

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

Claim Form issued 19 December 2012

Claim No.HQ12D05474

BETWEEN:

MS AYODELE ADELE VAUGHAN

Claimant

-and-

(1) LONDON BOROUGH OF LEWISHAM

(2) RALPH WILKINSON

(3) CHRISTINE GRICE

(4) ELAINE SMITH

(5) VALERIE GONSALVES

(6) ELAINE HATTAM

(7) KATE PARSLEY

(8) DR ANTHONY WILLIAMS

Defendant

SKELETON ARGUMENT FOR THE CLAIMANT

APPLICATION FOR AN INTERIM INJUNCTION

25 MARCH 2013

PREMAMBLE

References in this Skeleton Argument to C and D are the Claimant and the Defendants' and to the Claimant's Bundles- B1, B2 & B3, are in the format [B?. xx . x] in this skeleton are to [bundle. page. paragraph] in bundles 1- 3: The Court is recommended to read the following documents in advance, together with this skeleton and the references contained within it:

- (1) Chronology **[B1.38]**;
- (2) C's Application Notice dated 27 February 2013- interim injunction **[B1.28]**;
- (3) C's supporting letter dated 27 February 2013- interim injunction **[B3.1394]**;
- (4) C's Application Notice dated 27 February 2013- amendment **[B1.30]**;
- (5) C's supporting letter dated 27 February 2013- amendment **[B3.1406]**;
- (6) C's Particulars of Claim **[B1.268]**;
- (7) C's witness statement (1) **[B1.41]**;
- (8) C's witness statement (2) **[B1.62]**;
- (9) C's Employment Tribunal application regarding her request for a 'stay of proceedings' dated 23 February 2013 **[B1.1372]**;
- (10) Extracts of C's covert recordings and transcripts highlighted in paragraphs 9a- t, 22a – c & 23 a-f of her witness statement 1 **[B1.41]**, (regarding her application for an interim injunction).

Introduction

What this application about

- 1 On diverse occasions between January 2011 and May 2012 the D's have published/uttered and/or caused and/or permitted to be uttered and/or published and/or been party to or procured the distribution and publication within the jurisdiction of this Honourable Court and engaged in and intend to continue to engage in a course of conduct which amounts to harassment. The C therefore seeks an interim injunction in libel and

slander to restrain the publication and utterances of defamatory allegations under the Protection from Harassment Act 1997 to prevent harassment by defamatory publications and utterances. The C's claim form was lodged on 19 December 2012 **[B1.262]**.

- 2 The rules set out in CPR 25. 1(1)(a) state that the Court may grant an interim injunction. S.37(1) Supreme Courts Act 1981 states that the High Court may by order, (whether interlocutory or final) grant an injunction in all cases in which it appears to the Court to be just and convenient to do so. The court must also consider whether the grant of relief is proportionate in the context of the European Convention on Human Rights.

- 3 The C refers the Court to the Just & Convenience Test set out in ***American Cyanamid v Ethicon*** [1975] 1 ALL ER 508 HL, in particular **[A2.406, 407, 408]**. In this case, Lord Diplock states that the governing principles in determining whether to grant an interim injunction are whether
 - (1) there is a serious issue to be tried;
 - (2) where the balance of convenience lies (The expression "balance of convenience" does not fully reflect the standard imposed by the statutory provision which confers the power on courts to grant or refuse an interlocutory injunction. The express statutory standard is what is "just or convenient");
 - (3) adequacy of damages to the claimant, (if the interlocutory injunction is not granted, whether it will cause irreparable injury to the applicant);

(4) Whether there are any special factors.

The primary objective of an interlocutory injunction is to protect the Claimant against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

- 4 Although interim defamation injunctions are rare, the C believes that in this particular case, it is right that the Court has jurisdiction and should grant it, as the words complained of are seriously defamatory of her and any further publications and/or utterances of the words complained of will cause alarm and distress to her, injure her health and exacerbate her medical condition [B3. 1370a, B1.163 – 164 & 171 – 177 & B3.1098 – 1001] and [B1.251 & 254]. There is a clear threat by D's 1 – 7 to further publish and utter the words complained of, and that if this is permitted she will suffer injury.

The D's Defence

- 5 In the C's witness statement she has set out the numerous examples of why any defence by the D's will fail, [B1.41. 10 - 20]. It is clear that any defence by the D's will not succeed at trial, (see **Greene v Associated Newspapers Ltd** [2005] QB 972 per Brooke LJ at [A9.57]), the C's Employment Tribunal 'strike out' application [B1. 321 – 335n]- which C also relies on, and the C's High Court claim form and pleadings for

defamation [B1.262 & 268].

