

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

WITNESS STATEMENT FOR THE CLAIMANT

(1) THE CLAIMANT'S APPLICATION TO AMEND HER PoC

(2) DEFENDANT'S 1- 7 APPLICATION FOR A 'STAY'

& THE CLAIMANT'S RESPONSE: 25 MARCH 2013

PREAMBLE

References in this witness statement 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.

I, Ayodele Adele Vaughan of, CENSORED, make this statement in support of my application dated 27 February 2013:

Introduction

- 1 On diverse occasions between January 2011 and May 2012 the Defendants' 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. I have therefore made an application for 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.
- 2 This is a consolidated hearing **[B3.1422]** to consider my application for an interim injunction against the Defendant's, my amendment application requesting permission to add a new cause of action for malicious falsehood to my claim for defamation and the Defendants' application for a 'stay' **[B3. 1409]**.
- 3 In support my objection to the Defendants' application I rely on my skeleton argument for my application to amend my Particulars of Claim and my response to Defendant's 1- 7 application for a 'stay' **[B1. 17]**, my application for an interim injunction against Defendants' 1 – 7 **[B1.28]**, my supporting evidence in relation

to this, (as set out in my application index- appendix A **[B3.1387]**), my application witness statement **[B1.41]** and skeleton argument **[B1. 1]**.

- 4 I am not expecting the Court to read all of the material in my bundles, the evidence has been included merely to support my allegation of harassment and to draw the Court's attention to the specific points that I have raised which relate to the issues of harassment, misfeasance in public office, malice, abuse of process and the lack of merit in the Defendants' applications and indeed their entire case.

- 5 Between November and December 2012 I and the Defendants engaged in pre-action protocol correspondence and other correspondence. I rely on this in support of my claim and it is my contention that the correspondence demonstrates the Defendants' malice **[B1. 251 - 261]**. My letter of claim **[B1.226]** and the Defendants' response to my letter of claim **[B1.255]** indicates that they intend to rely on the fence of justification, honest comment and qualified privilege. The Defendants' failed to partake in the proper pre-action conduct in relation to exchanging information before the start of proceedings and refused to accept receipt of my recordings.

- 6 If the Defendants' application is granted they will be free to publish and say further defamatory matters calculated to injure my health and exacerbate my medical condition and harass me, which include the false allegations and defamatory statements which the Defendants' intend to reinforce at the Tribunal during the 28 day full hearing in October 2013 **[B1.268.20.1 – 21.3L]** and any time between now and October 2013.

The Applications

My application to amend my claim form and particulars of claim

- 7 On 19 December 2012 I lodged my Claim form **[B1.262]**. On 5 February 2013, I briefly saw Master Leslie in practice and was accompanied by a friend. Master Leslie advised me that he would not permit me to serve my claim form and Particulars of Claim on the Defendants' because my Particulars of Claim was too long and advised me to reduce my particulars of claim. The Claim remained stayed. The same day I complied with Master Leslie's instruction and e-mailed my revised Particulars of Claim to the Court.

- 8 On 13 February 2013, after having seen Master Leslie in practice, (to which I was accompanied by two friends), he approved my Particulars of Claim **[B1.268]** and this was sealed by the Court. When I was lodging my particulars of Claim the Court informed me that it had given my claim an incorrect claim number. The Clerk amended the number on my claim form in my presence. Later that day I e-mailed the Court regarding this error **[B3.1369]** dated 13 February 2013.

- 9 On 22 February 2013 at 9.00 I contacted the Defendants' (1 -7) via e-mail to notify them of my intention to make an application to amend my claim form and PoC **[B3.1377]**. I forwarded this e-mail to the 8th Defendants' legal representative on 26 February 2013 at 18.04 **[B3.1377]**. On 26 February 2013 at 14. 56 the Defendants' 1 - 7 e-mailed me to notify me of their intention to make an application for a 'stay' **[B3.1375]**.

- 10 On 26 February 2013 at 16.16 I e-mailed the Court and the Defendants' to notify them of my intention to make an application to amend my claim form and PoC **[B3.1376]**. On 27 February 2013 at 5.30 am I e-mailed Defendants' 1- 8 to notify

them of my intention to make an application for an injunction against Defendants' 1 – 7 [B3.1384].

