once it had been sealed. I assume for a moment that the claimant thought it was necessary for a legitimate purpose. But even then, her subsequent behaviour was still odd for someone who wanted to get the best evidence of giving a particular SD card to Mr Daly. By the time she ripped open the sealed bag, she knew that the seal was tamper-evident. She had not yet been informed that there were no more tamper-evident bags available. At that point she had no need of another opaque envelope. Or, if she still thought that an envelope was needed, she could have kept her phone pointed at the envelope from the point of the SanDisk SD card going into it until the envelope was handed to Mr Daly. If that was tricky, because of the need to open the front door, she could easily have asked Mr Plumbley to help her (if he was there) or, even more obviously, she could have done the whole thing with the front door open so that Mr Daly could see it and get a video of it.

100.10. I cannot consider the events of 3 August 2022 in isolation. It has to be seen in the context of the procedural history as a whole. On any view, this is now the third occasion where:

(a) the claimant has claimed to have an item of important original evidence (data on her phone, the Disputed Document and now the SD card);

(b) the respondent has alleged that the evidence was fabricated and proposed that it be forensically analysed;

(c) forensic analysis would be likely to assist the tribunal in deciding whether the original evidence was genuine or not;

(d) the claimant has sent an item or provided it for collection;

(e) the recipient of the item was someone other than the respondent (Levins twice and now Mr Daly of CYFOR);

(f) the claimant has acquired and kept evidence appearing to support her claim of what she sent or provided;

(g) that evidence was not conclusive because of gaps over which the claimant had control;

(h) the recipient of the item has then claimed that the item she sent or provided was something different from the original evidence that the claimant claimed to have sent or provided; and

(i) it would be serious professional misconduct for the recipient to make such a claim either knowing it to be untrue or having no basis for knowing whether it was true or not.

100.11. It cannot be a coincidence that this has happened three times. Indeed, the claimant does not suggest that it was a coincidence. Her theory is that Levins (on two occasions), and now Mr Daly, have deliberately caused her original evidence to go missing and then given false evidence to make the claimant's behaviour look suspicious. According to the claimant's strike-out application, this is for two purposes. The first is to avoid the evidence being

analysed and found to be genuine. The second alleged purpose was to make it look as if the claimant was building a false trail of evidence, so that her claim could be struck out rather than determined on its merits.

100.12. For the claimant's theory to be possible, Mr Daly would have to have switched the SD cards and lied to me about it. But the following things would also have to have happened:

(a) Mr Heath, or a member of his administrative staff at Levins, must have lied about the green sheets of paper (see paragraph 151.7 of the original judgment);

(b) Someone at Levins must have given the claimant's phone to the SD card creator, or photographed that phone and given the photographs to the SD card creator. They must have done it at a time when Levins were denying having received the phone in the first place, both to the claimant and to the SRA. They must have given the phone to Mr Thomas or to someone who was not their client. (As I noted in the revocation judgment, the respondent did not rely on this point at the reconsideration hearing. It is now advanced by Ms Barry. I think it is appropriate to consider it.)

100.13. I cannot see what Levins or Mr Daly would have to gain by perverting the course of justice in this way. I also do not see why, if Levins were dishonestly covering up their receipt of the claimant's phone, they would then give the claimant's phone to someone (such as Mr Thomas or his then partner). That would be an extraordinary risk for Levins to take: the moment Mr Thomas used anything from the phone, it would be obvious that Levins had given the phone to him.

100.14. Of course, this is an argument that can cut both ways. What did the claimant have to gain by pretending to give Mr Daly the SanDisk card and actually giving him the Kingston SD card? She was certainly taking a big risk. She was deliberately engineering a situation where CYFOR would find no data on the SD card and the respondent would inevitably accuse her of falsifying evidence. I have already recorded my finding that the claimant believed that she had no choice but to take that risk. I also find that she thought she could get away with it. She thought that she would be able to find enough holes in the respondent's evidence to support the false narrative that it was someone else who had swapped the cards. During the lifetime of this case, the claimant has shown herself to be highly skilled in using technology in support of the points she wishes to make. She is also a tenacious researcher, both into points of detail in the evidence provided to her, and also into publicly-available material on the internet. She has made two reconsideration applications and seven strike-out applications, many of which have been made on multiple grounds and supported by large bundles of evidence. As I see it, the claimant was confident enough in her own ability to obfuscate to make the risk of swapping the SD cards worthwhile. She may have been encouraged in that endeavour by the revocation judgment.

Consequential findings

101. Having resolved the card-switch dispute in the respondent's favour, I am now in a position to revisit earlier findings. Here they are:

101.1. The claimant, I find, was the SD card creator. The respondent now positively asserts that this is the case. I agree. Nobody but the claimant could plausibly have wanted to load the SD card with the data referred to in the second reconsideration application, and lay cryptic clues back to the respondent. Had the claimant thought that someone had done that, and then put the SD card in her mailbox, she would have had no reason to switch the cards when the time came for the SD card to be forensically analysed.