6 The C can also show that the statements were actuated by malice and that the D's had no belief in the statements. It follows that if the D's did not genuinely hold the alleged views expressed- see *Merivale v Carson* [1887], 20 QB 275 [A1.280 - 281], (as cited in *Spiller & Anor v Joseph & Ors* [2010] UKSC 53), or made the statements knowing that they were untrue- see *Fountain v Boodle* [1842] 3 QB 5, then the C can rely on this as evidence of malice. This will vitiate any defence relied on by the D's.

7 The D's did not have a duty or interest to make the statements to external note-takers (Susan Funnell and Jocelyn Heyford). In *Clift v Slough Borough Council (1) and Kelleher (2)* [2009] EWHC 1550 (QB) [A14.38, 40, 86 & 99] Tugendhat J. held that publications to some of the Council's own "customer-facing staff" attracted privilege but that publication to (i) council employees in departments which were unlikely to have any dealings with the Claimant and (ii) partner organisations were not privileged.

8 A defendant cannot resist an injunction by a generalised assertion of belief in the truth of the allegations made. As Eady J said *Sunderland Housing Group v Baines* ([2006] EWHC 2359 (QB)) [A12.17]:

"It seems to me at least right for a defendant who seeks to resist an injunction against publication of defamatory words to identify the defamatory meaning or meanings which he intends to justify and also to state in a witness statement verified by a statement of truth that he believes in the truth of the words in that meaning or those meanings. That, it seems to me, must be the very minimum."

9 Any defence by the D's would constitute an abuse of the process of the Court or otherwise likely to obstruct the just disposal of proceedings. The court may strike out a statement of case if it appears to the court –

***'(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings...'***

10 Where a party's conduct, (such as perjury or presenting fraudulent evidence) so damages the integrity of the case being presented that its continuation would be an affront to justice, it may be struck out as an abuse of process, see ***Masood v Zahoor*** [2009] EWCA Civ 650, [2010] 1 WLR 746 [A16. 66 - 73].

11 In the case of ***Clarke v Fennoscandia Ltd*** (No 3), [2005] SLT 511 and 2008 SC (HL) 122 [A8.16 -17], on appeal, the Lord Justice Clerk observed that the concept of an abuse of process need not be confined to fraud. The essential question, he said, was whether the action compromised the integrity of the court's procedures. It might do so if it wastefully occupied the time and resources of the court in a claim that was obviously without merit.

12 The Court of Appeal decision in ***Arrow Nominees v Blackledge*** [2000] 2 BCLC 167 [A7. 54] is the first to consider in any detail the proper response to the dishonest conduct of litigation. The Court of Appeal stated:

"Where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice the court is entitled—indeed, I would hold bound—to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him."

13 The C is also seriously considering making a 'strike out' application and/or an application for summary judgment and is confident that those applications would be successful. It is therefore likely that the D's defence would either be 'struck out'; severely limited or the case could be settled. The C respectfully requests that the Court orders an interim injunction to ensure that in the meantime the C is not subjected to further harassment, the Tribunal proceedings are 'stayed' and the C is free to explore the above options as soon as possible.

CPR Part 24.2 provides:

'The court may give summary judgment against a Claimant ... on the whole of the claim or on a particular issue if-
(a) it considers that
(i) the claimant has no real prospect of succeeding on the claim or issue; ...
(b) there is no other compelling reason why the case or issue should be disposed of at trial'.

Harassment

14 The Protection from Harassment Act 1997 is written in terms of a course of conduct: see sections 1(1), 1(2), 1(3), 2(1), 3(1), 7(3). It is submitted that the D's course of conduct amounts to harassment. The C believes that there is a clear basis for relief under the Protection from Harassment Act 1977, see ***Howlett v Holding*** [2006] EWHC 41 [A.11. 4], that:

“in some circumstances, the exercise of one’s right of free speech can fall within the concept of harassment, provided the other necessary ingredients are present. For example, it would have to be classified as unreasonable and oppressive conduct”.

15 It is submitted that the C’s application is entirely in keeping with **ZAM v CFW** ([2011] EWHC 476 (QB)) [A21]. The D’s have both understood and intended throughout that the words complained of would cause alarm and distress to the C. The D’s have and continue to engage in the deliberate and dishonest abuse of power’ which has resulted in the C suffering loss and damage because of that action carried out with reckless disregard or indifference to the consequences.

16 The D’s conduct is in violation of the law. Power was granted to the D’s for a public purpose. It is an abuse of that power for them to exercise it for their own private purposes, which were out of spite, malice and revenge. The acts were done deliberately and with knowledge of its consequences and the D’s cannot argue that they did not intend the consequences of their actions or that they were not aimed at the C and that she would suffer loss.