11 On 27 February 2013 I lodged my Notice Application to amend my claim form and PoC, [B1.30] and supporting evidence [B3.1406], [B1.201], [B1.264 - 265], [B1.319] and [B3.1377 - 1381] - *see application form*. I have set out the reasons, (including the relevant law and general principles), in my skeleton argument as to why my amendment should be granted. In my letter to the Court dated 27 February 2013 I set out the narrative [B3.1406]. My draft order can be found at [B1.36] and an electronic copy is on a disk, in an envelope at the front of my bundle 1.

12 On 3rd March 2013 I sent the Defendants' 1 - 7 my Notice Application and supporting evidence [B3.1423 - 1424] following my receipt of the Court's letter dated 1 March 2013 [B3.1422]. I had originally been informed by the Court on 27 February 2013 when I lodged my Application Notice that it would serve it.

The Defendants' application for a 'stay' of High Court defamation proceedings

13 On 23 February 2013 I made an application for a stay of proceedings in relation to the Tribunal proceedings [B1.1372] and requested that it report the Defendants' because my covert recordings and transcripts, (which were sent to the Tribunal on 13 February 2013 [B3.339 - 341]), proved that they were abusing public office and public facilities and it was clear that the Defendants' were concealing offences, (perverting the course of justice, interference with evidence and fabricating evidence and the publication of matters calculated to prejudice a fair trial). I have not applied to the Tribunal for it to stay the hearing in September 2013, which deals with unrelated issues.

14 The Defendants' did not respond to my application for a 'stay' right away, but instead informed me of their intention to make an application in the High Court to 'stay' the defamation proceedings [B3.1375]. They advised the Tribunal of this the following day when they lodged it, [B3.1386]. The Defendants' application for a stay of the defamation proceedings is clearly designed to circumvent my Tribunal application for a stay of proceedings. It is completely without merit and does not disclose any valid reasons for the Court to grant such an application.

15 My defamation pleadings [B1.268], the covert recordings [B1.78] and transcripts x 30 [B1.342 – B3.1049] and my detailed Tribunal application relating to the 'strike out' of the Defendants' defence/response and the admissibility of the covert recordings and transcripts dated 12 February 2012 [B1.321 – 335n]- *which the Defendants' received a copy of*, show that there is a prima facie case of libel and slander and malice.

Francis Millivojevic- The Defendants' 1 – 7 in-house lawyers' witness statement

16 The above witness statement, [B3.1409] indicates that the Defendants' are asking the Court not to exercise its jurisdiction to try the claim. At paragraph 13i of the witness statement [B3.1417] it is argued that if I was successful at the Tribunal the damages would be a far greater amount than I could expect to receive at the High Court. My claim for defamation is first a foremost about vindicating my reputation, not money. I will clearly not be able to do this in the Tribunal without the aid of the covert recordings and transcripts (which the Tribunal has excluded). Therefore this basis of the Defendants' argument should not be a relevant consideration for the Court.

17 At paragraph 13m the witness statement goes on to discuss what the effect of a delay would be on Tribunal proceedings, in the event that the High Court claim were to proceed first [B3.1418]:

'The Employment Tribunal would therefore be required to consider historical allegations some years after the Claimant's dismissal.'

18 At the hearing in January 2012 the Tribunal dealt with historical allegations dating back to September 2009 [B1.129 - 130] and [B1.160]. In October 2013 the Tribunal intends to deal with issues dating as far back as 28 December 2010 [B1.208 - 210] - the claims in this case have been stayed by it since July 2011[B1.119.4 & 120.38]. In its dealings with me since April 2010 it is clear that the Tribunal has been quite happy to deal with historical allegations and 'stay' them for prolonged periods of time.

19 At paragraph 13n of the witness statement it states [B3.1418]:

'The Claimant has made wide ranging and extremely serious allegations against a number of individuals, ranging from line managers, the officer presiding over the dismissal hearing, up to and including its Chief Executive. She has also made serious accusations of perjury and dishonesty in those proceedings. It would be invidious to those individuals named in the Employment Tribunal proceedings to yet suffer further delay, and prolong the stigma of being associated with allegations of discrimination.'

20 This clearly didn't represent a problem to the Defendants' when in October 2012; the Tribunal listed the hearing to deal with these claims for October 2013, (a year later). No complaint was made to the Tribunal by the Defendants' regarding the date or any request made to bring the date forward. I however, did contact the Tribunal to air my disapproval [B1.224]. The Tribunal received this e-mail and failed to comment [B1.225]. It is incredible that the Defendants', (in light of the damning evidence against them) can even make a statement depicting themselves as victims.

