



EMPLOYMENT TRIBUNALS

Claimant: D

Respondent: (1) E and (2) F

Heard at: Newcastle by video

On: 20 and 21 November 2023

Before: Employment Judge O'Dempsey

Representation

Claimant: claimant's father

Respondent: McGrath (Consultant)

JUDGMENT

The Respondents' application to strike out the claimant's case is dismissed.

REASONS

1) This is an application by the 1st and 2nd respondent to strike out the claimant's claim on the grounds that it offends against rule 37 (1) (a) of the Tribunal Rules (ETR) because it is scandalous vexatious or has no reasonable prospect of success. It is also (and is primarily) based on the *manner* in which proceedings have been conducted. It is said that the proceedings have been conducted in a manner which is scandalous, unreasonable vexatious. This invokes rule 37 (1) (b) ETR. Finally it is said that it is no longer possible to have a fair hearing. This invokes rule 37 (1) (e) ETR.

2) I heard evidence from the 1st respondent and from two HR advisers who act as deputies for the third party. I heard also from the claimant's father who acts also as her representative. I also heard from the claimant's father's line manager.

3) The issues in the case have not been finally determined, and this made it difficult to determine the relevance or otherwise of the assertions being made in the pleadings. It seems to me, looking at the respondent's pleadings and the

careful analysis of the basic case in the case management hearing of EJ Aspden in June 2023 that the following are issues in the case:

- (A) Is the claimant disabled by virtue of general anxiety disorder; an eating disorder and neurodivergent autism or ADHD? The respondents' position on this is a non-admission rather than a denial.
- (B) Direct disability discrimination/ disability-related harassment (because of /related to disability (actual or perceived):
 - (i) 30 December 2022 the first respondent gave the claimant a written warning, or threatened the claimant with a written warning, by telling the claimant this was her "third strike" and that she would be getting a written warning. This complaint is set out in paragraph 19 of the grounds of claim.
 - (ii) 7 January 2023 the first respondent referred a matter to court of protection solicitors and thereby initiated disciplinary action against the claimant. This complaint is set out at paragraph 20 of the grounds of claim.
 - (iii) 10 March 2023, the first respondent told the claimant that she was not to be allowed to drive the minibus, be left unattended alone with the third party or give him medication. The claimant alleges that by doing that the first respondent restricted her responsibilities and what she was allowed to do. This complaint is set out at paragraph 32 of the grounds of claim.
- (C) Failure to make reasonable adjustments contrary to s20/21 Equality Act 2010 (paragraph 29-32 of the Particulars of Claim);
- (D) Breach of Working Time Regulations 1998: refused to permit the claimant to take rest periods or rest breaks to which she was entitled under the Working Time Regulations.

4) In addition it is important to look, not only at the legal and factual issues for determination necessary for the determination of the claims but at the contextual evidence or secondary evidence upon which the claimant is entitled to rely for her claim of disability discrimination and harassment in particular.

5) The claim form included also paragraphs 11-18 which were said explicitly to be matters over which the tribunal does not have jurisdiction but which were provided as context for the allegations of disability discrimination and harassment, and are said to be relevant to the treatment of the claimant in the workplace. Some of these matters might be regarded as relevant background, contextualizing the actions of the first respondent, and a tribunal may have regard to these matters when considering, for example the circumstances in which an act said to constitute disability related harassment takes place, so as to judge the perception of the claimant and whether it was reasonable to regard the "unwanted conduct" as having the prohibited purpose or effect.

The Law

6) In addition to the regulations cited above I was referred to the following cases cited by the respondent, or considered independently by me in the course of my deliberations:

- Harris v Academies Enterprise Trust** [2015] IRLR 208.
- Harmony healthcare plc v Drury** [2000] all ER (D) 1302
- Bennett v London Borough of Southwark** [2022] IRLR 407
- Attorney General v Barker** [2000] EWHC 453
- Jones v Wallop Industries Ltd.** (ET/17182/81)
- Bolch v Chipman** UKEAT/1149/02

Stood v London Borough of Hounslow UKEAT 0156/14
Force One Utilities Ltd v Hadfield UKEAT 0048/08
Wong v Royal Mail Group Ltd (2500163/2022)
Smith v Tesco Stores Ltd 2023 EAT 11
A v B UKEAT S/0042/19/SS

7) I will deal with the evidence that was presented to me later on. I make the following findings on the application by following the way it is set out in the written application.

**The application to strike out
7 March 2023 email**

8) The claimant's father, on 7 March 2023 sent an email to the 1st respondent's then employer making what the respondents state are unfounded accusations of abusive behaviour towards the claimant. The employer is not connected to the claimant or the claims. The respondents say that the purpose of the contact was to slander the 1st respondent and damage the 1st respondent's reputation in order to jeopardise the 1st respondent's employment.

9) The claimant's father does not deny writing that letter. The claimant's father does however dispute the purpose with which it was written. I reject the respondent's contention that the aim of the letter was to "slander" the first respondent. I also reject the claimant's explanation for the letter. I find that the letter was aimed at getting the first respondent into trouble with her then employers. This was at least part of the intention behind it.

Go Fund Me pages

10) On 8 April 2023 the claimant's father created a "GoFundMe" webpage (p18-19) The application states that this contained "a full background of the case as well as providing updates on the outcome of the closed preliminary case management hearing" which had taken place earlier. I do not accept that it gives a full background to the case, or that it gave any substantive updates on the outcome of closed preliminary case management hearings.

11) The claimant's father does not dispute that he created this Gofundme webpage. He does dispute its purpose. He does dispute the detail and content of it. I find that the principal purpose of that page was to raise funds and I do not accept that it gave rise to a more than fanciful risk of triangulation onto the identity of the first or second respondent or anyone else who later became subject to an anonymization order by members of the public.

12) The first respondent in oral evidence drew attention to pages 18 and 19 and said that the relevant parts were where the claimant's father talked about his daughter starting work as a carer. She said that the pages talked about the background to the case about bullying and the fact that the mother of the 3rd party was the employer. She cited details such as the fact that the claimant says at one point that she was told to get out of bed on her days off and told to work or she would be evicted. The complaint of the 1st respondent was that this page talked about things that she disputes. She accepted that the information disclosed there did not triangulate on her but said it did when mixed with other posts and she referred to something she described as "investigating the investigators". The claimant's father accepted that he had used the title

"investigating the investigators" as a Twitter title for a short while. However he did not do anything with it he suggested.

13) He denied that the GoFundMe page was an attempt to intimidate the 1st respondent. He explained how it was that he came to run that page. It was put to him that the general campaign of social media posts had the prominent reason to intimidate the 1st respondent. He denied this when it was put to him that although one of the reasons was to get funding for the case, the other reason was to ruin the 1st respondent's reputation, he denied it because he said he had not mentioned her or identified her on social media posts. The details of how it was said that the first respondent could be identified from the material that was in the public domain was put to him, and I accept the claimant's father's answers in this respect that the chance of triangulation was minimal in this case from the information which remains on the websites and social media.

14) He went further and said that he had made specific efforts to distance and not to identify her. Although he accepted that he had mentioned the title Dr. He did not mention either where the 1st respondent or himself live. He said he took lots of steps to ensure that the material was not too specific. He did accept that he had given his location as Wigan. Given the location of the events in question this was not going to assist anyone in identifying anyone involved in the case.

15) He accepted that he did not use polite language and that it was not kind language but he said that the treatment of his daughter fully justified language he used on page 142. However he said he was not trying to intimidate with this language.

16) He accepted that the social media accounts had not been deactivated. However he said the contents had been deleted on 9 September 2023. I have, at this stage no reason to disbelieve that point. The content was no longer available he said due to the anonymity order. He said that his view was that he was not to direct anyone to the court hearings and he said that none of his content had. He explained that the reference on page 142 to how far he should push was a fabrication because he knew that the 1st respondent was watching.

17) He denied that it was designed to make her worry, which I do not accept, but he did say that he accepted that it was to that her know that he was watching what she was doing.

18) The witnesses for the 2nd respondent state "contrary to the orders (sic) issued by the tribunal he (the claimant's father) has chosen to continue to publicise this case". In making this point the witnesses refer to pages 18-19 and 95 of the bundle.

19) Pages 18 and 19 appear to have no material added to them after 11 September 2023. Page 95 is the material shortly after the order in September. However this material does not appear to me to be such as to be likely to lead to the identification of anyone. I accept that it is theoretically possible that someone with a great deal of ingenuity could triangulate onto the first respondent, I do not consider that it is likely either in the sense of being "on the cards" or in the sense of being more likely than not.

20) I find that the materials on pages 18-19 were not vexatious, scandalous or unreasonable conduct of these proceedings. They were an attempt by the

claimant's father to raise funds for legal expenses. I find that they did not become unreasonable conduct (or scandalous or vexatious conduct) of the proceedings after the restricted reporting order or the anonymization order was made. If the respondents believed that they had become such, they made no attempt to have the claimant or the claimant's father remove the materials. Had they done so there might have been a case to be made that a refusal to do so was unreasonable conduct of the proceedings, but on the evidence before me, even that would not have amounted to unreasonable conduct of these proceedings.

Facebook pages

21) On 16 May 2023 it is alleged that the claimant (from whom I did not hear) created a public post on Facebook promoting the GoFundMe page. It was alleged that this gave further details of the case. The claimant's father does not dispute that he created a Facebook page. The consequences of that he does dispute. I find that there was nothing improper in the publication of this page, and that it did not either taken singly or with other information give rise to anything more than a fanciful risk of identification of the first or second respondent, or of anyone else who later became subject to an anonymization order.

22) The claimant's father was cross examined on the entries in relation to the transcript of his Facebook video 16 May 2023 on page 142. On that same page appears an entry for 27 June in which he asks the question how far should I push, how noisy am I going to be? How compliant should I be? I have had an offer from a journalist in the disciplinary discrimination campaigners who say they can skirt around the issues of police and tribunal". When he was questioned about this he said this was him foolishly playing up to the camera because he, by that stage, knew that the 1st respondent was following him. He denied that it was an attempt to intimidate her.

23) It is clear to me that this was a rather foolish attempt to worry the 1st respondent by implying that journalists were interested in the story. This was not true, on the evidence before me, but nonetheless it was an attempt to make the 1st respondent feel uncomfortable. I consider that it was remote from the proceedings themselves and there is no evidence that it had any marked effect on the first respondent.

Instagram post of 28 May 2023.

24) On 28 May 2023 the claimant's father is alleged to have uploaded a public Instagram post providing updates on the case and of the closed preliminary case management hearing which had taken place prior to that. It is said that this detailed the claims and the claimant's father's involvement. It was never made clear to me in evidence what "details" of the case were dealt with in this. I understand that video content has been removed (see LL and AT's witness statement, para 6). In the absence of any evidence from the respondents on this content, I have looked at the transcript provided by the claimant of the Carousel pages (claimant's bundle p 24). I can see only an attempt to obtain support from those viewing the video. There are no details of the preliminary hearing given, which a claimant would not be entitled to give. I find that nothing of any substance was divulged in that post and I again reach the same identification risk conclusion. To the extent that I have any evidence of what was said in those videos, nothing could contribute to the identification of anyone under the anonymization orders.

“Vexatious” reports to the police

25) The application is based on an allegation that in May 2023 the claimant and the claimant's father made what are described as vexatious reports to the police accusing the 1st respondent of assault and modern slavery practices. It is alleged that this was aimed at defaming the 1st respondent and bringing her into disrepute. The application states that following an investigation the police confirmed that there was "absolutely no evidence to support such allegations and the case was dropped in July 2023."

26) The 1st respondent's witness statement deals with the police investigations accusations by the claimant and the claimant's father. She refers to page 20 of the bundle which is a heavily redacted document. It is not clear to me why these redactions have been applied, and it perhaps is of no relevance. However it is apparent from the text of the email that the writer who appears to be an officer (detective constable) at the Northumbria police is writing, not to the 1st respondent, but to someone who regards the 1st respondent as their client. It is not clear to me why the recipient of the email has been redacted in those circumstances. The letter thanks the unnamed person for their assistance with the police investigation concerning the 1st respondent. It states that the officer had reviewed the case with supervision and "I can now confirm there will be no further action taken against your client." This email appears on page 20 dated 7 July 2023 at 1644 and again at page 21. It is not clear to me whether it is supposed to be the same or a different email. The only difference I can see is that more redaction, knocking out the start of the Northumbria police email stem has been applied on page 21. In addition the writer is identified on page 21 as "Lisa".

