Neutral Citation Number: [2013] EWHC 795 (QB)

Case No: HQ12D05474

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/04/2013

Before :

THE HON MRS JUSTICE SHARP

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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	**Defendants**

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The Claimant in person
Mr Stuart Brittenden (instructed by **the Legal Department, London Borough of Lewisham**) for the **First to the Seventh Defendants**
Mr Jonathan Barnes for the Eighth Defendant

Hearing date: 25 March 2013

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON MRS JUSTICE SHARP

Mrs Justice Sharp:

1. On 25 March 2013 I heard cross applications in this matter. The Claimant, Ms Ayodele Vaughan, applied for an interim injunction in libel and harassment, and for permission to amend to add a claim for malicious falsehood. The First to the Seventh Defendants opposed those applications and applied for a stay of this action. The Eight Defendant was neutral in relation to the Claimant's applications since they did not directly concern him. He was also neutral in respect of the stay application provided it did not prevent the earliest possible disposal of the claim against him either by a trial or under his application notice of 13 March 2013 due to be heard on 17 April 2013, to strike out the Claimant's claim.

2. I refused the Claimant's application for interim relief and stayed her claim against the First to the Seventh Defendants pending the resolution of the ET proceedings, or further order. Whether her claim will also be stayed against the Eighth Defendant is a matter which will be dealt with at the hearing of his application on the 17 April 2013. I set out my reasons below.

Background

3. The Claimant was employed by the First Defendant in its Children and Young People Directorate [1] until she was dismissed on 13 April 2012. The reasons for her dismissal are explained in a letter dated 5 April 2012. The First Defendant says that the Claimant was dismissed for "some other substantial reason" for the purposes of Part X of the Employment Rights Act 1996 by reason of a breakdown in working relationships between the Claimant and her colleagues. The Second to the Seventh Defendants are all employees or former employees of the First Defendant who were involved in managing the Claimant or were otherwise involved in the dismissal process. The Eighth Defendant is an independent occupational health consultant who was engaged by the First Defendant in relation to the Claimant, and interviewed her, as I understand it, on one occasion only.

4. The Claimant has submitted 9 sets of proceedings in the London South Employment Tribunal (the ET) in respect of these matters, making a number of serious and wide-ranging complaints of discrimination, unlawful detriment following a protected (whistle blowing) disclosure, harassment, victimisation and unfair dismissal. The First Defendant is a common defendant in all sets of proceedings.

5. In January/ February 2012, at a hearing which took place over 28 days, the ET considered the first 3 sets of proceedings. These were brought against the Claimant's original employer (which had transferred the Claimant's employment to the First Defendant) and some of its employees, as well as against the First Defendant. On the 2 March 2012, in a judgment extending to 55 pages [2] the ET dismissed the Claimant's claims save for a small part of the third claim, which is due to be dealt with in September 2013. The Claimant was ordered to pay a third of the Respondents' costs (an unusual step in the employment tribunal, which is normally a costs free jurisdiction). The Rule 3(10) judgment of HHJ Peter Clark of 29 November 2012 at

[1] In her Particulars of Claim the Claimant describes her main role as providing independent and unbiased information, advice guidance and intensive support to young people on personal, health, financial and emotional issues.

[2] The Claimant has provided me with the first and last pages of the ET's decision only.

paragraph 9 confirmed the costs order against the Claimant will amount to approximately £92,000. A detailed assessment of those costs took place on the 18 and 19 March 2013, and has been adjourned part heard, to be re-listed for a further 4 day hearing in November 2013.

6. The ET refused the Claimant's application for a review of the dismissal of her claims. I am told her application for permission to appeal to the EAT was unsuccessful, and that she has now renewed her application for permission to appeal to the Court of Appeal. The EAT however gave her permission to appeal against its costs order. This appeal took place before the EAT on 1 February 2013, and judgment was reserved.

7. The ET has also consolidated claims 4 to 8 (issued in August 2011, November 2011, April 2012 x 2 and May 2012) brought against the First to the Sixth Defendants and against two individuals who are not party to the High Court Proceedings. [3] It has reserved the hearing of them to the same tribunal that considered the first 3 sets of proceedings. At a hearing on 21 March 2013, the ET struck out the whole of claim 9 (a discrimination claim against the Claimant's original employer). It found one of the Claimant's claims was vexatious and awarded a further sum of £2,000 in costs against her.