21 In addition to the above, following the hearing in the High Court, if I am successful, (which I believe I will be), it will be highly unlikely that the Defendants' would even proceed with the Tribunal case. Indeed, in light of the evidence, it is hard to envisage a situation where the Defendants' case would proceed to a full trial in the High Court. This rationale is in keeping with paragraph 13t of the witness statement lodged on behalf of the Defendants', (to which the rationale can be reversed to suit a situation in which the High Court action proceeds first):

'...then following any decision of the Employment Tribunal it is likely that the parties will need to review what, if any, issues/claims remain to be determined before the High Court.' [B3.1420]

22 In addition to the above paragraph and the Defendants' characterization of the nature of my complaints, '*extremely serious allegations*', this is compounded by the fact that they concern matters of considerable legitimate public interest and concern.

23 At paragraph 13q of the witness statement [B3.1419] the Defendants' in-house lawyer makes the wild allegation that my defamation claim is an attempt to have my claims heard by a different forum other than the Tribunal and that this therefore constitutes an abuse of process. Even though some of my Tribunal claims include allegations of defamation [B1.211 - 215] and it encompasses issues like qualified privilege [B1.199.74], the Tribunal does not have any jurisdiction to hear claims for defamation.

24 In their Tribunal response, the Defendants' have denied my allegations of defamation and claim that they are unclear as to what they are [B1.203. 21f], yet asserted that I should be put to proof of the allegations [B1.206.35]. It will be impossible for me to do this as the crucial covert recordings and transcripts have

been excluded by the Tribunal, (even though it is clear that the recordings and transcripts are central to my case [B1.189 - 200], only Defendants' 2, 3, 4 and 5 will be giving evidence at the Tribunal [B1.186] and the Defendants' themselves have asserted that my case has no reasonable prospect of success and threatened to apply for costs [B1.161 & B1.204.27]. If I was to lose (due to these unjust circumstances), it is likely that such costs would be awarded to the Defendants', as the Tribunal has previously made an extreme cost order against me in excess of £92,000 [B3.1413.6]. This is currently under appeal [B1.221.11].

25 The Tribunal hearing will not be able to address in any comparable way, the important issues of justification, qualified privilege, honest comment and my allegations of dishonesty and malice on the part of the Defendants' because the covert recordings and transcripts have been excluded by the Tribunal, therefore only the High Court can adjudicate on the truth of disputed facts relating to the words complained of. The Tribunal will not be able to make findings of fact in relation to these issues, but other findings that it will make, (which will be without the benefit of the covert recordings and transcripts) will clearly be prejudicial to my defamation action.

26 The Tribunal has already questioned my credibility because of, (as the Employment Judge put it), the 'clandestine' nature of the recordings [B1.183.6] and Tribunal will obviously hear evidence from the Defendants' as to the circumstances in which I made the covert recordings and the evidence acquired and this will likely be central to their case, as is evidenced by the Defendants' pleadings [B1.179. 21L]:

“The Respondents’ admit that the Claimant’s coat was removed from an investigation meeting due to the fact that they suspected that the Claimant was seeking to covertly record these meetings and other discussions in circumstances where the Claimant had denied that she was making

recordings and had been unequivocally told that consent had not been given to record meetings....'

'In light of the Claimant's applications to the Tribunal and the reference to covert recordings in case number 2313031/2012A the Respondents submits that these suspicions were reasonable and well founded.'

27 I will be at an unfair disadvantage as I have not permitted by the Tribunal to adduce the evidence, (which shows that I was discriminated against and defamed), therefore my precautionary measure (to covertly record) was justified. No fair and just findings can be properly made about the matter without admitting the covert recordings and transcripts into evidence.

28 The Tribunal has refused to allow my covert recordings and transcripts and even to allow me to submit the transcriptions I have prepared myself [B3.1382], even though the Employment Appeal Tribunal recommended that the Tribunal reconsiders and permits me to admit my own transcriptions [B1.267c. 24 – 26 & 28], as this will be in the interest of justice.