27) In her witness statement, the 1st respondent argues that "this shows that the claimant's representatives accusations were false/baseless".

28) The fact that the police did not pursue an allegation such as this, may stem from a number of different reasons. It is not possible to say that the fact that the police will not pursue an allegation indicates that the allegation is false or baseless.

29) I therefore did not have or hear any evidence to the effect that the police found that there was "absolutely no evidence to support such allegations". There was evidence however that the police decided that the evidential threshold for a prosecution had not been met. I conclude that this was not conduct of the proceedings and in any event, the claimant and her father are entitled to draw matters, albeit in dispute, to the attention of the police. The police pointed to the lack of corroborative evidence as one of the grounds on which the matter was not to be taken further. That is not the same as dismissing an allegation as lacking any evidence at all. I reject the submission that the claimant's representative was conducting these proceedings in an unreasonable fashion by making these reports to the police. It was a separate matter, as the claimant pointed out in the particulars of claim (albeit it may form part of the context of the matters constituting harassment).

30) However the 1st respondent went on to say that the claimant's father has continued to assert after 7 July 2023 that the police hold a report on the claimant personally suggesting that there was substance to the claim and that the matter is ongoing. In support of this the 1st respondent points to page 87 and page 88 of

the bundle. It is important to know what those pages form part of. Those pages are part of the claimant's response to the respondent's application to strike out the claim. They are therefore documents which are written to the respondent and to the tribunal. There is no evidence that they have been publicised further than that. It is open to the claimant to assert that the police do hold a report and this is to correct a point made by the respondent.

31) The claimant's father says, of page 87, that the report to the police was made on the guidance of an employment Solicitor. In particular it says "they concluded that the issues outside of the EAT (a misnaming of the tribunal proceedings I think) such as financial control, servitude concerns as well as a threat of violence warranted a call to the police. I refute the claim that there was absolutely no evidence to support such allegations". The claimant's father then refers to the issues concerning the threshold for progressing with the case. He disputed that there was absolutely no evidence. He also says that he was seeking or had sought legal advice and once the case had reached its conclusion there was an offer from a pro bono criminal barrister who would look into the police handling of it.

32) The other page that is referred to in the 1st respondent's witness statement is page 88. Apart from the passage to which I have already made reference there appears to be nothing on that page concerning the police report. The claimant's father does not appear to assert that the police hold a report and by so suggesting that there was substance to the claims. The claimant's father does say that there is a report from the police/NRM and he would not repeat the wording of the report. It is not clear that this is suggesting that there was substance to the report what is clear and what I conclude the claimant was saying in this was that the wording of the respondents' application, to the effect that there was "absolutely no evidence to support such allegations" is incorrect and that the issue was whether such evidence is there might be satisfied the threshold for progressing with the case.

The contact with a news media outlet

33) The application is also based on an allegation that in May 2023 the 1st respondent was contacted by what the application describes as a "reporter" from a news channel on television after that person had received a call from someone claiming to be a colleague of the claimant's father. According to the application that person had details of the ongoing tribunal proceedings and accused the 1st respondent by name of abuse and modern day slavery against the claimant.

34) I have set out some of the areas in which the claimant's father does not dispute events, and there were other incidents in that that he also does not dispute. He does however dispute strongly the question of contact from the television news outlet with the 1st respondent.

The 1st respondent notes that the claimant relies on the assertion that the 1st respondent's name has not been made public and that he had not shared any identifying factors about the 1st respondent nor the protected 3rd party. In rebuttal the 1st respondent refers to what is said to be a call made to a television news outlet by somebody describing themselves as a colleague of the claimant's representative. In doing this she refers to page 92 of the bundle.

35) Page 92 is a file/attendance note which gives LL as being the person in attendance and is dated 10 October 2023. It appears that the file note is taken much later than the events which it purports to record (which occurred in May 2023). LL did not deal with this file note in the joint witness statement that she produced with another person. This was very unsatisfactory as it is impossible for me to know the provenance of this attendance note. It emerged in evidence that the television news outlet had aired a piece about an activity in which the first respondent was said to have engaged, in May 2023.

36) The file note purports to be a transcript of a call. I say this because it starts with the word "hello". However what it is a note of is completely unclear.

37) It is not clear how the person is supposed to have obtained the information which is being recounted in that file note. It is not indicated, significantly, when that information was given to the supposed caller. It is not even clear to whom the speaker is speaking from that file note. The file note purports to name both the 1st respondent and the employer to whom the claimant's father had written in March 2023. It says that the matter is "actually at police level now". This would place it between the date on which the claimant involved the police and 17 May 2023.

38) The file note ends with a telephone number. Nobody gave me any information as to attempts by the respondents to trace that number, or even to call it. The claimant's father however did indicate that he had checked his phone records and this number did not appear on any of his contacts telephone numbers. He gave details of the women, as the caller was alleged to be a woman, with whom he worked at his employers. He said he had not spoken to those women about the case.

39) The 1st respondent says that she was made aware of this call an hour before the television news outlet aired an interview with her concerning matters not connected to this case.

40) It is puzzling as to why nothing was said about this prior to the file note being produced in October. The 1st respondent states that she was told that the caller made multiple calls and that the one that was "forwarded to me" was just one of them. It is not clear whether the recording of that call was disclosed to the claimant. It is also not clear to me why no file note was produced of it earlier and why the file note does not recount any of the circumstances of the making of the file note. I have no explanation as to why the recording was not made available to the claimant or myself.

41) I find that there is no evidence to suggest that this was part of the claimant's or the claimant's father's conduct of proceedings. I accept the claimant's father's denials that he brought about any such call. He disputes that it occurred in detail either directly or indirectly.

A fair hearing is no longer possible

42) The application, without developing this point, crucially, states that this places the respondents at prejudice. "As such it is no longer possible to have a fair hearing." The "as such" appears to indicate that on the basis of what is set out in the letter, a fair hearing was no longer possible. However it does not explain why that conclusion is tenable.

43) I find that this point is not tenable on the evidence which I did receive. There is no evidence that any witness of the respondents is not prepared to give evidence in this case as a result of anything that the claimant or the claimant's father are alleged to have done. There is no evidence that would suggest that the other ordinary powers of the tribunal to control the evidence and proceedings before it would not be sufficient to deal with the alleged behaviour of the claimant's representative.

Striking out is proportionate

44) The respondent's application says that the order to strike out is proportionate to the matters that have been cited. I do not accept that striking out is proportionate because the tribunal can deal with the attempt to include truly irrelevant material in a witness statement by means of (a) directions as to witness statements (b) case management of the content of witness statement disputes (so that the parties can argue that certain passages are to be excluded from evidence as irrelevant to the proceedings, or are to be heard in private should the grounds under rule 50 be satisfied for making such an order).

45) In the same letter there was an application for an anonymization order. This was that all parties be anonymized in the public judgement. It was said that there was a real risk of one of the then respondents being identified directly or indirectly through the publication of the claimant's or any of the respondents' names. This application was granted.

46) The rights that are relied upon are the rights of the 3rd party whose identity needed to be protected. There was no reference to the rights of the 1st respondent in this respect. Of course due to triangulation issues the identity of the 1st respondent needed to be protected if the identity of that 3rd party was to be protected.

The evidence presented.

47) As this was the respondent's application to strike out I heard evidence from the 1st respondent and from the two representatives to whom I have already made reference. I will have something to say about the way in which the evidence of the two representatives of the 3rd party was presented to me and the exceptional step I took to ensure that the hearing could proceed and that their evidence could be heard.

48) However first, I deal with the way in which the 1st respondent put evidence before the tribunal. This is of considerable importance because at no point in her evidence did she give any evidence that a fair hearing would not be possible. In particular she gave no evidence that she would not attend the hearing to give evidence. This point is all the more acute because the first respondent did at one point exhibit some signs of distress, as explained below.

49) The hearing had certain technological problems. But eventually the 1st respondent was able to give evidence. She started to be cross examined at 1107 and became distressed shortly after that. The hearing resumed at 1135 after a short adjournment for a few minutes. The first respondent's distress appeared to be occasioned by the appearance of an observer, who, it transpired, was attending to take notes on behalf of the claimant. It is necessary to say a little bit more about this. There was nothing objectionable in the observer attending and

indeed keeping notes of what was being said in evidence as this was an open hearing. The witness asked about how the public were being told about the link to attend. I made administrative enquiries and it was confirmed to me that the link did not reveal any identifying material. This was in accordance with the restricted reporting order that has been made already.

50) When the hearing resumed the 1st respondent was clear that she wanted to carry on. She continued to be cross examined by the claimant's father.

51) The 1st respondent was then asked who had given her the photograph of the mobile phone with email and she was not prepared to say. She complains that the email effectively identified her. She complained that she felt that the claimant was trying to ruin her reputation.

52) The 1st respondent denied being the employer in any capacity. She accepted that her name may have been on the employer's liability insurance but this was relinquished after the legal claim that is relevant to this case had finished. It accepts that if she was at home she would often do day-to-day management. She denied that any of the assistants who worked for the 3rd parties she said were her responsibility but she would step in to do care. She would usually be consulted on issues like when medication was to be had by the lead caregiver. There are other issues such as the 3rd party's sleep. She would be told if the 3rd party was not sleeping and would talk to the 3rd party and his personal assistants. She would ask them to encourage the 3rd party not to stay up too late. She was consulted on the kind of shopping that was to be done. She was consulted about how often the bed was to be changed. If it did not happen she would have to do it. Similarly she would cover jobs which were not done such as ensuring the toilets were clean or ensuring that 3rd party's personal hygiene in relation to his ears and nose for example were attended to.

53) She said that she would talk to the lead personal assistant and negotiate with them perhaps a checklist she said she attended the March 10 March meeting which was a return to work meeting as "supervisor". She said that this title was given to her to describe her role by the HR team. She says her role was to act as an intermediate between the HR team and the 3rd party. She would give them information. She said it was difficult to get consistency and information might have to be conveyed to the HR team. She would end up having to do that. She said that she was the person responsible for 3rd party and would supervise activity with regard to matters such as continuity of care. If there was going to be a gap in the 3rd party's care and support she would take responsibility of it due to the personal relationship that they have. She pointed out that he does not have 24/7 care.

54) She accepted that she had said that she was giving the claimant a verbal warning during the Christmas holidays because she was the person supervising. She says she gave a verbal warning to her. She said that this was the 3rd or 4th time that the claimant had not followed the protocol. She says that she had told the claimant that she was going to get a written warning from HR. She said she was telling the claimant in advance that claimant was going to get the warning. She explained to the claimant that in the written warning the claimant would probably be told how long it would last. She said in evidence that she was dealing with a difficult situation without support. She reiterated that she is not the employer and she is not in a situation where she would want to do that.

55) She was asked about the media outlet's airing the programme containing an interview with her and she said that this was on the 15th May. It was put to her that on the 16th. I do not think anything turns on that distinction.

56) She said that she was made aware by the editor of the media outlet programme who sent her the recording that he said he had received. It was established that the recording had not been disclosed but what the first respondent said was the transcript was at page 92.

57) She could not answer why it had taken 5 months for the file note to have been written up given that it was written on 10 October 2023.

58) She said that she was not making a link between the contact made with her in the writing of the 1st social media post in May, and this appears to make sense because the 1st post was after the time which the interview was said to have gone out.

59) The 1st respondent felt that the information showed that triangulation was possible. She referred to being somebody at a particular position in an organisation and having a public persona.

60) It was put to her that it was not true that it would be easy for anyone to triangulate the information to identify her and that the only person who had triangulated the information was the HR director at her then employers. She said that this was not true, but she did not provide any examples of other people who had successfully triangulated information onto her from publicly available social media. Although the 1st respondent refused to identify the source of photographs of the telephone showing the email of 7 March 2023 she denied that she had "outed" herself by contacting Ms Tahir or HR to tell them that she was being targeted by someone and that he might well contact HR.