17 The 1st D is vicariously liable for the acts of D’s 2 – 5. The D’s knew that the C had an existing psychiatric illness, (depression), but despite this they were and continue to be hell-bent on intentionally exacerbating her condition and causing anxiety, distress, anguish, fear and humiliation. Together, the multitude of incidents in such a prolonged period, (from April 2011 and continuing) by the same D’s, indicates harassment.

18 The conduct was and continues to be oppressive. There has been and continues to be the very worst kind of abuse of executive power by the servants of government. It extends to the maintenance and repetition by the D's of false allegations against the C. The D's have acted and continue to act in a contumelious way and in a way in which there was and is active and knowing concealment of what had taken place.

19 The very nature of the harassment which the C believes constitutes misfeasance in public office, the D's objectionable behaviour and the disrespect shown for the C's Human Rights is behaviour that the C trusts that the court will disapprove. The D's actions constitute a deliberate attack on the professional and personal integrity of the C and arguably evidence a campaign of harassment against the C. They are arguably capable of causing alarm or distress. They are arguably unreasonable, or oppressive and unreasonable, or oppressive and unacceptable, or genuinely offensive and unacceptable.

20 A professional woman's integrity is the lifeblood of her vocation. If it is deliberately and wrongly attacked, whether out of personal self-interest or malice, a potential claim lies under the Acts relied on. The courses of conduct which amount to harassment are, (as evidenced by her 2 witness statements **[B1.41]** and **[B1.62]** and related supporting evidence- *audio [B1.78] and documentary*, (see the Claimant's bundle index for this

hearing dated 25 March 2013) and particularly the matters set out in her letter to the Tribunal dated 12 February 2013 [**B1. 321 – 335n**):

- a) Engaging in the deliberate and dishonest abuse of power' which has resulted in the C suffering loss and damage because of that action carried out with reckless disregard or indifference to the consequences;
- b) Intentionally exceeding authority for improper reasons, i.e. to obtain an improper private advantage for themselves and over the C;
- c) wilful excesses of official authority, malicious exercises of official authority, intentional infliction of injury upon a person, frauds and deceits and wilful neglect without reasonable excuse or justification.
The misfeasance, breach of duty and neglect being calculated to injure the Claimant, including the D's neglect and the denial of knowledge of the C's mental health condition;
- d) the targeting of the C, (a vulnerable disabled employee and member of the public) in order to subject her to degrading treatment which aroused feelings of fear, anguish and inferiority and it humiliated and debased her;
- e) suspending the C for reasons based on a body of lies, deception, concealment, exaggeration and manipulation;
- f) publishing the statements and allegations, without making any prior check with the C as to their veracity or offering the C any opportunity to respond to them prior to publishing/uttering them and suspending her;
- g) tampering with notes/minutes in order to support their false case against the C;

- h) The abuse of the internal process for the purpose of making/relaying untrue defamatory statements/allegations relating to the C and which were motivated by malice;
- i) unlawfully dismissing the C for reasons based on a body of lies, deception, concealment, exaggeration and manipulation;
- j) The D did not properly act on the information given to them by the C but instead suspended and dismissed her on false and fabricated charges. The wording in the dismissal letter and the words complained of, in their natural and ordinary meaning meant and were understood to mean that the C was: i) unfit for public office; ii) incompetent; iii) responsible for her own dismissal; iv) lacking professional integrity; v) dishonest in relation to the charges brought against her; vi) there was no evidence of her disability/she had failed to adequately disclose information about this;
- k) ignoring and disregarding evidence which showed there was simply no evidence to support the false allegations made against the C;
- l) wilfully and maliciously fabricating/falsifying evidence against the C and publicly defaming her;
- m) justifying and reinforcing the false allegations against the C and failing to retract them, despite knowing that what they wrote and or said were false;
- n) failing to take disciplinary action against those guilty of misconduct in public office, upon receipt of proof of that misconduct;
- o) the substantial interference with the C's Article 8 rights;

- p) knowingly instructing legal representatives to submit false evidence to the Employment Tribunal, (in the form of pleadings/Employment tribunal response and the 1st D's dismissal letter **[B3.1245]**), which was submitted to the Tribunal for the hearing on 19 and 20 April 2012 **[B3.1243]** and which the Defendants' will clearly be relying on as part of their defence in that Tribunal case;
- q) unreasonably defend legal proceedings relating to these matters, (a defence can be viewed as part of a course of conduct amounting to harassment- see *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 123 **[A19. 54]**).
- r) The D's continued abuse of their office, either by acts of omission or commission. The consequence of that, is has been and continues to be harassment of and injury to the C, (a member of the public). By the D's acts or omissions the C believes that the D's are responsible for conspiring, assisting and encouraging one another, in relation to Concealing offences; interference with evidence and fabricating evidence and the publication of matters calculated to prejudice a fair trial.