29 In relation to the issue of the transcripts and my application to admit them and the covert recordings the Tribunal stated the following [B3.1382]:

'Turning to the application to admit covert recordings, you have sent to the Tribunal a transcript (which presumably has not been independently and professionally done) along with, what we understand to be, 32 hours of actual audio recordings. Please note that the Tribunal will not be reading the transcript or listening to the audio recordings as this is an unreasonable and wholly disproportionate use of the Tribunal's time. You are referred to the PHR Order of Judge Balogun dated 2 August 2012, in particular, paragraphs 6 and 7 of the Reasons. They make clear that before an application for admission of covert recordings can be considered, the recording must be independently transcribed.'

30 It is clearly not appropriate for a transcription company to transcribe the recordings, namely because it is not the job of a transcription company to authenticate recordings and a transcription company would not be able to recognise the voices of any of the individuals featured in any of the recordings,

(which can be anything up to 12 voices at a time speaking over one another). A transcription company would obviously not be able to identify which individuals are saying what. This is clearly a barrier.

31 I had been informed when making enquiries to different transcription companies that several people would need to be engaged in the task of transcribing the numerous recordings- this will only serve to ensure that the defamatory statements contained in the recordings would be spread to an even wider audience, which is a breach of the my rights and not something that should be sanctioned by any Court or Tribunal.

32 In addition to this, I had already informed the Tribunal that I was not in a position to pay £10,000 for the services of a transcription company. The Tribunal's approach has limited access to justice for me and adversely affected me as an unrepresented, unemployed, and disabled Claimant. It has effectively 'priced me out' of access to justice. It is important to note that the Defendants' and the Tribunal have been in possession of the covert recordings and transcripts since the middle of February 2013, but have not disputed the content of the recordings, nor contended that the recordings have poorly transcribed or tampered with.

33 The Tribunal is well aware of my precarious financial situation (which is acknowledged by its cost order it made against me in April 2012 Tribunal (which is currently under appeal), and which is also evidence by the fact that I am still unemployed and deemed unfit for work both by my GP and the DWP **[B1.1371]**. This has been the case since last April 2012.

34 The Tribunal's decision and approach has placed an unnecessary burden on me at the expense of preserving access to justice and maintaining an effective

system for the enforcement of my rights, (which will clearly have a detrimental impact on the high court case if the Tribunal hearing is allowed to proceed first. It's clear that natural justice does require that the European Convention for the protection of Human Rights and Fundamental Freedoms in the Article 6 is adhered to.

35 Such a state of affairs is clearly unjust, inappropriate, oppressive, unnecessary and unreasonable and not in line with the overriding objective. The Tribunal's approach is clearly unfair and onerous. I should not have to comply with this requirement just for the Tribunal to determine whether or not the material is probative. At the Pre-hearing review in August 2012 when this issue was originally considered, (without the benefit of the transcripts and covert recordings having been presented to the Tribunal because the transcribing had not been completed at that stage), all the Tribunal required me to do at the time was state what the material contained in order to answer the question of whether or not the material was probative:

***'When asked by me to be more specific about the content of the recordings, the Claimant was not prepared to elaborate but simply referred me back to her written submissions'. I was therefore not satisfied that the recordings were of probative value.'* [B1.184.7].**

36 My covert recordings and transcripts are clearly probative and I therefore believe that I will be denied my right to a fair hearing in the Tribunal. The Defendants' will therefore be free to use the Tribunal hearing in October 2013 as an opportunity to further publicly defame me, cause me humiliation, fear, anguish and injury to my already fragile mental health, see my medical evidence, **[B3. 1370a, B1.163 – 164 & 171 – 177 & B3.1098 – 1001]**.

- 37 The Defendants' have been made aware that their course of conduct is severely affecting my already fragile mental and physical health [B1.251 & 254] and having an adverse effect on my on-going Tribunal and High Court cases. I have pleaded in my skeleton argument for my application for an interim injunction against the Defendants' that the above conduct by the Defendants' constitutes harassment and the Court should not sanction this.
- 38 The Tribunal is taking a casual approach to the issue of vindication. The Tribunal will not be able to identify discrepancies, contradictions or inconsistencies with the witness statements, oral evidence and the documentary evidence, if it is unable to compare it to the covert recordings and transcripts. The primary relevant facts are disputed/'at issue' between the parties. The determination of the relevancy of a particular item of evidence rests on whether proof of that evidence would reasonably tend to help resolve the primary issue at trial.
- 39 There is contradictory evidence, therefore the covert recordings and transcripts will be crucial in order to for proper findings of fact to be made, resolving issues of credibility, determining the real truth and disposing of the case fairly and justly. It is highly important that I be allowed to evidence the truth of my account, clearly this will only be possible in the defamation proceedings. Further to this, in a Tribunal the burden of proof is on me, whereas in the High Court it is on the Defendants'.
- 40 In light of all of this, it cannot seriously be suggested that priority should be given to Tribunal proceedings for the resolution of issues of this kind. The High Court will be the judicial body that will be determinative of the real issues between the parties in the defamation action and having the added benefit of the covert recordings and transcripts.