61) The 1st respondent's evidence dealt with what the 1st respondent alleges is a pattern of unreasonable behaviour by the claimant's father "and the detrimental effect of their actions prior to this claim being brought which has continued throughout this tribunal process".

62) The 1st respondent makes reference to the restricted reporting order. That was made on 11 September 2023. This was quite some way into these proceedings. The 1st respondent states that the claimant's representative "has continued to post on his social media details of the case and the content remains on his social media accounts to date. In referring to this the 1st respondent refers to certain matters which were put on social media before the restricted reporting order and one which appears to be dated, at earliest approximately 2 days after the restricted reporting order is made.

63) It appears to be something which the claimant's father posted on a social media platform which says "I spent a week researching what you do. I'm in desperate need of help in relation to what I feel is a wholly incorrectly applied an anonymity order used to protect someone's reputation, not the person covered by COP... Obviously I can't say any more than that, for legal reasons." This appears to be viewed by 87 people according to page 95 of the bundle.

64) There is one comment. It appears to be that of the claimant's father. It states "if anyone can help me appeal this I could be really appreciative". This appears to have been viewed by 69 people.

65) The other 2 items come from earlier in the proceedings. Page 18 of the bundle and page 19 appear to be the GoFundMe page. Pages 18 and 19 appear to me to be an attempt by the claimant's father to raise money for legal fees. This was his evidence as to why he constructed this page and indeed it is self-evident that that is its purpose.

66) The 1st respondent's witness statement, apart from asserting that these matters contain details of the case, does not appear to indicate which bits of information it is said would lead to the identification of anyone in the case.

67) The 1st respondent's witness statement says that the anonymisation order shows that names of the parties must remain confidential. It is of course true that once an anonymisation order is made those who are anonymized under it are to be referred to in the terms of the anonymisation. The 1st respondent argues, in the witness statement, that the claimant's representative has acted contrary to the orders issued by the tribunal because he has chosen to publicise this case. The second part of the argument is that this is because the claimant's father had previously contacted the 1st respondent's employer and has now posted on social media.

68) Whilst the claimant's father, prior to the making of the anonymization order, has talked about the details of the case, there is nothing in an anonymisation order that says that the parties may not refer to the details of the case (provided that they do not reveal the identity of the person who has been anonymized). In order to make the argument good that there has been information disclosed in the social media posts which does result in more than a fanciful risk of the 1st respondent's identity, or indeed anyone else's identity being disclosed, the respondent ought to have provided witness statement evidence showing the process of the alleged triangulation.

69) Instead the 1st respondent states "identifying factors have been shared which would directly link me to the accusations made." The 1st respondent goes on to say that the claimant's father's unreasonable and vexatious behaviour is directly in line with his behaviour prior to the claim being made.

70) I was not presented with any evidence that the respondents have sought to ask the claimant's father to remove material from the social media platforms, or to identify those matters which might identify the 1st respondent or directly link the 1st respondent to the accusations made.

71) What appears to have happened, at its height, is that the claimant's father, prior to the anonymisation order, put material on social media the impact of which on the identification of the 1st respondent is unclear, but which the claimant's father has not taken down since the making of the anonymisation order.

72) The 1st respondent refers to page 7 in the bundle. This is the document dated 7 March 2023. This was before the claim form was presented on 4 April 2023.

73) It appears to be a photograph of a mobile phone in which appears an email from the claimant's father dated 7 March 2023 at 15:25 hours. It is sent to somebody whose name is supposed to be redacted but is addressed in the greeting line (Mrs Tahir). And the subject of it appears to be the forwarding of "employee complaint – private and confidential."

74) Before embarking on the contents of that document it therefore appears that the claimant's father sent an email to an identified person within the 1st respondent's employer. He marked it private and confidential. I understand that the photograph was taken by the 1st respondent, but if that is not right then it certainly came into the possession of the 1st respondent at some point. The 1st respondent was unwilling, and refused, to name the person who showed her the mobile phone screen which was photographed.

75) Dealing with the 7 March 2023 email from the claimant's father to Ms Tahir, the document says that the claimant's father felt he had been placed in an impossible situation and that he felt that reaching out to the employer was justified because the conduct of the 1st respondent was he said bringing the business into disrepute as far as the claimant's father felt.

76) He made the point that the complaint does not relate to performance in role but to the behaviour outside the scope of the employer. However he went on to make the point that information in a subject access request was likely in his expectation to confirm that a lot of the abuse that he said was being committed was being done during the working day for the employer.

77) The document states that the 1st respondent had behaved in these ways, in the writer's opinion, and should be viewed in the light of the employer's stance on modern day slavery discrimination bullying and equality. It is in this context that the claimant's father states "they have backed me and my child into a corner where I feel this action is acceptable."

78) The document does not directly identify the 1st respondent, but it does give considerable information on the claimant and I have no doubt that Ms Tahir could identify her (so far as that is relevant). It makes various complaints about the 1st respondent's attitude in relation to matters which are subject to the complaints before the employment tribunal and some which are not. The email suggests that there is a great deal more ill-treatment of which details could be given but were not being given.

79) The email is explicit however in that the writer states "the solicitors who have conducted the grievance and disciplinary process been predictable in finding favour in their long established client and their latest maneuver made me consider my options which one of them is contacting" the first respondent's employer.

80) On page 14 the email, eventually reaches the point that the claimant's father felt "that there were only the options of settling in which case the 1st respondent escapes accountability" or "we resist and make this individual publicly accountable for their actions." The email goes on to say "I'm not going to allow my child to be financially bullied any longer, therefore my plan is to publicly out this person and raise a fighting fund to demonstrate that power, status and wealth and the length of service rules shouldn't be used to be advantage for bullies in the workplace."

81) The email goes on to ask for a meeting with Ms Tahir to present "the extensive evidence of our claims." He goes on to say that the claimant's father feared once this went public, "this individual will gaslight their employers in the same way they do with everyone else they encounter." The claimant's father offers to "present you evidence that I know their legal team can't sue me for revealing.... I have more than enough evidence to allow you to make an informed decision that this individual is bringing your business into disrepute."

82) The email states that the claimant's father plan to refuse a settlement agreement in the next few days and "start a public campaign, we have established a GoFundMe page to raise legal fees in several neuro divergences influences are on standby to raise awareness of this case."

83) The 1st respondent in her witness statement stated that the serious "yet baseless accusations of modern slavery and discrimination been deeply distressing affecting my mental health. It has caused me significant anxiety and distress."

84) The 1st respondent does not state that it has affected her attitude towards giving evidence or participating in the tribunal proceedings. This was something that was made by way of a submission at the end of the proceedings. However I heard no evidence to support that submission. I therefore have to proceed on the basis that although involvement in the proceedings is, and clearly was, distressing for the 1st respondent, I do not have any evidence that she will not participate in the tribunal proceedings given correct and appropriate safeguards.

85) It is difficult to understand why, if it was the 1st respondent's position that she felt so intimidated by the claimant's representative that she will not participate in proceedings, this was not stated in her witness statement or foreshadowed in any way in the application.

86) The 1st respondent's witness statement refers to the passage in the communication to the employer in which the claimant says that the intention is to publicly out the 1st respondent. The 1st respondent says that the claimant's father's behaviour is unreasonable because the purpose of a tribunal claim is to achieve justice and not to abuse the process by making it the claimant's father's goal to ruin the 1st respondent's reputation.

87) It is undoubtedly clear that one of the aims of the claimant's father, and possibly the claimant, is to obtain a public ruling on the matters that the claimant alleges and over which the tribunal has jurisdiction. The claimant's father, and the claimant are entitled to obtain a public and reasoned judgement, but only in relation to the matters over which the tribunal has jurisdiction. If irrelevant matters are raised, the tribunal can prevent questions from being asked about them, and will refuse to make a reasoned judgment dealing with them. If the claimant's father persistently makes any allegations that are plainly irrelevant to the issues in the case then this may constitute unreasonable conduct of the proceedings. However the allegations which I have seen in relation to the alleged treatment of the claimant do not fall within those categories.

88) It seems plain to me that whilst part of the claimant's representatives objective is to achieve a judgement which may reflect unfavourably on the 1st respondent, that is not the overall aim of these proceedings. The aim of a tribunal

proceeding is to achieve (open) justice. The tribunal will be jealous that its process is not abused by anyone seeking to use it solely or primarily for the purposes of damaging a person's reputation, regardless of the merits of the case they put forward.

89) The 1st respondent's witness statement then deals with the question of the identification of the correct employer. The objection that the 1st respondent seems to make at this point is that she is not the employer and that the narrative to the contrary from the claimant's representative is one which he knows to be false and which has been created to create scandalous content.

90) At the case management hearing which took place on 5 September 2023 it appeared that the claimant was not suggesting that the 1st respondent was her employer. Rather the 1st respondent was being included on the basis of being a perpetrator of the discriminatory act. It is of course open to the claimant to argue that a person is a legitimate respondent because they are a person captured by any of s109, 110, 111 and or 112 of the Equality Act 2010. Neither of the representatives addressed me on the question of whether the 1st respondent was correctly joined under these or the heading of being the employer of the claimant. I proceed therefore on the basis, without deciding it, that the first respondent was properly joined as a respondent.

91) In her oral evidence the 1st respondent explained various activities that she did engage in. She indicated that these were simply as the person with a particular relationship to the 3rd party. She states that she has no relationship to the 2nd respondent. However it seems clear that there is an issue to be explored and from which findings of fact will need to be made by the employment tribunal hearing the full merits hearing as to whether or not the relationship she speaks of is sufficient to give rise to liability for her actions and whether she can properly be found to have committed the various acts within the jurisdiction of the tribunal, of which the claimant complains.

92) At this stage therefore it does not seem to me to be so clear that the fact that the claimant via her representative is making allegations against the 1st respondent makes any difference to the question of whether the claimant is entitled to make allegations against her.

93) Next the 1st respondent deals with the passage on page 17 of the bundle which states "our plan is to refuse the settlement agreement in the next few days and start a public campaign". On page 17 however that passage continues "we have established a GoFundMe page to raise legal fees and several neuro divergence influencers are on standby to raise awareness of this case".

94) That passage read in its context indicates to me that the public campaign could relate to the treatment of the 1st respondent or it could relate to the raising of funds and awareness of the case.

95) What is clear, sadly, from the text of the email of 7 March 2023 is that the claimant's representative was plainly demonising the 1st respondent. This is done by attributing the worst motives for actions to the person being demonised.

96) However, and in so far as this is relevant, I do not read that email as showing that the claimant's representative does not want to resolve the claim and that the claimant or he would not consider any attempts to reach a settlement

with a fair and levelheaded approach, as the 1st respondent argues in her witness statement. It is plain that the claimant via her representative was not impressed with the state of negotiations.

97) The 1st respondent's witness statement then turns back in time to when the claimant's father wrote to her then employer and began posting information on social media. She says that she was the only female high profile person with the job that she has in the national organisation to which she then belonged who had a particular title and who had a child with specific characteristics which she identifies.

98) She says, argumentatively, that it would have been very easy for anyone to triangulate the information provided by the claimant's representative to identify. However this is to ignore the fact that at the time that these matters were put into social media, there was no anonymity order, and the claimant and representative are entitled at that stage to identify the 1st respondent without breaching a tribunal order.

99) The 1st respondent then turns to the passages on page 88 and states that following the contact with the employer (which it will be recalled was with someone who is described as an HR representative and was marked private and confidential, and was written to the employer) she was placed on restricted duties on 9 March 2023. This was because of the perceived reputational risk to the organisation.

100) The material in the 7 March 2023 letter was not in the public domain and although it may be that the 1st respondent was identified by it, and that the contents of it seek to demonise her, this does not appear to me to address the issue of whether it was unreasonable conduct of the proceedings for the claimant's father to contact the 1st respondent's then employer. I have concluded that it does not constitute unreasonable conduct of the proceedings.

101) Similarly the 1st respondent complains about the passage "we have established a GoFundMe page to raise legal fees and several neuro divergence influencers on standby to raise awareness of this case". It is correct that the claimant's father has sourced social media influencers to bring publicity to the claims that the claimant is making. It seems equally clear that the purpose of bringing attention to is in relation to the GoFundMe page.