8. On 7 August 2012 the ET issued directions to enable the parties to progress to a final hearing of claims 4 to 8. On 16 October 2012, the final hearing was given a 28 fixture, to begin on 23 September 2013; and the parties are now in an advanced state of preparation for the hearing of those claims. As will be obvious from the court time allotted to it, very extensive issues are involved; the Claimant's consolidated tabular Schedule of her Claims alone extends to over 31 pages. She has produced a very substantial quantity of documents, and the Defendants expect the final hearing bundles to consist of at least 10 lever arch files.

9. The Claimant is also very anxious to rely on 39 hours worth of covert recordings made by her of various meetings relating to matters concerning her employment and dismissal. The ET rejected the Claimant's application to do so, as did the EAT on 1 February 2013. Underhill J, giving the decision of the EAT, decided the judge had been plainly right to refuse the application as made, since neither the recordings nor any transcripts had been made available. However he said it was open to the Claimant to make a more focused application, properly supported by transcripts of the material sought to be relied on. The Claimant then made a further application to the ET, asking for permission to rely on 32 to 35 out of the 39 hours of recordings (and the transcripts she has made of them). On 21 March 2013 the ET gave her permission to rely on 5 hours only.

10. On 27 December 2012 the Claimant issued this claim against the Defendants. The Particulars of Claim were issued on 13 February 2013 and served on the Defendants shortly thereafter.

11. On 23 February 2013 the Claimant made an application to the ET asking it to stay the final hearing of claims 4 to 8 in order to allow the High Court to make findings of fact in relation to her claim in defamation.

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[3] They are Barry Quirk, the Chief Executive of the First Defendant, and Frankie Sulke, the Executive Director of its Children and Young People Directorate.

12. On 26 February 2013, the First Defendant's legal representative informed the Claimant that it would be submitting an application to the High Court to stay the defamation proceedings until after the full hearing had taken place in the ET.

13. On 27 February 2013 the Claimant issued her applications for an interim injunction against the First to the Seventh Defendants asking the court to "restrain the publication of defamatory allegations under the Protection of Harassment Act 1997 to prevent harassment by defamatory publications." Her application for permission to amend to add a cause of action in malicious falsehood was issued on the same day.

The contentions of the Claimant and the First to Seventh Defendants

14. The Claimant's contentions are these (and I summarise). In respect of her injunction application, this court should restrain the First to the Seventh Defendants from harassing or publicly defaming her which it is to be anticipated they will do by what they say and do in their conduct and defence of the ET proceedings (she says for example that they will lie under oath, about their knowledge of her mental condition - a matter in issue in her ET proceedings). This will cause her alarm and distress as she is a vulnerable disabled Claimant with fragile mental health. She says moreover that she is entitled to an injunction because any defence to her claim in libel and harassment will not succeed at trial. As for the stay, she submits now she has issued these proceedings for defamation, on established authority the High Court proceedings for defamation should take precedence over those of the ET. Further, the court trying her defamation and harassment claim will be able to consider the full extent of the covert recordings, unlike the ET which has unfairly excluded them. The Claimant says they establish publication of the allegations of which she complains and malice (on the basis they establish that the Defendants were aware the words complained of are false).

15. In support of her applications she relies on two witness statements by her, her skeleton arguments and a considerable quantity of additional material. The bundles before me contain nearly 1500 documents, including a considerable quantity of additional material relating to her harassment claim, although the Claimant says she does not expect the Court to read everything. The Claimant has also made available the covert recordings themselves.

16. Mr Brittenden for the First to Seventh Defendants submits the application for interim relief looked at on its own, is ill-founded for a number of reasons. But in any event, the application is being made for a collateral and abusive purpose, that is, to interfere with the proper resolution of the matters in dispute between the parties in relation to the employment dispute which is currently due to be tried by the ET, the court with competent jurisdiction over this matter. He submits the proper course in the circumstances, is for those proceedings to take their course; and for the Claimant's libel action to be stayed.

Discussion

17. The sole purpose of the injunction application is to prevent the First to the Seventh Defendants from making statements which the Claimant anticipates will be defamatory of her when defending her claims before the ET (whether by giving evidence, making witness statements or doing anything else incidental to the

preparation, defence or conduct of their case, such as disclosing documents or preparing bundles for the hearing). It is not necessary for an inference to be drawn about this (though to my mind the inference is compelling from the facts) since the Claimant acknowledges in terms in her witness statements and in her submissions that this is what she wishes to achieve.