- 41 This is compelling reason why the Court should refuse the Defendants' application for a stay of the defamation proceedings. The Court will have to reduce the risk of granting a decision which will ultimately produce an unjust result. If the Tribunal hearing is allowed to proceed first and make findings, in my view, this will prejudice and embarrass the High Court at the defamation trial.
- 42 The argument at paragraph 13s of the witness statement lodged on behalf of the Defendants' **[B3.1419]**- (that I should not be permitted to proceed in a costs jurisdiction because I have no money), is simply outrageous and should not be a consideration for the Court, particularly in light of the fact that the Tribunal already made an extreme cost order against me and in my view, any defence by the Defendants' is bound to fail. It is hard to imagine why the Defendants' would want the anxiety, expense and inconvenience of a defamation action hanging over them for an unnecessarily long period.
- 43 In response to paragraph 13u of the witness statement **[B3.1421]**, the Court should be advised that I will not be submitting a fresh claim for malicious falsehood. I am confident that my amendment will be granted by the Court and stayed if the Court deems it necessary to do so. Therefore this basis for the argument in support of their request for an extension of time to serve a defence should not be a relevant consideration for the Court.

Conclusion

- 44 The Defendants' application for a stay, (and the fact that they have indicated their intention to defend the action **[B3. 1411.3]**, which flies in the face of justice and the damning evidence), in my view, constitutes an abuse of the process of the

Court or otherwise likely to obstruct the just disposal of proceedings. In light of the damning material which I have submitted in support of my two Notice Applications, it would be improper for the Court to take into account the matters which the Defendants' have set out in its Notice Application, witness statements and written/oral arguments. It would be oppressive, stressful and a denial of justice to me if their application is granted.

45 It is clear that a court has power to intervene to prevent injustice where the continuation of one set of proceedings may prejudice the fairness of the trial of other proceedings and it should exercise that power where there is a real risk of serious prejudice which may lead to injustice. If the Tribunal case is allowed to proceed first I will be prevented from evidencing the fact that the Defendants lacked a belief in what they published and uttered and that they were reckless as to the truth/falsity of the words complained of in the defamation case. The Tribunal will make adverse findings against me in relation to this, which would then prejudice my defamation case, as the High Court would be bound by this and other related findings.

46 In addition to the above, by excluding my crucial evidence (the covert recordings and transcripts); I have effectively been shut out by the Tribunal from evidencing and justifying the truth of my claims and the Defendants' guilt and malice. If the Tribunal proceedings were to precede the High Court proceedings, it follows that the High Court would find itself bound by the findings made by the Tribunal (in these unfair and unjust set of circumstances), as to the nature of my dismissal and the reasons for that termination, (which would be to my prejudice, thereby limiting the High Court's freedom to make findings in respect of the same factual issues.

- 47 I cannot recover from my illness or find employment until I have vindicated myself. The Defendants' application is without merit and oppressive and a serious infringement of a citizen's right of access to the courts. I accordingly respectfully requests that the Court refuses their application and expedites the defamation trial.
- 48 My reputation and fragile mental health are on the line here and as such it should be considered proportional that I be permitted to have the chance to bring any claims/issues in order to seek a declaration as to my rights as soon as possible, in order to protect and advance my case and protect my reputation and mental health. The Tribunal hearing which deals with the overlapping issues is not due to take place until October 2013.
- 49 The Court will need to place in the balance of my right as an unrepresented disabled Claimant and the rights of the Defendants'. Weighing the balance of prejudice as between the parties it is my view that a decision by the Court to grant the Defendants' application would have a greater prejudicial impact on my case as an unrepresented vulnerable disabled Claimant than it would have upon the Defendants' case. This balancing exercise is one which the Court has to perform in compliance with its own obligations as a statutory body under the **Human Rights Act 1998**.

I believe that the facts stated in this witness statement are true.

Signed

Ms Ayodele Adele Vaughan

13 March 2013