102) Finally the 1st respondent states that the claimant's representative has made clear his aims and desired outcomes and that these are personal and have caused insurmountable pressure both professionally and personally. She refers to page 89. This is a reference to a confidential conversation before the proceedings were issued. This was in February 2023. However, looking at the passage which is quoted by the 1st respondent, it is clear that the intention of the claimant's father is about "exposing her despicable behaviour, not only for (the claimant), but others".

103) There is nothing in this that indicates that the intention of the claimant or her father is to abuse the tribunal proceedings solely for that aim. It is very common that people who are bringing claims and employment tribunal, especially over matters relating to discrimination, identify as an objective the acknowledgement that a wrong has been done to them and the holding of the

employer or perpetrator to account so that the same thing does not happen to others. Most of those matters are common to non-discrimination claims.

104) I have gone over the 1st respondent's witness statement in some detail partly because in all of the presentation of the evidence that she relies upon she does not indicate anything that suggests that it will not be possible to have a fair hearing of this case. It is also in part because of the way in which the evidence was presented in this case. The witness statements tended to refer to whole documents, and make sweeping assertions about what they prove. It was therefore necessary, in order to understand what either party's case was, to look at the detail of the documents from start to finish.

105) I have a great deal of sympathy with the distress that the 1st respondent has exhibited. It is plain to me that the claimant's representative, in the communications to the then employer, was engaging in distressing behaviour which was (at least in part) aimed at causing problems for the 1st respondent. Were he to continue to behave in that manner in the course of the proceedings, and in particular after this hearing, the claimant could expect an employment judge to take a strict view and the claimant and her father should be aware that the power to strike out for unreasonable conduct of proceedings might well be used.

106) However in considering the evidence before me I have to consider the motives of the claimant. Even if the behaviour of the claimant was everything that the 1st respondent alleges, it seems to me that a fair hearing can still take place. That would be sufficient to dispose of this matter. However I make findings relating to the claimant's motivation.

The second respondent's witnesses

107) I also consider the evidence that was given by the HR Director (LL) and the senior HR manager (AT) for the firm acting on behalf of the third party as the third party's deputy. This, bizarrely, was given by way of a joint witness statement.

108) The claimant's father, on behalf of the claimant, objected to the introduction of the joint witness statement evidence because it was in the form of a joint statement and it was not possible to attribute any particular passage to either of the people purporting to make it. It seemed to me that there was a great deal of force behind that objection. I considered whether or not it was possible to admit the evidence when it was one witness statement but with 2 voices. In the end I decided to admit the evidence but required that the witnesses were both affirmed and were under oath at the same time. I then required them to identify which paragraphs of the witness statement were attributable to which of the witnesses.

109) The claimant's father was then able to question each of them on the paragraphs that they had adopted as their own. In some cases there was a joint adoption. This related to a very small part of the evidence.

110) I made the point very clearly, I hope, to the respondents' representative that production of a witness statement in this manner is completely unacceptable. I had taken an exceptional course in allowing the evidence in at all, and that those responsible for compiling a witness statement in this way should provide an explanation as to why it was done in this way.

111) Regardless of that it should be very clear to the professional representatives in this case that a witness statement should never be presented in this form in the future. It in no way meets the aims of the overriding objective. It was deployed against a lay representative and caused understandable confusion. This method of presentation (save where evidence is utterly uncontroversial) tends in any event to undermine the value of the evidence that was given.

112) In the course of their professional role as the human resources people who were instructed by the 2nd respondent, AT and LL, referred to a confidentiality agreement that was drawn up during internal procedures. They state that despite the confidentiality agreement the claimant's father "has continued to breach the confidentiality agreement by speaking about this case." Of course, that cannot in and of itself be a breach of the confidentiality agreement unless one looks at the terms of the confidentiality agreement itself. Neither gave any evidence of any attempts to invoke the confidentiality agreement against the claimant's father in order to obtain his compliance with it.

113) The agreement is dated 16 February 2023. It was an agreement to maintain the confidentiality of all matters discussed during certain meetings with the claimant which relate to the 3RD party's clinical and care needs. This was clarified to mean or include all information relating to health. It extends to details of any medical conditions; treatments which include support plans and medication. The concept of "information" is also defined as meaning documents, verbal accounts and written statements which reference those matters in relation to third-party care. The agreement is not to share or discuss that information with any 3rd party including references to the 2nd respondent on any social media forums.

114) That was the state of the agreement. Although the witnesses sought to argue that the claimant's father's behaviour was unreasonable and vexatious, there appears to have been no attempt to ask the claimant's father to remove the material which the respondents, taken singly or jointly, claim offends against the confidentiality agreement. Before me the way, if any, in which the information provided by the claimant's father offended against this confidentiality agreement was not developed, and I can see nothing in the point.

115) Next the 2nd respondent's witnesses stated that the claimant's father was fully aware of the tribunal's order. This is the anonymisation order and they referred to page 74 and 75. Page 74 is dated 11 September 2023 and orders that "there shall be omitted or deleted from any document entered on the register, or which otherwise forms part of the public record, including the tribunal's hearing lists, any identifying matter which is likely to lead members of the public to identify any of the persons specified below as being either a party to or otherwise involved with these proceedings...". This does not have a penal order attached to it.

116) Also on 11 September there is a restricted reporting order. This states that it prohibits "the publication in Great Britain, in respect of the above proceedings, of identifying matter in a written publication available to the public, or its inclusion in a relevant programme for reception in Great Britain. "Identifying matter" in relation to a person means "any matter likely to lead members of the public to identify the complainant or such other persons (if any) as may be named in the order". This then lists certain people who may not be so identified. The order

states that it remains in force until both liability and remedies have been determined in the proceedings unless revoked earlier. It finishes by saying that the publication of any identifying matter or its inclusion in a relevant programme is a criminal offence. Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding level V on the standard scale.

117) That order took effect in relation to matters after 11 September 2023. As it is an order that carries with it a penal sanction, it is of course important that it be construed strictly. There is no definition given of when the matter is "published".

118) In addition, and as a result of the fact that it carries a penal sanction, the concept of "likely" must also be construed strictly. In my view it cannot mean simply that it is "on the cards" that somebody will be identified from the material. It must mean, in my view that for a breach to have occurred it must be shown that it is more likely than not that the material will identify these individuals or an individual.

119) Insofar as the respondents claim that the claimant's father has acted in breach of the restricted reporting order of 11 September, it would be necessary for the respondent to show to the tribunal material that renders it more likely than not that the persons who should not be identified, or at least one of them, will be identified.

120) In so far as the anonymisation order of 11 September 2023 is a derogation from the principle of open justice, its terms are to be construed in the way in which they least restrict the principle of open justice. The derogation must be no more than strictly necessary to achieve its purpose. There is no general exception to open justice where privacy or confidentiality are in issue.

121) The terms of that anonymisation order are, in any event very limited in scope: the order relates to documents entered on the Register or which otherwise form part of the public record (including the tribunal's hearing lists) of identifying matter which is likely to lead members of the public to identify certain persons as being involved with these proceedings.

122) Page 95 is a complaint that the tribunal had issued incorrectly an anonymity order in a case which is not specified. There is also a request for help for the claimant's father to appeal the matter. In order to link that material back to the website material it would be necessary for a person to trace the claimant's father's title and link it back to that material.

123) The witnesses state (see paragraph 5 of the joint statement) that the claimant's father has "unreasonably made a volume of accusations ... at every meeting held following due process, these have been about our and (the 1st respondents) professionalism and he has threatened reports to a number of regulatory bodies if we failed to settle with the claimant."

124) The writers of the witness statement are human resources professionals. I am unaware of what qualifications they carry as these are not set out in the witness statement. The accusation that the claimant's father has "unreasonably" made a volume of accusations is distinctly unhelpful to me in seeking to determine what the facts are. The witness statement does not give any details of the accusations made at these meetings. There is no evidence of any correspondence from these witnesses or anyone indicating to the claimant's

father that these interactions were regarded as threatening unreasonable or indeed vexatious. Reference is made to page 96 and following. The witnesses do not indicate which parts of that lengthy document were regarded by them as intimidating or threatening. I have therefore read the whole of it.

125) At page 98 the claimant's father's intervention appears to be about a procedural point, whether or not the process of the hearing was to hear new evidence only. On page 99, having interrupted the claimant's father JR is recorded as having made a lengthy intervention. At the end of this the claimant's father says "I get that and I think that the issue that I have is obviously you just read exactly what the claimant put which kind of answers your question really..." There is then a lengthy intervention by the claimant's father on page 99 at the end of which he says... "So I think it is unfair for (the claimant) to be expected to answer adjustments so that was just kind of my point really but I will shut up now and I will let you carry on." In response to this JR states "thank you and I completely take the point..." On page 100 the claimant expresses her frustration.

126) On page 100 when the claimant's father next seeks to intervene he does so by asking "can I say (the claimant) didn't see that conversation it was kind of in confidence away from (the claimant) so (the claimant) was not aware of them until they were submitted to the grievance so I think again (the claimant) probably only ever seen them once they were put in the grievance..." There appears to be nothing unusual in that intervention or anything that could be regarded as intimidating.

127) On page 101 the claimant's father again intervenes but it is to make a perfectly proper point in the context of an appeal. There appears to be nothing in that material, which is followed by a lengthy intervention by JR lasting the majority of page 101, to indicate that the claimant's father was behaving in a way which was unreasonable and his behaviour seems to be similar to that of other representatives in the context of this type of appeal hearing. On page 102 when the claimant's father next seeks to intervene he asks whether he can interject. Having been given permission he says this "we are completely aware of the living arrangements that is not an issue, so I am eviction specialist, it is what I do so I have go (got?) no qualms about getting the course outside this process so that is fine no need to really, (the claimant) is not aware of the legal issues on that yet so don't worry about that we have got that one in hand."

128) This in some respects explains why the claimant's father was talking about getting redress outside of the process in relation to the question of eviction.

129) In relation to the remainder of what he says going over to page 103, once again there is no tonal element of intimidation either in what the claimant's father says or indicated in the response to it. I was not taken to any follow up correspondence indicating that those attending had found what the claimant's father had said in any way offensive or intimidating.

130) On page 105, and after a break during the meeting and a considerable intervention by the claimant, the claimant's father asks again to ask a quick question on a point. On page 106 he sets out what that issue is. On page 107 the claimant's father raises a concern he has, and which has repeated on several occasions, about the tax position, and makes the argumentative point that the claimant has had to put in a subject access report. He comments that doing so is not going to look very good at the tribunal (with the implication that it will not look

good for the prospective respondents). However this is about what the claimant's shift patterns were. He then goes into a discussion of what are plainly without prejudice negotiations. I pay no regard to that passage.

131) There is then a discussion on page 108. The context for this appears to be the claimant developing a point about the diary and what her shift pattern was. The claimant's father makes the point that they are trying to find out what the correct amount of time is and says "we have asked for that information will be submitted on the ET1 we have asked for it formally by the 1st grievance we have asked for it now basically by subject access request which will expire I think it is next week." On page 107 JR states that the information is being gathered and would be provided before the end of the subject access request deadline.

132) It is in that context that the claimant's father states that the deadline for the ET1 is probably by the end of the week so that the information would not be on the claim form. He then says "but if it comes back then it comes back so yeah they were the kind of 2 questions now one question we were going to add and you mentioned, I have actually been speaking to the SRA because I'm going to put a complaint in about (the solicitors for the second respondent) about and I appreciate that you might not want to discuss this in depth... But you are on that website as the contact... About the medicine that you mentioned without going into too much detail completely feel that this whole scenario has been well (the 1st respondents) weaponize to her in-house solicitors really should try and oust (the claimant) out of her job and I have had 2 GPs look at it, look at the consequences and it has just been dismissed because it has got to stick out on (the 1st respondent's) bode (sic) that it has not got fatal consequences so my concern is as an organisation which reports to do medical negligence on the website why did not (name of solicitors)..." The claimant's father is then interrupted and the point is made that this is not particularly part of the grievance but that the firm does not do medical negligence work.

133) The passage I have just read out was, in the bundle highlighted in yellow and I was told that the passage formed part of the intimidation upon which the respondents rely.