(My revocation judgment mentioned a factor that lent support to the claimant not having been the SD card creator. That was the fact that the SD card creator must have had access to the business records. A possible explanation is that the claimant had the records all along, and took a tactical decision to apply to have the response struck out rather than rely on the evidence in the first place. I have not found it necessary to make a positive finding of fact about whether that is the explanation or not. It is sufficient to say that the fact that the SD card creator had the business records does not outweigh the other evidence that compels the conclusion that the SD card creator was the claimant.)

101.2. The claimant forged the Disputed Document and pretended to send it to Levins. I reach these findings for the same reasons as I did in the original judgment. Those reasons could not safely stand whilst the possibility existed that the SD card might be genuine. But the SD card was not genuine. The images on the SD card are not reliable evidence, because the claimant put them there, then claimed untruthfully that someone else had done so.

Relevant law

Striking out

102. At paragraphs 155 to 163 of the original judgment, I set out the law relevant to striking out claims and responses. I have reminded myself of those legal principles.

Reconsideration

103. Reconsideration of judgments is governed by separate rules and legal principles, which I have set out in the revocation judgment at paragraphs 26 to 34. I do not believe that they have substantially changed since then.

Social context

104. The original judgment drew on guidance from the Equal Treatment Bench Book about the impact of a person's mental health on the way they give their evidence. I have borne that guidance in mind in reaching this decision, just as I did when I reached the original judgment.

Conclusions

Response not struck out

105. The claimant's seventh strike-out application does not succeed. The following table sets out the claimant's grounds for striking out the response, together with my brief conclusion on each one. The lettering in the left-hand column is taken from the claimant's written application.

	Ground	**Conclusion**	**Paragraph**

			of this judgment
A	"Any evidence submitted by myself that is damaging to the respondent's defense has gone missing."	The respondent is not responsible for the evidence going missing. The claimant only pretended to send the Disputed Document and the SanDisk SD card. Levins did not cause the claimant's phone to go missing in the way that is alleged.	97, 100.12
B	"…The respondent is trying to prevent the submitting into evidence the new SD card from myself".	It was appropriate of Slater Heelis to insist that one SD card be analysed at a time.	40
C	"Slater Heelis did not request a conflict test to Cyfor and did not complete one themselves".	There was no conflict. There was nothing to alert Slater Heelis or CYFOR to any risk of a conflict.	76 to 80
D	"The fraudulent and misleading behaviour of Mr Daly and evasiveness on not showing myself the video of the SD card going into the envelope…"	Mr Daly did not behave fraudulently. He did not lie to the claimant. He did show the claimant the video recording.	50, **Error! Reference source not found.**, 70
E	"None-compliance of regulation in relation to chain of custody, evidence bag procedures, and a biased report not conforming to the home office guidance and rules, based on an SD card that I did not provide."	I do not think that it is proportionate to examine CYFOR's conduct alongside Home Office rules. CYFOR were not acting for the Home Office. This was not a criminal case. If there were any shortcomings in the evidence-handling procedures at CYFOR's premises, they do not shed light on the card-switch dispute. In any case, CYFOR were not conducting the proceedings as the representative of the respondent. The claimant did provide the Kingston SD card.	59 to 63, 72 to 75
F	"Mr Plumbley has made a witness statement that I did in fact submit a	I considered Mr Plumbley's evidence in reaching my finding that the claimant swapped the SD cards.	54

	2GB SanDisk SD card."		
G	"The respondent's communications via Slater Heelis from the outset of communications, in saying the purported SD card and continuance of my case and the fact that the SD card has gone missing reads like a book with a for drawn, orchestrated and pre-planned conclusion".	Neither the respondent nor Slater Heelis planned for the SD cards to be switched. Their communications with the claimant do not betray any such plan and, in any case, I found that it was the claimant who swapped the SD cards.	31, 97

Striking out the claim

106. I have no choice but to conclude from my findings of fact that the claimant has conducted the proceedings unreasonably.

107. A fair hearing is no longer possible. As I stated in the original judgment, there are fundamental disputes of fact. These have since been clarified in my case management order. The factual disputes will be dependent on reliability of the evidence of witnesses including the claimant. That reliability has been irretrievably damaged by the lengths to which she has gone to fabricate evidence and pretend to send it to others.

108. I would in any event have concluded that the claimant's unreasonable behaviour was a deliberate and persistent abuse of the tribunal's process. It is one of the rare occasions where the tribunal can strike out a claim even where a fair hearing would still be possible.

109. It is proportionate to strike out the whole claim. This is not just because of the gravity of what I have found the claimant to have done. It is because there is no part of the claim that escapes its impact. All the claimant's complaints depend on my resolving disputes of fact, which the tribunal cannot now fairly do. If these points do not speak for themselves, the original judgment explores the issue of proportionality in more detail. I would adopt those reasons again.

110. The claim is therefore struck out.

Reconsideration of the revocation judgment

111. In my view it is unnecessarily cumbersome to reconsider the revocation judgment in view of my conclusion that the claim should be struck out in any event.

Employment Judge Horne

5 January 2023

SENT TO THE PARTIES ON

6 January 2023

FOR THE TRIBUNAL OFFICE