18. This would obviously interfere with the proper conduct of the ET proceedings and the just resolution of them. In particular, in circumstances where Ms Vaughan is the claimant in both sets of proceedings, in my judgment, this is a clear abuse of the court's process, analogous to that which arises when proceedings are brought to attack or undermine the decision of a court of competent jurisdiction by re-litigating the matters already decided: see for example *Hunter v Chief Constable of the West Midlands* [1982] A.C. and *Apsion v Butler* [2011] EWHC 844 (QB) at [95] to [113].

19. It need hardly be said that parties to litigation should generally be free to prepare for it by taking such steps without interference of this nature, or that statements and publications of the type which the Claimant wishes to restrain are at the very least, likely to be protected by absolute privilege,[4] or that part of the purpose of that defence is to afford protection to those involved in litigation from even the risk of proceedings for defamation in matters directly relating to their conduct of that litigation (I should add there is no suggestion that the Defendants will make any publications of which the Claimant may complain outside the ET process). As Lord Diplock said in *Trapp v Mackie* [1979] 1 W.L.R. 377 HL at 480:

> "…the rule of law is one which involves the balancing of conflicting public policies; one general, that the law should provide a remedy to the citizen whose good name and reputation is traduced by malicious falsehoods uttered by another; the other particular, that witnesses before tribunals recognised by law should…give their testimony free from any fear of being harassed by an action on an allegation whether *true or false* that they acted from malice."

20. This brings me to some further fundamental problems with the application.

21. The jurisdiction of the court to grant injunctions in defamation proceedings is a delicate one which is very rarely exercised: see *William Coulson & Sons v James Coulson & Co* (1887) 3 TLR 846 where Lord Esher MR said:

> "It could not be denied that the court had jurisdiction to grant an interim injunction before trial. It was, however, a most delicate jurisdiction to exercise, because, though Fox's Act only applied to indictments and informations for libel, the practice under that Act had been followed in civil actions for libel, that the question of libel or no libel was for the jury. It was for the jury and not for the court to construe the document and to say whether it was a libel or not. To justify the court granting an interim injunction it must come to a decision upon

[4] For a recent consideration of the scope of absolute privilege see *Smeaton v Butcher* [2000] E.M.L.R. 985 CA.

> the question of libel or no libel before the jury decided whether it was a libel or not. Therefore, the jurisdiction was of a delicate nature. It ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous and where, if the jury did not so find, the court would set aside the verdict as unreasonable. The court must also be satisfied that in all probability the alleged libel was untrue, and, if written on a privileged occasion, that there was malice on the part of the defendant. It followed from those three rules that the court could only on the rarest occasions exercise the jurisdiction."

22. Further, the rule (as it is called) in *Bonnard v Perryman* [1891] 2 Ch 269 means that an interim injunction will not generally be granted in proceedings for defamation where a defendant intends to rely on a substantive defence such as justification or qualified privilege, for the reasons explained by Brooke LJ in *Greene v Associated Newspapers Ltd* [2004] EWCA Civ 1462 at [57]:

> "…in an action for defamation a court will not impose a prior restraint on publication unless it is clear that no defence will succeed at the trial. This is partly due to the importance the court attaches to freedom of speech. It is partly because a judge must not usurp the constitutional function of the jury unless he is satisfied that there is no case to go to a jury. The rule is also partly founded on pragmatic grounds that until there has been disclosure of documents and cross-examination at the trial a court cannot safely proceed on the basis that what the defendants wish to say is not true. And if it is or might be true the court has no business to stop them saying it."

23. This case is entirely different in my judgment from that of *ZAM v CFW* [2011] EWHC 476 (QB), upon which the Claimant relied. This was a very unusual case on its facts, in which the claimant had put forward very detailed evidence that the allegations complained of were untrue, and where none of the defendants had said they would be relying on a defence of justification or any other substantive defence.

24. The First to the Seventh Defendants have already indicated in their response to the Claimant's pre-action protocol letter that they intend to defend her claim by relying on defences of justification, honest comment and qualified privilege. They also wish to rely on the defence of absolute privilege in respect of the future publications which the Claimant wishes to restrain.