21 A victim may also seek an injunction before a course of conduct has been established, if the claimant can show a suitable case of fear of such a course of conduct, see *Iqbal v Dean Manson Solicitors* **[A.19. 53]**.

22 The D's have acted and are acting incompatibly with the C's rights under Article 3, 6 and 8, contrary to Section 6 of the 1998 Act. The C relies on

section 6 of the Human Rights Act, as it gives the Court power to make orders to protect the Convention rights of parties. The C believes that her Article 8 right, 'to respect for private and family life' has been engaged. The C also equates her experiences with inhumane and degrading treatment/torture.

23 Since inhumane or degrading treatment violates human dignity there is sometimes an overlap between Article 3 and Article 8 (the right to respect for private and family life). It is not uncommon where ill-treatment fails to meet the level of severity demanded by Article 3 that a violation of Article 8 may have occurred as Article 8 protects a person's physical integrity as an aspect of private life; this has also been recognised by the European Court of Human Rights in *E. S. and Others v. Slovakia* [2009] (application no. 8227/04) [A.15].

24 By reason of the matters aforesaid, the 1st D is in breach of the Cs' rights under Article 8 of the European Convention of Human Rights (ECHR), in particular the right to reputation embraced by Article 8. The C contends that the Court is entitled to hold that the 1st D holds no convention rights and that it can on the following grounds set out in the Human Rights Act:-

- (a) in the interests of public safety;
- (b) for the prevention of disorder or crime;
- (c) for the protection of health or morals;
- (d) for the protection of reputation or rights of others;

grant the C's application for an interim injunction, as it proportionate to the legitimate aim pursued. The Court's ruling itself must be itself compliant with the Convention jurisprudence.

25 The Court is entitled to conclude that the D's course of conduct continues to be oppressive and unacceptable by virtue of the gravity of the misconduct which is in an order which the C believes could sustain criminal liability for misfeasance/misconduct in public office, Harassment- under section 2 of the Protection from Harassment Act 1997, perverting the course of justice, concealing offences, defeating the ends of justice and obstructing the administration of justice.

26 A party who uses the Courts' process for the commission of a crime or a civil wrong is abusing it. A Court which allows its process to be abused in that way will lose public confidence. The Court should protect the C, (who is disabled) and itself by not tolerating such abuse. It gives the C no pleasure to have to make this application and to pursue these proceedings but in the light of the serious threat to the C, including her mental and physical health and her reputation, she felt that there was no alternative.

Conclusion

27 As Tugendhat J said in **Clarke v Bain** [2008] EWHC 2636 (QB), [54], defamation actions are not primarily about recovering money damages, but about vindication of a claimant's reputation.

'A claimant wrongly accused of some serious fault, such as malpractice or dishonesty in business, may very well suffer very large unquantifiable loss if he does not recover his reputation.'

28 The C therefore respectfully request that the Court protects her as a disabled Claimant, from further defamation, harassment and malicious conduct, (which is calculated to infringe her rights) and which has caused/is causing severe damage to her health, the loss of her employment/income and career, injury to her reputation and damage to her future career prospects.

29 The C respectfully request that an order be made in accordance with her draft order **[B1.32]** - *(which the C has also provided an electronic copy of on a disk at the front of her bundle 1)* and that the Order be binding on third parties, (including an Employment Tribunal), under s.37(1) of the Senior Courts Act 1981 via a penal notice. There is the ongoing 'threat of publication and utterances of the words complained of', by the D's and the Tribunal. The Tribunal has refused to admit the C's covert recordings and transcripts into evidence for the main hearing in October 2013 **[B1.182 & 1382]** and at a pre-hearing review in support of her application for the 'strike out' of the D's response to her Tribunal claims **[B3.1382]**, therefore the C will be unable to evidence that the words complained of are false.

30 It is submitted that the court has jurisdiction under the Senior Courts Act 1981 s.37(1) to make an order binding on third parties. An order binding

upon third parties would be achieved by the inclusion in the Penal Notice of the words set out in the C's draft order **[B1.32]**.

31 There is, and without an injunction, (in accordance with the C's request), there will continue to be, a course of conduct which amounts to harassment of her, (see the reference in s7(2) of the 1997 Act to "alarming the person or causing the person distress" and the provision in s 7(3) that a "course of conduct" must involve conduct on at least two occasions), (2) the victim can apply for an injunction under ss1 (1A) and 3A of the 1997 Act, and (3) the Defendants could not show any of the grounds set out in s1(3) of the 1997 Act, in particular because their conduct is the reverse of reasonable.

32 The C also respectfully requests the Court refuses the D's application stay of proceedings for the same reasons that she relies on in support this application and that it expedites the defamation trial.

STATEMENT OF TRUTH

The Claimant believes that the facts stated in the statement of case are true.

Signed

Ms Ayodele Adele Vaughan

13 March 2013