134) It seems to me that a threat to make a report the solicitors regulatory authority cannot be viewed in that light. The 2nd respondent's representatives are a firm of solicitors and the ability of people with whom they interact to report them to the solicitors regulatory authority cannot be wholly unknown to them. In any event it seems to me that the claimant's father, possibly working on a misconceived basis, was proceeding on the basis that the solicitors were saying something (albeit on behalf of the client) that they knew to be untrue. The claimant's father, through ignorance of the true situation, may well have been threatening to make an allegation which would not have succeeded. However this is a far cry from identifying this kind of point made in the course of the grievance/disciplinary hearing as any kind of unusual or intimidatory behaviour. I do not accept that it was intimidating or was taken that way. It was not unreasonable simply by virtue of being wrong, and it was not vexatious; there is nothing to suggest (and it was not suggested to me) that the claimant's father knew that making this complaint would be hopeless so that he was doing it just to inconvenience.

135) In any event there is no evidence that it was perceived as intimidatory. During the course of page 108 JR corrects what the claimant's father says about

what is said on the website as to whether the firm does medical negligence. JR is very boundaried about what belongs, in the 2nd respondent's view, to the disciplinary proceedings and what belongs to the grievance hearing. In that light JR is perfectly clear that the issue as to whether the drug dose was potentially fatal could be brought up in the context of the disciplinary hearing. The claimant's father's response to that point is perhaps telling. On page 108 he says "yeah no problem". It is plain that he is not content with the idea that the disciplinary in the grievance should be kept separate because he says that it is his view that JR has not read the whole case from start to finish and he said he was probably putting her on the spot. In the light of that claimant's father goes back to the point about the obtaining of documentation and payslips.

136) Read in context I can see nothing that would legitimately be classed as behaviour which is either unreasonable or vexatious behaviour. It is plain that the claimant's father is seeking to do his best as a representative for the claimant. He has, possibly misconceived, views about the behaviour of the solicitors' firm. He does not press those points in an overbearing or unreasonable manner, so far as one can tell from the transcript and the responses of professional HR employees of a solicitors firm.

137) The witness statement refers to the whole of the interaction on pages 96 through 111 when it says "we have found this interaction to be threatening vexatious." Having set matters in context it is difficult to understand why exactly the 2 witnesses who make this claim (neither of whom were present at the appeal hearing on 1 March 2023) should make this claim.

138) The witnesses then rely on pages 112 – 118. Page 112 is a file note at which AT was present. This is the disciplinary outcome meeting on 24 February. Pages 112 – 114 are largely taken up with AT reading out or summarising matters leading to a written warning. On page 114 the claimant's father's 1st intervention arises as a result of a question by AT: "are you available for that Mick because I know that you will obviously be supporting". It is simply to say that he would have a look at this diary.

139) On page 115 AT has suggested that there should be a meeting and goes on to say "I wanted to ask because aside from the discipline the outcome in those proceedings that are running, in the meeting and in the written submission you have obviously made clear your feelings about (the 1st respondent) as well and I know that you have made some statements about you feel she is a narcissist and that all these things were done to punish you, what would return to work look like for you." The claimant then responds to that and on page 115 the claimant's father asks whether he can interject after the claimant has been speaking for a short while. He says that he would stop short of telling AT where he is aiming to take the situation. He says that the problem was that the 1st respondent had made it quite untenable for the claimant to go back. He describes that his daughter had been on the phone to him over the Christmas period and almost nightly on most nights having panic attacks about the thought of going back. He raises concerns that the claimant he says has about the 1st respondent "going to be looking over her shoulder" and goes on to say "as well because she (the 1st respondent) is probably thinking she has got an employee who is going to try and stitch her up at the first available opportunity..."

140) He makes the point that he feels that they were going through the motions. He says that he respects what AT was saying but he also felt there was an

element where he felt she was saying that AT was going to "implement this, you are going to implement that". He says that there should be systems in place by the 1st respondent due to the employment that she has elsewhere for preventing people like the claimant and others at the risk of going through this process.

141) He is complaining that they needed to know what value there was in going through the grievance the following week. He then describes that he has had 6 weeks of stress trying to look after his daughter. He goes on to say "so I think it is time that someone like an impartial referee I suppose has to say enough is enough now we need to just you know have obviously got the legal viewpoint on this and the strength of the case going to tribunal, we have got a legal viewpoint on it for the record for disclosure, we know that we have not got a golden bullet with the discrimination claim because (the claimant) has not got that diagnosis yet, but we have got a hell of a lot of other things skirting around the edges which have heard in a tribunal really paints a pretty poor picture so I think..." He is interrupted at this point. The reaction however is to state not that this is unacceptable behaviour but to state that the conversation was going into a territory "where we are having kind of discussions about where it is a potentially without prejudice discussions". AT goes on to say that she was happy to continue that chat but it would need to take place without the minutes.

142) So there does not appear to be any suggestion that this professional HR representative had any difficulty in seeking to control what the claimant's representative was saying and to allocate it, quite properly, to the different areas of open and without prejudice discussion. It is noticeable also that the claimant's father is compliant with the idea that the matter should be dealt with in a without prejudice conversation. He does not seek to come back into the conversation to make any substantive points after that. On page 117 AT is suggesting that there should be a mediation due to what happened over the previous weeks even if there was going to be a return to work. She finishes what she wants to say by saying this. "The reason we are not having that discussion" (about return to work and mediation) "is because I am aware that you have got a grievance appeal and as I said I don't think it would be appropriate given the paving that was implemented because of the grievance process and the disciplinary process so I would see that disciplinary process has concluded but as Mick said if we are feeling that we are in a situation where that is pointless and untenable I am happy to have a discussion with you this morning if you would like, I mean it's up to you (the claimant) really it's your..."

143) Page 119 is an attendance note at which AT is present and relates to 3 March 2023. This is a "return to work discussion". On pages 119-120 there is no contribution by the claimant's father. There is then a highlighted passage in which the claimant's father says "I think (the claimant) should just stop there. I think this meeting is not..., I get what you are trying to achieve Lucy..." That is the end of the highlighting. AT then corrects the claimant's father that her name is not Lucy. However the claimant's father then goes on to make points which do relate to the working relationship between the claimant and the 1st respondent. He is interrupted by AT who wants to make a point about the claimant being fit and well and the reason that she was asking about this. While she is making a point about a duty of care to make sure that the claimant is fit to come back to work the claimant's father seeks to interrupt but AT continues by saying "and you can voice your concerns about well-being so I do feel that is responsible for me to ask that question".

144) The claimant's father then goes on to deal with the question of whether there is a duty on the employer to have an occupational health assessment done. AT disagrees that this would be the 1st step. The claimant's father's response to that is "right okay then fair enough that is for you to decide I think at the end of the day you are aware of what has gone on and you are aware of the claimant's mental state you are aware of what she has been through even like the stuff this morning where you are surprised the salary..." He talks about issues around tax and national insurance and says how it has been skirted around "because you have to pay it but even little tricks like that really does not set a good precedence really". AT interrupts, apologising for doing so, to disagree that it was a trick. She says she wants to keep the focus of the meeting she firmly makes the point that she is not going to discuss anything other than the claimant's return to work.

145) After making the point that she wishes to make the claimant's father comes back to the point "without need to apply for occupational health assessment". To which AT replies "no". The claimant then makes the point that she wants to make. On page 123 the claimant makes a point about when she has panic attacks and how she has a way of coping with them now. And at this point the claimant's father states "just for the reference (AT) I have also a generalised anxiety disorder for like 35 years, I have had (claimant) on a lot of occasions trying to coach herself out of panic..." He goes on to give a description. He proceeds to attribute the anxiety in the claimant's case to the 1st respondent. He says he understands that the employer needs to go through the whole process. He says that he understands that the employer has to show that it has given fair due attention to the disciplinary. He points out that there are other issues still remaining which could not be discussed in that meeting. He says that he thought that he knew that AT knew where they were going, and there was going to be an impasse.

146) He then goes on to say that the person giving clearance should be someone independent, "we have made an accusation to (the 1st respondent that the claimant) has been discriminated on the grounds of her disability, (the claimant,) has gone off after (the 1st respondent's) comments last year it is a long, long process to get a diagnosis, the next step for (the claimant) is actually on..."

147) On page 124, where there are further highlighted passages, the claimant has been making the point that she was content to have a meeting with the 1st respondent. In the context of what the claimant has said AT states "but I don't think it's fair to put you in that situation you know that sounds like quite a horrible stressful situation for the both of you so I need to know that you are fit and well to engage in those discussions and that is just a question that I need to ask you because it would be irresponsible of me to ask you to come to a meeting where you are saying that you feel that bad."

148) The 1st highlighted passage, which is said to show vexatious or unreasonable behaviour, and intimidation, is this: "I'm happy to engage in the discussion like it is what it is, like this is how I felt when I was working with (the 1st respondent) anyways I guess what I'm saying is I don't know how I will react I'm not going to hold you responsible for the take responsibility for that. I'd like to have a meeting with her and have a chat and just be like..." However this passage in the transcript is not attributed to the claimant's father but is attributed to the claimant herself. There is absolutely nothing which is exceptional or unreasonable in that passage in the context.

149) The next passage on that same page is also from the claimant and is highlighted. In it she says that she would not start an argument or anything and it would be a mature conversation about moving forward and going on from there.

150) I see nothing on page 124 which is suggestive of any attempt at intimidation or vexatious behaviour by the claimant or the claimant's father. Looking at page 125 the passage that appears to be highlighted is simply AT asking that if anyone needed a break the witness would facilitate it and goes on to say various things about how the meeting between the 1st respondent and the claimant would be conducted and what would and would not happen. It appears to be about the tone of that forthcoming conversation, for example that the parties would not talk over each other and those sorts of things.

151) During the whole of this however the claimant's father is not recorded as saying anything. His next entry appears to be on page 126 where he is asking about timescales. On page 126 he also asks about mentioning a settlement agreement and asking whether that was still on the table. On page 126 AT replies to that. The claimant's father expressed concern that the chat between the claimant and the 1st respondent would not be a formal mediation (indicating that he thought it should be formal).

152) On page 127 he asks about outcomes on the tax and national insurance point. AT gives him an update on that. He is concerned about the tax position. He explains that at that point there was no money outstanding to HMRC. The conversation goes on page 127 and 128. I can see nothing objectionable about this.

153) On page 128 there is a lengthy passage from the claimant's father, and although expressed in slightly off-colour language at times, it does not appear to be intimidatory speech. The burden of it appears to be that he wanted to sit down with the solicitors and discuss matters. He referred again to having reached an impasse.

154) Although on page 128-129 he is clearly concerned about the process and clearly concerned about his daughter he does not appear to be offensive for intimidatory, and once again on page 129 he appears to be compliant with moving on.

155) Finally the witnesses sought to rely on pages 143 – 4. These appear to be an exchange of emails on 3 March 2023, which is again prior to the presentation of proceedings. The email chain appears to start on 2 March 2023. It is an email from AT and to the claimant. This appears to be trying to set up the discussion about return to work and the disciplinary and other matters. It also touches on the question of which payslips were missing.

156) On that same day, about 3 hours later, the claimant's father confirms that there will be an appeal as the process is not concluded. He says he was minded to file a complaint about the grievance appeal meeting. This was to do with the wording of what, the claimant's father said, had been promised for the hearing and what he perceived as a contradictory start to the meeting. He says that as a result of having numerous meetings with AT and LL, the makers of the witness statement, he had allowed those meetings to progress without interjection but he

had on the occasion on which he did intervene felt he had to do so because he felt the line of questioning was nothing to do with the aim of the meeting.

157) About a quarter of an hour later on 2 March 2023, AT confirms that the meeting was to discuss next steps in the outcome of the disciplinary. She says it would not be appropriate to discuss the grievance appeal on the disciplinary appeal. She said the claimant should be able to direct questions about that to the appropriate people.

158) On 3 March 2023 the claimant's father writes saying that the claimant had been paid only £250 instead of £385 and asking for an explanation head of the meeting. That was sent at 1050 and 9 minutes later AT replies that the payslips sent for February detailed the wages and deductions. She explains that as a supportive measure the payment was to be made outside the normal monthly payroll and asserts that the claimant was in receipt of weekly pay. The payment reflected deduction in respect of tax and national insurance.