25. The Claimant says her case falls into the rare category where she is able to say each of the defences is bound to fail. I do not agree. As Mr Brittenden points out, this is a very bold assertion – not least because it reflects one made in the proceedings which the Claimant has already lost. But it is in any event, only a bare assertion. In my view, this is simply not the sort of exceptionally rare case where the court could or should

make such a determination now in advance of the trial, particularly having regard to the matters to which I have already referred, including the background to this litigation and to the unsatisfactory nature of the Claimant's pleaded case.

26. In respect of the latter point, it is sufficient to say that I am not satisfied for the purpose of this application that the claim is adequately pleaded. The words of which the Claimant complains consist of very short extracts from a large number of documents which were apparently provided to the Claimant in February 2012 during the course of the internal disciplinary SOSR ("some other substantial reason") or grievance procedure, together with the odd sentence from the covert recordings she made of meetings at which these matters were addressed. Certainly in respect of a considerable number of the extracts set out, it is not clear either that they are defamatory of the Claimant or that they give rise to the meanings complained of.

27. I bear in mind of course that the Claimant is a litigant in person. Whether the Particulars might ultimately be capable of amendment or reformulation is a matter which does not arise at this stage. [5] But the unsatisfactory nature of the way in which the claim is currently formulated, bears directly on the question whether relief should be granted at all, or indeed what relief the court could actually grant even were it minded to do so. I say that because of the obvious importance, particularly in applications which affect freedom of expression, and where difficulties with regard to the meaning of words may arise, that the nature of the claim which is said to give rise to the right to interim relief, should be formulated with precision, as should the terms of the injunction asked for itself. Neither requirement is satisfied here, as can be seen from what it is the Claimant asks the court to restrain the Defendants from doing:

> "1. The publication of matters calculated to injury my health and exacerbate my medical condition and harass me, which include the false allegations which the Defendants' [sic] intend to reinforce at the Employment Tribunal at the PHR on 21 March 2013 and during the full hearing over the course of more than 20 days in October 2013;
>
> 2. the persistent denials of the Defendants' guilt, which has caused and continues to cause severe damage to m health, the loss of my employment/income and career, injury to my reputation and damage to my future career prospects;
>
> 3. the attempts by the Defendants' [sic] to pervert the course of justice."

28. It is clear that the harassing acts the Claimant relies on are the publications she says are (or will be, if published) defamatory of her. She says for example, that the Defendants will publicly defame her in their defence of her claim in the ET, and lie under oath, about their knowledge of her mental condition (a matter in issue in her ET proceedings) and that their conduct in doing so, amounts to harassment.

[5] I should add that passing reference has been made to potential limitation problems which some of the claims made may face, though I have not been specifically addressed on that issue by either side.

29. There might be circumstances when defamatory words are relied on as harassment in which the court would grant interim relief in both causes of action, as happened in *ZAM*. But it seems to me, as the Claimant confirmed during the course of submissions, that the true nature of her complaint is in defamation. Thus, that rigour of the rule in *Bonnard v Perryman* applies to her claims however formulated.

30. There are also obvious difficulties in my view, in permitting a litigant who is unhappy with the conduct of the litigation in action one, to use that conduct to found a second cause of action in harassment. In a case such as this, these include undermining the protection given by absolute privilege and upsetting the public policy balance to which Lord Diplock referred in *Trapp v Mackie*; the potential for the second action to be used as an abusive interference with the litigation process itself; the risk of satellite litigation and of course, the potential conflict which might otherwise arise between the orders made in the different actions (as to which the court would be bound to consider the implications of the potential defence available under section of the PHA 1997: see paragraph 32 below). A court before which a claim is brought can, after all, use its case management powers to control the content of the pleadings and/or the conduct of that litigation and the parties to it, as the case may be, if there are legitimate concerns about these matters.

31. It is true that the possibility that the content of pleadings could be regarded as part of a course of harassing conduct under the Protection from Harassment Act 1997 (the PHA 1997) was contemplated (obiter) by Rix LJ in *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 12 at [54] albeit the court did not address the issue of absolute privilege. [6] It is however sufficient to say that the circumstances in which the court in *Iqbal* contemplated such a point might arise (where, exceptionally, the litigation process was abused by the throwing of "irrelevant and abusive dirt…as part of a malicious campaign") are far-removed from the facts of this case. Put simply, I have seen no evidence that the Defendants have done anything or are likely to do anything in the ET proceedings which is likely to be categorized in that way or as oppressive and unacceptable conduct so as to give rise to a claim in harassment (Mr Brittenden described the argument that it did so as "surreal"). Nor in the circumstances, am I satisfied the Claimant is likely to establish the Defendants knew their conduct (for example, the production of documents in accordance with the relevant rules and case management directions given by a court of competent jurisdiction, or of witness statements dealing with them) would amount to the harassment of the Claimant, pursuant to section 1(1)(b) of the PHA 1997; or that a reasonable person in possession of the same information as them would think the course of conduct amounted to harassment.

32. It is further to be noted that section 1(3)(b) of the PHA 1997 provides an effective defence in respect of any course of conduct if the person who pursues it shows that "it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment." It will be the Defendants' case that the conduct of which the Claimant complains (disclosure, exchange of witness statements and the like) was "pursued" in accordance with case management directions and orders made by the ET in accordance with its statutory powers under the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2004; and this is not a defence I am able to say the Claimant is likely to overcome.

[6] As the court itself observed in *Iqbal v Dean Manson Solicitors* (No 2) [2013] EWCA Civ 149 at [7].

33. Quite apart therefore from the question whether her claim for interim relief is an abuse of the process, or falls to be determined as one in defamation, I am not persuaded that the Claimant has demonstrated, as she must by virtue of section 12(3) of the Human Rights Act 1998, given the type of conduct she seeks to restrain, that she is likely to succeed in her claim of harassment at trial, applying the threshold test in the manner explained by Lord Nicholls in *Cream v Banerjee* [2004] UKHL 44 at [22].

34. A separate and additional reason advanced by the Defendants for the refusal of injunctive relief is the excessive delay in making the application. The Claimant did not make any claim for relief in 2012, nor when issuing her claim. As I have said, she only did so the day after the First to Seventh Defendants applied for a stay of the High Court proceedings.

35. The Claimant says the application is made now because the harassment of her by the Defendants (in relation as I understand it, to the steps taken to prepare for the ET proceedings) has recently worsened; and such delay as there has been occurred because she is a litigant in person and at a particular disadvantage because of mental health difficulties. Whilst I do not underestimate the potential effect of these latter matters on the Claimant, she could give no detail of any recent matters she relied on, and it seems to me, there is considerable force in Mr Brittenden's submission that the chronology demonstrates that the trigger for the Claimant's application was the Defendants' application for a stay.

36. A further point is taken with regard to a cross-undertaking for damages. Though an undertaking is contained in Schedule 2 to the draft order which the Claimant asked the court to make, the Claimant frankly concedes she has no money, and is not in a position to satisfy any of the costs orders made against her in the ET, or indeed the order for costs which I made against her at the end of this hearing. There is no doubt she would not have the means to meet any award made as a result of such undertaking, which Mr Brittenden described as meaningless and insincere.

37. As it is however questions of delay or the adequacy of any cross-undertaking do not arise, since regardless of those factors it seems to me for the reasons I have given that the application for an injunction must be refused.

38. I turn then to the question of the stay. Both the ET proceedings and the Claimant's claim in defamation/harassment centre exclusively on the same circumstances relating to the Claimant's treatment as an employee.

39. The jurisdiction of the court when there are "parallel" sets of proceedings to stay one of them is undoubted: see the Senior Courts Act 1981 section 49(2), the commentary in volume 2 paragraphs 9A-183 and the cases cited there and CPR r 3.1(2)(f). In this case, the Defendants have filed an Acknowledgement of Service contesting the jurisdiction of the High Court to hear the claim pursuant to CPR Part 11, and invite the court to stay the proceedings under CPR 11 (6)(d).

40. There is an obvious public interest in avoiding a multiplicity of claims, for reasons of cost, delay, and fairness to the party forced to deal with what is effectively the same claim more than once. The appropriate course in any case depends on what is just and convenient on the facts. In this case, there are in my view cogent considerations in

favour of the ET proceedings being dealt with first and none of any weight tending to the support the conclusion that the High Court proceedings should be heard first.