159) At 1140 that day the claimant's father writes saying that the claimant had been paid weekly during the process. He expresses alarm that she had been sent barely legible payslips with less than 24 hours notice that she would be getting 65% of her pay. He says "a very unpleasant tactic indeed that won't look that good on the ET1 submission."

160) He then says that the claimant would be raising a grievance about that matter.

161) There is a slight air of unreality about the assertion that any of this taken singly or together could be reasonably regarded as threatening or vexatious. The evidence of a report to a regulatory body appears to be simply the threat to report the solicitors firm to the SRA. It does not appear to be a threat to make that report if the 2nd respondent failed to settle with the claimant. That assertion was not expanded upon in either of the witnesses' evidence and I find that there were not multiple threats.

162) It appears to me that the kind of "threat" that the claimant's father had been making was the type of assertion that an HR representative would see frequently in similar situations. I do not accept that either of the HR representatives or anyone else who legitimately should have known about the contents of the meetings (for example a non-employee should not have known about them), would have been intimidated or threatened by them.

163) The witnesses (paragraph 6 of the joint witness statement) assert that it is a sign of disrespect for due process and disregard for the orders issued by the tribunal that the claimant's father continues to publicly seek to overturn the anonymity order. There is absolutely no substance in this, with respect blatantly argumentative, piece of evidence. It is the right of every party to litigation to challenge the tribunal's decisions. As it is a right it cannot be regarded as showing a lack of respect for the tribunal's procedure or unreasonable conduct of the proceedings or that the party who is seeking to appeal is "disregarding" the orders of the tribunal.

164) The witness statement does state however that video content has now been removed. It is plain that the claimant and her representative have taken steps to minimise the extent to which triangulation might, without straining, take

place. The witnesses go on to say that the claimant's father remains active in seeking his desired outcomes on social media. They say that the accounts remain active and are accessible and linked to his current social media posts. In this they rely on pages 16, –19 and page 64 – 84. I will deal with the latter 1st.

165) Page 64 is a record of a preliminary hearing going from page 64 through to page 73. Page 74 is an order. Page 76 is another case management hearing record. This goes from page 76 through to page 82. Page 83 is a restricted reporting order.

166) There is nothing in that that could be relied on to show unreasonable or vexatious behaviour by the claimant in the conduct of the proceedings.

167) Page 16 – 17 are portions of the material sent to the HR manager of the 1st respondent's then employer marked "private and confidential". This was not a public document it was a matter conveyed in confidence to the 1st respondents then employer. Pages 18 and 19 are the GoFundMe pages to which I have already made reference. The tribunal materials are not matters which are in the public domain in any way that would lead to the identification of any of the parties. The GoFundMe page I do not consider as triangulating on any of the respondents or the people whose identity has been anonymized.

168) In paragraph 7 of the joint witness statement the witnesses claimed that "employee grievance and claims been lost in the claimant's father persistent vitriol directed at the 1st respondent". Once again I am not referred to specific passages but to pages in the bundle. The witness statement refers to page 6 – 17. Page 6 is the photograph of the email sent, not to the 2nd respondent, but to the 1st respondents former, but then still, employer marked private and confidential. It is unclear why the representatives of the 2nd respondent would have been aware of this document. No explanation was given to me as to how they became aware of it. It is not clear to me how the grievance or other matters could, within the overview of the 2nd respondent, have been "lost" in the communications which were directed to a third party and at their height appeared to be aimed at creating a problem for the 1st respondent.

169) I am then referred to page 20 of the bundle. Once again this does not appear to be directed to the 2nd respondent or the 2nd respondent's representatives. It is the heavily redacted email of 7 July 2023 to which I have referred already. It concerns a police investigation into the 1st respondent.

170) Similarly page 21 (which is cited separately but is the same document) does not appear to have any relevance to the 2nd respondent. It is completely unclear how those 2 documents show that employee grievances or claims had been lost within the "persistent vitriol" from the claimant's father to the 1st respondent.

171) I am then referred to pages 86 – 91. Pages 86 – 91 are the claimant's response to the respondent's application to strike out, and form part of the correspondence to the tribunal. As no particular passages are referred to by the witnesses, I take it that these are references to the passages with which I have already dealt in this document.

172) The witnesses say that these documents show "ulterior motive" on the part of the claimant's representative. As far as I can see the motive of the claimant's

father is to expose what he sees as the wrongdoing of the 1st respondent by means of obtaining a judgement over matters in respect of which the employment tribunal has jurisdiction and via other means in respect of matters over which the employment tribunal does not have jurisdiction.

173) The sanction of striking out the claimant's proceedings all part of them is a Draconian one which requires properly articulated evidence to support it especially if the allegations that are being made against a person are of very serious misconduct.

174) The evidence which I have reviewed in the documents from these witnesses and which I have analysed above however shows that the employee grievance and claims have not been lost in what is alleged to be persistent vitriol. Instead what happened, it seems from the written record, on the evidence presented to me at any rate, was that the HR professional dealt with the claimant's father's interjections, which were not of themselves intimidatory or abusive or otherwise unreasonable, perfectly professionally and the claimant's father, at least on the face of the record appears reacted with compliance.

175) The witness statement goes on to say that the "due process" has been obstructed and detrimentally impacted. This appears to be a reference to page 121. I have already referred to the passage highlighted on page 121. Even taking into account everything that the claimant's father said on that page I can see nothing that suggests obstruction of "due process". However even if it did indicate obstruction of the internal procedures, that is nothing to the point in relation to whether or not the proceedings had been brought to further solely an improper motive, or whether the conduct of these proceedings has been unreasonable.

176) Paragraph 8 of the joint witness statement is difficult to understand. It says "the underlying matter for resolution from our view on behalf the employer is seeking public reputational damage and professional ruin of (the 1st respondent) which is a matter that we believe has no reasonable prospects of succeeding in a tribunal, and the action taken so far to achieve this have been vexatious and scandalous on the part of (the claimant's father)."

177) In this context I am referred to pages 86 and 89. Page 86 is the start of the response to the application to strike out. In this the claimant's representative states that there is no mention of the 1st respondent in the 7 March 2023 email. It should be stressed however that at the time that that email was written neither proceedings had been issued nor any orders (let alone anonymisation orders) had been made in these proceedings.

178) The justification for contacting the former employer was, according to that document, that the 1st respondent was sending messages which the claimant's father claims, in that document are "tantamount to wanton bullying and harassment" from her email that work. Alternatively that there were other documents being sent during that time. Whilst a professional representative might realise that the tribunal can order disclosure of documents, many litigants in person and nonprofessional representatives issue subject access requests in order to try and obtain disclosure from the other parties to proceedings.

179) It is plain to me that the email sent in private and in confidence to the HR representative of the 1st respondents former, but at the time current, employer

was designed to create problems for the 1st respondent. However it was also aimed at trying to seek to put pressure on the 1st respondent. It did not however form part of these proceedings. It cannot be regarded as unreasonable conduct of the proceedings.

180) As to whether it was an abuse of process to issue these proceedings. I cannot reach that finding on the basis of the information available to me. The claimant's representative says that the information that was forthcoming from an analysis of the documents and the materials obtained was that it proved that the 1st respondent whilst at work was sending these abusive messages. As a third party to that employment relationship, if this was true, then the claimant and the claimant's father were entitled to draw that matter to the employer of the 1st respondent.

181) The claimant's father states that given the 1st respondent's employer's stance on various ethical matters including bullying and discrimination he wanted to see what their stance would be on the information was sending them. He states that his aim is to get recognition for what he puts in capitals as all of the 1st respondent's behaviour. He says that the loss of her professional reputation should be the reason why she acknowledges her behaviour and adjusts accordingly.

182) Whatever the rights and wrongs of that proposition, assuming as it does a particular stance on the facts, the use of this means appears to be addressing one part of the 1st respondent's behaviour. There is some overlap with the procedures that the tribunal allows the claimant to use to try to secure findings of fact, but it does not seem to me an improper use of tribunal proceedings.

183) The other passage I was referred to was page 89. First I need to say that I do not accept what the claimant's father says on page 88 that he did not have an intention to get the 1st respondent sacked but simply to see what the then employer's opinion was of an employee who was failing to utilise any basic standards of HR administration training health and safety, PAYE records and who he says was bullying her staff. This submission does seem to me to be disingenuous.

184) On page 89 he goes on to say that conduct was not vexatious but was utilising the leverage on the basis that the 1st respondent's professional reputation as the only risk to her in the tribunal proceedings and is the sole reason why the advocates were requesting anonymity. He then goes on to recount a confidential conversation in February 2023. He told the respondent's representatives that his intention was to leverage the professional reputation of the 1st respondent. He says this "I told them explicitly that this is my intention, this is not about money, this is about exposing her despicable behaviour, not only for (the claimant), but others. This is another example of (the 1st respondent) using (the 3rd party's) funds to protect herself from scrutiny and the consequences of her actions.

185) The claimant's father does appear to be engaging in an attempt, in "confidential conversations" to apply pressure to the 1st respondent by this means.

186) That behaviour appears to be an attempt to put pressure on the respondents to achieve either a settlement, or some recognition of the 1st

respondent's behaviour so that others and not just the claimant would not be adversely affected.

187) Accepting, as I do, that the claimant's father was not being genuine when he denied trying to put pressure on the 1st respondent by contacting her employer, I have to ask myself whether the intention in bringing the proceedings in the tribunal was with the sole aim of attacking the 1st respondent's reputation. I have reached the conclusion that it was not the sole aim, nor the main aim. It was one of the aims, but the way in which it was to be achieved was by obtaining a judgment against the first respondent.

188) Paragraph 8 of the joint witness statement stated that the witnesses believe that there is no reasonable prospect of the case against the 1st respondent succeeding in a tribunal. This is a highly germane point to the question of whether the behaviour of the claimant's father is vexatious. However I was not addressed on the question of the prospects of success of the claimant's case against the 1st respondent. There is a dispute as to whether the 1st respondent is the employer of the claimant or whether she is captured by the provisions of the Equality Act 2010 as someone who can be joined as an individual respondent who is acting on behalf of the 2nd respondent and for whose activities therefore the 2nd respondent is liable; there are several other legal mechanisms which would need to be considered before any conclusion would be possible on this point. In respect of all of these routes the first respondent would be a perfectly proper respondent to the proceedings.

189) So whether the claims against the first respondent stand any reasonable prospect of success is not something that I could determine at the hearing and I was not invited to do so.

190) The 1st respondent did give some evidence that in her opinion the activities in which she was engaging were not those of an employer of the claimant. If that remains a live issue in the case it was not one which I could determine on any basis at this hearing.

191) Finally the witness statement addresses the question of whether a fair hearing is possible on behalf of the employer, which I take to mean within the context of the witness statement on behalf of the 2nd respondent.

192) I do not understand the final paragraph of the witness statement. It was never properly explained to me by the witnesses. It expresses a feeling that the claimant's father's actions have distorted the "initial matters that we had engaged with the employee on" and it goes on to say that the 2nd respondent is unclear as to whom they are responding to. This, with respect, is an irrelevant point as it must have been absolutely clear to them that the claimant's father is acting as the representative of the claimant. The claim is brought by the claimant and the tribunal proceedings are being pursued by the claimant.

The claimant's father's evidence

193) The claimant's father was cross-examined and accepted that he sent the email of 7 March to the 1st respondent's employer and that he made accusations of abusive behaviour including modern day slavery, discrimination, bullying and harassment. He said that these were not connected to the claims. It is clear from the pleading that he meant by this that they were provided as context and background. I do not accept that they were not connected to the claims.

194) It was put to him that it was his intention in sending the email that the 1st respondent's employer should find that the 1st respondent was bringing the company into disrepute. He denied this and said that the aim of the letter was to get the lie of the land to see if the advice he was being given was to see whether the things you are saying were in the public interest and to see how the employer would respond. He said his aim was to get the 1st respondent to adjust her behaviour and if there was a successful prosecution of the employment tribunal then the intention was to test the belief that someone of the stature of the 1st respondent could bring her employer into disrepute.