41. The ET was first seised of the matter and is the obvious place for the resolution of the Claimant's claims relating to her employment, including her claim for loss of earnings and her (uncapped) claims for damages for discrimination. As Mr Brittenden points out, it is a specialist tribunal established by Parliament to determine such disputes. As the history which I have outlined above shows, the ET proceedings (unlike the defamation proceedings) are well advanced. A great deal of time and resources have already been dedicated to them by the ET and the parties; and in case managing the claims so they are ready for the 28 day hearing which is due to begin in late September 2013. It is not irrelevant in my view that the Defendants stand no realistic prospect of recovering any costs they have already incurred in the ET proceedings from the Claimant, who, as I have said has admitted she has no means, and who has already been made the subject of costs orders she is unable to pay.

42. The primary time limit for instituting proceedings before the ET is three months from the act of discrimination or termination of employment (an even shorter time frame than that provided for the bringing of libel proceedings) reflecting Parliament's intention that employment disputes should be determined without delay. If the High Court proceedings are not stayed, then the ET is likely to stay the proceedings before it. The hearing date would then have to be postponed leading to unacceptable delay, and a great deal of time and money will then have been wasted. It is also to be borne in mind that the overlap between the two sets of proceedings is not exact: the claim in the ET is more extensive and includes a claim for discrimination which can only be resolved before the ET.

43. The Claimant accepts that proceedings should not generally be permitted to proceed concurrently, but argues that here the proceedings in High Court should go before those of ET. For the reasons I have given, I do not think that it would be just or proportionate in all the circumstances for that to occur. The authorities to which the Claimant has referred in support of that contention[7], concern the possibility of parallel proceedings for unfair dismissal and wrongful dismissal, a position which is not analogous in my view, to the one arising here. As for the question of vindication, the ET proceedings provide the Claimant with a means (and it may well be the best means, given the issues which are at stake) of obtaining vindication in respect of the matters about which she complains in both sets of proceedings. But in any event, the Claimant may still apply to lift the stay after the ET proceedings are terminated, an application which will obviously have to be determined on the merits if and when it is made.

44. I do not accept the Claimant's contention that since her defamation claim centres on the same issues as those before the ET but with the additional benefit of the covert recordings the ET has largely excluded, this court should determine the defamation claim first in the interests of just resolution of her claim. That the Claimant may have brought a second set of proceedings essentially covering the same ground as those brought in the ET, to avoid or circumvent the effect of a ruling she does not like in the

[7] For example, Mindimaxnox LLP v Gover [2010] EAT/0225, First Castle Electronics v West [1989] ICR 72, Automatic Switching Limited v Brunet [1986] ICR 542, and GFI Holdings Limited v Camm UKEAT 0321/08.

ET is in my judgment a factor in favour of staying the second set of proceedings and not militating against that result.

45. After I had given my decision on her application, the Claimant said she would now discontinue the ET proceedings and apply to lift the stay. If she does so her application will be considered on its merits. But even if the stay were to be lifted the Claimant should not assume that the High Court would then permit unlimited reliance on the covert recordings; certainly, at the very least, the possibility cannot be excluded that the High Court if and when it deals with the libel/harassment claim, might confine the use of those recordings for reasons of relevance, cost and the proportionate conduct of the litigation.

The position of the Eighth Defendant

46. Mr Barnes on behalf of the Eighth Defendant was anxious to highlight the following matters. The Eighth Defendant is not a party to the ET proceedings. He had only a peripheral involvement in the matters about which the Claimant is concerned. This is reflected by the fact that the claim made against him in these proceedings focuses on one email sent by him on the 2 January 2012, which gave a response to the complaint made about by the Claimant after he had interviewed her on one occasion. The Eight Defendant is very concerned that the claim against him, which makes a significant attack on his professionalism, should not be "mothballed" for a considerable period to await the outcome of the ET proceedings to which he is not a party, and where he has no opportunity to defend himself. In those circumstances, Mr Barnes asked either that the claim against him be excluded from the stay, or that the issue of a stay as against the Eighth Defendant, be deferred until after his strike-out application, which is shortly to be heard.

47. I certainly understand those concerns, but in my judgment they do not outweigh the powerful considerations favouring a stay, certainly as against the First to the Seventh Defendants. In view of the imminence of the Eighth Defendant's application to strike-out the claim against him, and his particular position, the right course in my judgment is to permit that application to be made and for the court to revisit the question of the stay as against him at the same hearing.