195) He denied that he was trying to damage the 1st respondent's reputation and it was put to him that he was doing so publicly. To this he replied that he was not seeking to do that at that stage. He denied that his saying that he was going to start a public campaign related to ruining the first respondent's reputation. He said of the reference to putting several neuro divergent opinion formers on notice that he had got them waiting but did not use them. He said that the purpose of the public campaign was to raise funds as this could be a very expensive legal case. In relation to the reference to the influences raising awareness of the case said that this was to do with funding. He said that in the end he used one influencer who did the video for him and that he spoke to one other.

196) He was cross examined on the passage in his letter on page 86 where he says that he wanted to see what the employer's stance would be on the questions of bullying discrimination in modern day slavery as he had stated from the outset that his aim with the case was to get recognition for all of the 1st respondent's behaviour and the loss of her professional reputation should be the reason why she acknowledges her behaviour and adjusts accordingly. It was put to him that this was a statement that his intention was to ruin the 1st respondent's reputation. Once again he responded that that was not his intention at that stage. He was asked what he meant by "at that stage". His reply was telling. He said that at that stage there had been no conviction and it was going to be lawful to point to the employment tribunal decisions. The point was that he was not going to ruin her reputation at that time. He said also that even now he was not seeking to do that because there is nothing on the public record he added "I am not stupid". He was clear however that his aim now was to get a finding which will ruin her reputation.

197) When it was put to him that although he had said that he did not want to ruin the 1st respondent's reputation prior to judgement that is what he was doing by emailing the employer before the proceedings had started, he said that he had anonymised the email and this was not what he was doing. He added that if he thought that Ms Tahir could have triangulated to who the 1st respondent he would not have done it.

198) He explained, when pressed on the matter, that at the point in March when he wrote the email to Ms Tahir, the claimant had been evicted from her home and his emotions were running quite high. He felt anger and bitterness at being left hanging. He was full of anger but he said that he knew he did not have the judgement to point people to at that time. He was therefore "seeing whether this was an option." He said that if he wanted to ruin the 1st respondent's reputation he would have released all of the information and evidence that he has.

199) It was put to him that he was intending to share information to damage the 1st respondent's reputation before entering the employment tribunal process and this was done by reference to what he said on page 16 that he had more than enough evidence to show that the 1st respondent was essentially bringing her then employer into disrepute. He denied that this was what he was doing and said if it was he would have sent the information but he did not.

200) It was put to the claimant's father that his intention throughout the process was not "appropriate compensation" but the loss of the 1st respondent's professional reputation. He denied this. In December he had telephoned the whistleblowing hotline for the employer and asked to have a confidential conversation. He developed this point in his skeleton argument, to the effect that he had spoken in advance of the letter in March to find out whether the then employer would have an interest in the information, essentially by way of standard setting and was told that it would. He then waited from December until March before writing the email to Ms Tahir.

201) At one point the claimant's father said that the aim behind the letter to the employer was to deal with the rage he felt someone who purported to be a shining example of fairness but who was behaving in the way which is alleged by him. He said he was doing due diligence to get redress from the only party that the 1st respondent has fear of. He said she was able to act with impunity. The claimant's father appeared to believe, having spoken to Protect, the charity, that the employer had a responsibility to deal with the matters he was raising. He explained both the December and March contacts in terms of his anger at what was going on at those particular times. He then qualified his answer to say that it was not so much anger as annoyance at the way in which his daughter, he felt, had been treated.

202) The claimant's father was cross-examined on the document that he produced which was a table of the various complaints he wanted to make on behalf of his daughter. These involve housing matters, matters to be reported to the police, including modern day slavery, and he said about this that if she was convicted of it she could be dismissed from her role.

203) The claimant's father appeared to refer to a further letter which he had not disclosed. Prior to disclosing it he said it was in relation to a serious data breach. It was disclosed later on in the course of his evidence and it appears to me that it did not involve for much of it any real complaint about any data breach. It was written sometime in June. This was before the anonymity orders were made in these proceedings. Its aim, like that of the March letter, appears to me to have been to cause problems for the first respondent. However it is right to say that part of the letter related to what the claimant's father said was leaking of information from the first respondent's then employer.

204) One of the issues which the respondent failed to distinguish between was the behaviour of the claimant in respect of focused information given to a particular 3rd party, namely the employer of the 1st respondent, and broadcast information. It also failed to distinguish between information that was sent out prior to the making of the an anonymization order and restricted reporting order and information that was created and sent out afterwards.

205) In respect of the file note at page 92 he described it as codswallop. He said that the video he had made had been been released after the media organisation

broadcast the programme in question. He said he worked with 9 or 10 females and had infrequent contact with them having infrequent conversations with about 3 of them. He asserted that this was a false attendance note although he accepted that the narrative might be correct.

206) He said that part of the narrative was not correct because he had never said that the 1st respondent was physically abusing his daughter. He pointed out that his daughter has a different name from his own and is not on social media.

207) He said that he did not recognise the number given at the end of the file note and he said, and was not challenged on this, that he had been through his phonebook contacts and could not find the number and so concluded that it was not connected with him in any way. He said he did not tell anyone to make contact with the media outlet. He said he was not aware of the contact with the media organisation until the anonymity order had been made. He denied that he had indicated to anybody that it would be nice if someone contacted the media organisation. I accept this evidence.

208) It was put to him that page 89 was vexatious and the paragraph relied upon by the respondent's evidence by his own admission he was seeking to ruin the 1st respondent's professional reputation. He said to this that one of the risks to the 1st respondent would be the cost of the trial and the loss of her reputation. However he felt the only risk was the loss of her reputation. He said that the anonymity order was brought in to protect the 1st respondent's reputation. It was put to him that his sole aim was to ruin 1st respondent's reputation and he disagreed with that saying that his aim was to get a settlement and to come to a natural conclusion.

209) He denied that saying that it was not about the money meant he was not seeking adequate compensation but solely seeking to destroy the 1st respondent's reputation. He said that what he was doing was trying to seek settlement. He said that on numerous occasions that he had asked to settle. When he was questioned about the reference to stopping the despicable behaviour not only for the claimant but for others he said that he had a suspicion that other carers had gone through the same process.

210) When he was challenged on the fact that the single competence authority had received a complaint he said that this was not done by himself for the claimant but that the police go through this process. The complaint in the case of the single competence authority was made in 29 September 2023 but the claimant's father said this had been made by the police and not by himself or his daughter.

211) When he was challenged in respect of page 29 which is the response to that reference he said that it was important to look at what factors they took into account. The claimant had not been trafficked so that brought the prosecution score down low, and that there was no evidence available to qualify as corroborative evidence of the claimant's account.

212) It was put to the claimant that he continued to assert, even after the dropping of the complaint by the police that the 1st respondent was guilty of modern day slavery. He denied this and said that the GoFundMe page is still active and does refer to modern day slavery. But he had not logged into it for 4 –

5 months. He says that the last donation was months ago that he had decided after £1100 that it was not worth continuing.

213) He said he had not corrected that page because he had not directed traffic to it. He said you have to be directed to it by a link. He said that the activity on the page had been zero for months.

214) When, on the last day of the hearing after lunch adjournment the claimant's father did reveal the correspondence with the 1st respondent's employer, the respondent made no application to recall the 1st respondent to deal with this matter. The claimant's father was unable to explain why he had not disclosed the letter earlier that said that he was under the impression that it was related to a data breach so was not disclosable.

215) He said that the data breach was referred to in the letter. The reference to the data breach was not explicit but was a reference to the way in which the email to this tax year had been dealt with (see page 61 of the bundle). There was a reference to information being leaked from the organisation.

216) Of course all of the material upon which the respondent relies in respect of this series of letters to the previous employer falls before the anonymization order.

217) Finally the claimant's father pointed out that he had 350 followers and that the statistics concerning the social media activity showed that the incidence of accessing his media was low.

218) The claimant's father's witness statement gives an account of his reasons for behaving in the way he did. In paragraph 11 the claimant's father says that the meeting on 3 March 2023 he presented a list of issues that had occurred during the employment and the associated "compensation awards. In fact this is a list of claims that the claimant's father said that the claimant had against one or other of the respondents in respect of a variety of things that had happened, some of which fall within the jurisdiction of the employment tribunal.

219) The claimant's father admits to sending to the HR director at the 1st respondent's then employer an "anonymous" letter. This appears to take the form of an email and I find difficult to understand how that could be anonymous. This was never explained to me.

220) In relation to that email the claimant's father says that his "headspace" was that the 1st respondent was being allowed to behave totally unchecked and great effort was being put into protecting her by her legal team. He says "may be some advice from her employers, who purport to be anti-bullying, discrimination et cetera, could help us get some records." It is unclear what the claimant's father meant by that and he was not asked what he meant by it. I do not accept that this was the primary motivation for that email.

221) The claimant's father links the activities of the HR director and the 1st respondent. He says that there was retaliation for the HR director telling the 1st respondent about the contact he had. He says that this was to stop the claimant's salary that she was getting whilst on paid leave.

222) He describes the incident on 10 March 2023 which is the return to work meeting. The claimant's father says he was excluded from the meeting. This was the meeting which AT was seeking to set up between the 1st respondent and the claimant. The claimant's father states that after that meeting they had reached an impasse. They then lodged the claim with ACAS.

223) The claimant's father says that it was after this point that she contacted the police and lodged a complaint on 26 March 2023. He says he sent a file of evidence on 3 April 2023 to the police which dealt with text messages. There was an update on 2 May 2023.

224) The claimant's father says that on 13 April 2023, he had contacted the police and told them that he had legal advice and that he was launching a fundraiser for legal fees. He says that he told police that he had taken advice on how to anonymise this. He says that if he had thought that the fundraiser page would have hampered the police investigation he would have delayed it but that he was told that as long as it was anonymous there were no issues from the police about it. The claimant's father was not challenged on this evidence.

225) On 2 May 2023 the claimant's father stated that the police attended the claimant's property to check with her and give her an update. He describes a meeting with the police where the officer predicted that the 1st respondent would give a no comment interview. The police indicated that the claimant and her father should be prepared for some bad news.

226) The claimant's father says that on 7 June 2023 the 1st respondent did attend the police station accompanied by "her legal team" and gave a no comment interview with a ready-made statement. It is not clear how he knew this, but he was not challenged on this evidence.

227) On 12 June 2023 the police decided that there was not enough evidence to meet the prosecution threshold.

228) The claimant's father was also not challenged on his evidence that on 8 March 2023 he complained to the 1st respondent's employer. The claimant's father describes what he suggests was being passed from one person to another.

229) The claimant's father refers to a letter which he received on 2 June 2023 in which the first respondent's employer stated that it did not inform the 1st respondent that he had emailed the then employer. This was the letter which was only disclosed by the claimant on the last day of the hearing.

230) The claimant's father in his witness statement, at paragraph 26, states that he had a simple reason for contacting the 1st respondents then employer in March. The "simple" reason is that the claimant's father had received advice that someone working in the public eye should conduct themselves in a professional manner. This seems to me to be inherently incredible as an explanation I do not accept that it was the sole or simple reason. I accept that it may have formed part of the reason for contacting the first respondent's then employer.

231) I do not accept the claimant's father's assertion that contacting the employer was a legitimate method of attempting to get an opinion on whether the behaviour of the 1st respondent fell far short of what they should be. I have

reached the conclusion that the aim was to put the 1st respondent in some difficulties with her employer. This was unreasonable conduct, but I do not classify it as conduct of the proceedings. It was an act, in part, of malice aimed at the first respondent. I think equally that the later letter that came to light during the course of proceedings was also, in part, aimed at causing problems for the first respondent, albeit that by that time she had ceased working for that employer. However I do not think it can be classified as conduct of the proceedings. The claimant had already, before the proceedings taken action which had caused difficulties for the first respondent and this appears to me to be no more than another attempt. It is also clear that it did not have any effect, and I have reached the conclusion it would be disproportionate to strike out all or part of the claim because of either of these letters or both (or any combination of contacts with the first respondent's former employer).

232) The claimant's father complains that in June, on 25 June 2023 he discovered that the 1st respondent was following his Twitter, Instagram and tick-tock accounts. He describes this as stalking. I consider that both the respondents and the claimant's representative have engaged in hyperbole towards each other in describing the other side's activities. Put simply the 1st respondent followed the claimant's father. She was entitled to do this. It does not constitute stalking. It does not constitute vexatious behaviour.

233) In due course directions will be given (to all parties) about the proper content of a witness statement. The claimant, and in particular the claimant's father, need to be aware (as non-lawyers) that there are very clear rules about what is what is not acceptable in a witness statement. Simply to label somebody in a particular way is not evidence. In this application both sides have been guilty of seeking to do that, or engaging in hyperbole, with their witness statements. Such behaviour will have to stop as the case proceeds in favour of factual evidence as to who did what when or who failed to do what when.

234) When this case comes to a full hearing the claimant, via her father, and the respondents need to be fully aware that the witness statement should be factual and should not engage in simply stating the conclusion that the party wishes the tribunal to reach.

235) If, as the claimant's father states in the end of his witness statement, he has been diagnosed with ADHD, it is important that he appreciates that there are clear instructions as to the way in which a witness statement should be constructed. It may be that there will be adjustments that a tribunal will need to reach in order to accommodate this in procedural terms. For example, in the future if orders are made the claimant, via the representative will need to commit to a practical date by which things will be done. Regardless of whether the claimant's representative has ADHD or not the claimant and her representative are responsible for conducting the case so as to achieve the overriding objective. If this means that where the tribunal has given a date by which something is to be done the claimant's representative must set himself a date, say a week earlier than that date by which it is to be done, then that is what the claimant's representative needs to do. The tribunal must ensure that although a participant's disability is accommodated, this does not distort the right of the other parties to a fair hearing. There may be a need for a ground rules hearing to take place in respect of the conduct of the proceedings if the claimant's father continues to represent. Other participants may also have needs of a similar sort that need to be accommodated, and a ground rules hearing can determine how

this is to be done. At the next preliminary hearing, case management directions may be given to deal with this aspect of the case and participation.

236) I was given the witness statement of the claimant's witness Mr Brailsford. In that document he describes his position in relationship to the claimant. He explains that the claimant works remotely from the claimant's father works remotely from the claimant's father's home in Wigan. He recounts what the claimant and told him about the case and makes the point that at no time did the claimant's father name any individuals involved in the case. He expressed scepticism as to whether anybody from the claimant's father's workplace (or employer) would be aware of the case because the claimant's father does not have much interaction with his colleagues. He expressed scepticism as to whether any of the claimant's work colleagues would make a phone call to the media. I accepted this witness's evidence so far as it goes.

237) In respect of the call to the media organization the respondent has not established any connection to the claimant or the claimant's father; no date has been indicated for when the information was transmitted to the caller, but it must have been before 16 May 2023 and hence before the anonymization order. The claimant's father denies communicating the information for the purpose of having it transmitted. I have no doubt at all that the claimant's father will have spoken to many people about the case, as is his right, and it may be that one of them did make contact with a media organization. However that is a far cry from establishing that the claimant or her representative has conducted proceedings scandalously, vexatiously or unreasonably. Entering into litigation, no matter how sensitive the subject matter, does not bring down a veil of secrecy over the disputed facts of a case until they are resolved by a tribunal, such a conclusion would run wholly counter to the principle of open justice and, as importantly, to the rights of individuals to free expression. The limits on that free expression are well known and are the subject of actions which parties can take outside the tribunal jurisdiction.

Summary of findings

238) I find that the claimant's father sending the email marked private and confidential to the first employer's then employer did not form part of the proceedings. Similarly, the other behaviour relied upon to show unreasonable conduct of the proceedings prior to the issue of the proceedings did not form part of the conduct of the proceedings. I do not think that it sheds any relevant light on whether his behaviour after issue of proceedings. I consider his behaviour after the proceedings had started (including the way matters were put in the particulars of claim) was not unreasonable vexatious or scandalous.

239) Second I find that although some of that behaviour was distasteful and an attempt at that point to get the first respondent into trouble with the then employer, it was not vexatious conduct of the proceedings and nor does it show an intention to abuse the process of the tribunal (even by foreshadowing such behaviour). The fact that the claimant's father repeated some of the things that he says the first respondent did in the course of defending this strike out application does not indicate that the claimant's intention in pursuing these proceedings (or her father's) was an improper one. Their intention appears to be to obtain a public finding which may have the effect of damaging the first respondent's reputation, but any case which goes to a final hearing and in relation to which reasons are given (including this judgment) will be published on

the Register. The fact that the claimant and her father might welcome that does not render the proceedings vexatious, scandalous or their conduct unreasonable.

240) The claimant is bringing claims relating to disability discrimination where there are jurisdictional issues yet to be determined, such as disability. The case is a complex one, and it is too early to make an assessment of whether the claimant's case stands no reasonable prospect of success (or little prospect of success).

241) Third, the intention of the claimant and her father appears to be to obtain a public finding against the first respondent in particular so that there is acknowledgment of what happened, as it is claimed, to the claimant, for which the first and second respondents are alleged to be liable either individually or jointly, should not happen to others. She is also seeking compensation. The declaration of rights is something which the legislation, both the Equality Act 2010, and the Employment Rights Act 1996 emphasise are rights of a successful claimant and which a claimant may reasonably pursue (see e.g. **Telephone Information Services Ltd v Wilkinson** [1991] IRLR 148).

Discussion and conclusions

242) Taking the respondent's case on the evidence at its highest I asked myself whether a fair hearing is still possible despite what is, on the respondent's case, scandalous unreasonable or vexatious behaviour by the claimant. I have to conclude that a fair hearing is still possible. I do so on the basis of a consideration of the following considerations. In general a claim or defence should not be struck out on the basis of the parties conduct unless the Tribunal reaches the conclusion that a fair trial is no longer possible. There are 4 steps to consider (**Bolch v Chipman** 2004 IRR 140):

1. Before making a strike out order I have to find that a party or their representative has behaved scandalously unreasonably or vexatiously in conducting the proceedings;
- 2 If I make that finding must then consider whether a fair trial is still possible as save in exceptional circumstances a strike out order is not regarded simply as a punishment. If a fair trial is still possible, the case should be permitted to proceed;
3. Even if a fair trial is unachievable the tribunal must consider the appropriate remedy in the circumstances so that it may be appropriate to impose a lesser penalty such as costs or preparation order against the party concerned rather than striking out the claim or response.

243) **A v B** UKEAT S/0042/19/SS, Lord Summers considered that certain emails from a claimant to a witness were designed to intimidate the witness in breach of a prior order and had made the fair trial impossible. He held that to the emails did not provide a proper basis for strike out because they had been sent before the claimant had received a tribunal judgement which explained that such conduct was unacceptable. The judgement warned the claimant about her conduct and contained 3 orders designed to moderate her behaviour. In particular the claimant had been ordered not to repeat certain allegations, to correspond in a polite fashion, and to seek the tribunal's prior approval for any witnesses the claimant proposed to call. (It should be noted that this is in the context of the Scottish tribunal's practice of not having evidence in chief in the form of witness statements).

244) There had been informal warnings previously but the tribunal should have based the decision on conduct which occurred **after** the judgment had been issued and the tribunal's position had been made completely plain. In addition the intimidatory aspects of the emails (note that the judge specifically talked about the aspects of the emails which were said to be intimidatory) were not sufficiently powerful a threat to the fairness of the hearing to justify strike out.

245) However Lord Summers found that strike out was appropriate because further emails sent after judgement had been received were in breach of the orders that the tribunal. In particular they breached the orders which required the claimant to refrain from repeating allegations which the tribunal considered scandalous unreasonable and vexatious and the order to communicate politely with the respondents representative. On that basis the tribunal was entitled to strike out the claim and the tribunal had not acted perversely or engaged in any error of law.

246) That case is of interest because the Employment Appeal Tribunal distinguishes between the claimed strike out basis that the emails were intimidatory and the basis on which the strike out was upheld, namely breach of orders. The respondent had highlighted paragraph 65 – 67. These are predicated on the idea that there was a breach of an order. In the present case I am unable to see that there was a breach of any order including the anonymity order. This is because I do not see that there was a real risk that the identity of the anonymised persons would be triangulated on the basis of the information to which my attention was drawn in evidence.

247) It seems to me that even if I accepted, which I do not in total, the respondent's case on whether there had been scandalous unreasonable or vexatious behaviour by the claimant's father I would still need to consider the proportionate responses. There is nothing to suggest that the claimant's father will continue with the behaviour manifested at the outset of these proceedings. There has been very little evidence that he has behaved in an untoward way in particular after the anonymization orders were granted. There is no evidence that anyone has asked him to take down the sites about which the respondent now seeks to complain as evidence of unreasonable conduct. The reality is that the claimant's father has simply left information up which, with a great deal of investigative work, which most people will not do, might (rather than is likely to) identify the 1st respondent. But even if I considered that the behaviour was scandalous unreasonable or vexatious and even if it included an element of attempted intimidation, there is no evidence before me that this has had any effect on the ability or willingness of any of the respondent's witnesses or either of the respondents to participate in proceedings.

248) It should be remembered that a tribunal when making an anonymity order has the power (see **A v Choice Support (Formerly MCCH Ltd)** 2023 EAT 18) to make an order which is the equivalent of a super injunction not only prohibiting the reporting of the proceedings but the existence of the proceedings. That did not happen in this case and it is unlikely that an employment case ever would require one.

249) For those reasons alone, the respondents' application to strike out must be refused. However I also find that the conduct complained of does not constitute unreasonable vexatious or scandalous conduct of the proceedings. The conduct upon which the respondent seeks chiefly to rely in fact relates to the period of

time in the run-up to the presentation of the claim. At that stage there is plainly an attempt to damage the 1st respondent's employment with her then employer by making allegations. I do not consider that to have been conduct of the proceedings however.

250) In respect of the other information that the respondents seek to rely upon, I have, in the course of analysing what exactly the witness statements of the respondents had to say about that information, come to the conclusion that this did not constitute unreasonable or vexatious behaviour on the part of the claimant. It is important that the tribunal distinguishes between scandalous unreasonable or vexatious behaviour and behaviour that it might regard as distasteful.

251) I bear in mind that the claimant's father is not a professional representative and that for him the issues involved in the case are highly emotionally charged. I equally recognise that the emotional charge of this case does not lie on all on one side. This is a very painful case for everyone involved and it is one which demands all sides to approach it with a degree of sensitivity.

252) I do not in particular regard his having failed to take down information which, in my view, was not likely to identify the 1st respondent either directly or by triangulation as unreasonable behaviour. It may be that the claimant's father, since he is no longer seeking to raise funds to the GoFundMe page might consider it sensible to take that page and information off-line. However that is a matter for him and I have not been provided with evidence which shows a real rather than fanciful chance that the publicly available information is likely to lead to the identification of anyone. The existence of that material does not in my view breach the anonymity order or come close to breaching the anonymity order.

253) All of the parties will be aware after this judgement that the tribunal has powers to prevent the claimant or respondent misusing the procedures by allowing by refusing to allow a party to lead irrelevant evidence or witnesses. The tribunal hearing the full merits hearing can prevent a party from asking questions that are not relevant to the case.

254) The list of issues has not been defined in this case, and there was no attempt before me to seek to do this. However the list of issues can be defined and in due course will be defined. The 1st respondent will perhaps remain as the 1st respondent as a result of the provisions of the Equality Act which may (or may not) bring her in as an individual respondent, and the case will in any event have to deal with the evidence of the 1st respondent in whatever guise, in respect of the 2nd respondent's employment of the claimant. The relevance of much of the material discussed during the course of the hearing before me will be greater or lesser depending on whether the 1st respondent remains as a respondent. For the moment, at any event, she remains a respondent.

255) There appears to me to be no imminent risk to the fairness of the hearing by the alleged behaviour. There also appears to me to be no need at this stage for any special directions to be given to the claimant or her representative as to the future conduct of the correspondence. The claimant is not in breach of any orders made by the tribunal and no request has been made for strike out on the basis of breach of any of the existing orders that the tribunal.

256) In those circumstances I do not strike out the claimant's claim or any part of it.

257) It was not possible in the time available to do anything other than here the evidence and submissions on the question of strike out. There is now to be a further preliminary hearing to deal with the claimant's application to amend the particulars of claim and give further case management directions for this case.

Employment Judge **O'Dempsey**
D O'Dempsey

Date 18 December 2023