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

Defendant

REPLY

SERVED 13 AUGUST 2013

(An index and the appendix are attached to this reply)

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III) APPENDIX TO REPLY	
Appendix	**Description**
1.	Extract of Publication complained of: 3 page extract of D1's SOSR hearing bundle index (pages 6 & 8- 9) and 14 page extract of hearing bundle, (pages 207 - 210, 286, 292, 301 - 302, 304 - 305, 329 - 330 & 340-342). NB. Page 302 is a duplicate number in D1's SOSR bundle- the page 302 that is included is page 3 of the original interview notes.

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SUMMARY OF REPLY, REQUEST FOR THE COURT TO STRIKE OUT THE DEFENCE OF ITS OWN MOTION & PERMISSION TO COMMENCE COMMITTAL PROCEEDINGS

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1. In its Reply, the Claimant wishes to clarify that this action is not a complaint about the Claimant's unfair dismissal. The action is about the defamation of the Claimant's character and the words complained of constitute libel (34 statements) and slander, (50 statements). Issues related to the termination of the Claimant's employment with D1 have been raised by the Defendants' and the Claimant's position is that this action is not an attempt to litigate her previous employment dispute. The reason for this action is set out in this reply and is set out clearly in her re-amended Claim form and Particulars of Claim (PoC), signed and dated 31 July 2013, at paragraphs 87 – 89, which makes it clear that the action is to restore her reputation/vindicate herself.

2. All the Defendants' spoke and/or published or caused and/or permitted to be said and/or published and/or been party to or procured the distribution and publication of the words complained of without taking any steps, to ascertain insofar as they conveyed the meanings pleaded by the Claimant, ('the defamatory meanings), were true and with reckless disregard for the truth or falsity of the defamatory meanings. The Claimant complains of several publications: a) D1's 'Some other substantial reason' (SOSR) internal hearing bundle; b) the defamatory words uttered by the Defendants' during the SOSR hearings on 27 and 28 February 2012, 6 March 2012, (which she covertly recorded) and 22 March 2012, and c) D3's SOSR presentation/report. The Claimant is seeking damages for defamation, intentional infliction of mental suffering and negligence, including: general damages, aggravated damages, exemplary damages and interest on these damages, as well as a complete retraction of all defamatory statements, a public apology, a cost sanction against the Defendants and an injunction. There is also a claim pursuant to the Human Rights Act.

<u>QUALIFIED PRIVILEGE</u>

3. D1, (which is a public authority) cannot rely on the defence "qualified privilege" in respect of a defamatory publication because the publication was not consistent with its public law duties. During 2012, (including during D1's SOSR internal process and prior to the dismissal and these proceedings), and on 21 June 2013 at 9.07, the Claimant gave the London Borough of Lewisham formal notices (in accordance with section 10(1) of the DPA) that she required it to cease the processing of her personal data (i.e. to retract the offending material, remove any copies retained) and apologise, as the processing of this data was, (and

continues) causing her unwarranted damage and distress. The London Borough of Lewisham failed to provide an apology and continues to process false data about the Claimant.

4. D1 was required to meet certain standards in performing its public-law responsibilities and its duties under the Data Protection Act 1998. D1 cannot persuade the Court that it had a duty or interest to communicate information that it had disclosed unfairly, contrary to the Data Protection Act 1998, see ***Desmond v Foreman and others*** [2012] EWHC 1900 (QB).

TRUTH DEFENCE AND MALICE

5. In her Reply, the Claimant disputes the Defendants' case on meaning, which the Claimant submits is unsustainable. The statements made by the Defendants impute the plainest allegations of dishonesty (in relation to the words complained of and her denials of the allegations made against her), incompetence, obstructive and intimidating behaviour, 'unruliness', 'laziness and 'unfitness *for her office/job/post/purpose*', all of which were not capable of being defended by any of the Defences relied on by the Defendants'.

6. The Court is also entitled to take into account the Defendant's conduct both prior and subsequent to the publications in question. The Claimant relies on the facts and matters set out in paragraphs 45.3, 54 and 56 of her re-amended PoC, the Defendants' state of mind, the facts and matters set out in her covert recordings and transcripts, which are listed at paragraphs 45.5 a – ee of her re-amended PoC and the facts and matters set out at 11.1a- o, 23 and 33 – 70 of her re-amended PoC, entitled '*Particulars of Malice*'. The Defendants' fail altogether to address these facts and matters. The Claimant has set out further particulars of malice in this reply, particularly at paragraphs 216 – 228.

7. The covert recordings and transcripts relate directly to the words complained of and a number of issues which are pleaded, (including malice), the question of a legitimate aim and the question of the Claimant not being given the right of reply before the statements were published. The Defendants' admit, (at the last sentence of the paragraph 163 of its Defence) that the Claimant was not given a 'right of reply', but only in relation to some of the publications complained of, (D3's SOSR presentation/report).

8. The case advanced by the Defendants' is largely unparticularised. The chronology and sequence of events stated in the Defence, even if established, does not support, or even lend any credence to, the Defendants' case. What the Claimant is most concerned with is the fact that the Defendants' application sets out to deceive the Court, by the giving of untenable, untruthful and inconsistent evidence and the presentation of an unmeritous case. It is clear that the Defendants' are seeking to subvert the process of the Court by fraudulent means. The Claimant accordingly applies to the Court for permission to commence committal proceedings (to commit the Defendant(s) / contemnor(s)), for contempt of court under CPR 32.14- see the full content of the Claimant's reply.

9. This Reply puts in issue the factual narrative in the Defence and under CPR Part 24. The Defence, (which flies in the face of justice and the damning evidence), is tainted by dishonesty. It constitutes an improper, unreasonable and dishonest violation of the court's directions and rules, (as well as the law), an obstruction of justice and the publication of matters calculated to prejudice a fair trial. The Claimant believes that the Defendants' have denied the allegations where they ought to have admitted them and issued a formal denial by way of their defence of the Claimant's claims, when it is clear that they are true, (thus resulting in the loss of protection of privilege). The Court should therefore by its own motion strike out the Defence on the grounds of the deliberate abuse of process- also see paragraphs, 251 – 252 and 276.

10. The Defendants' attempt to justify a number of allegations which are not even complained of in these proceedings. As a matter of law and proportionality, the Claimant disputes the Defendants' entitlement to do so. The Claimant therefore submits that the Defence herein be struck out and dismissed pursuant to CPR 3.4 and/or the inherent jurisdiction of the Court on the grounds that they:-

    10.1. disclose no reasonable grounds for defending the claim;

    10.2. are an abuse of the process of the Court and otherwise likely to obstruct the just disposal of the proceedings.

12 August 2013

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(14) KATE PARSLEY

Defendant

REPLY

BREACH OF CPR

1. In this Reply, abbreviations and definitions used in the Defence are adopted.

2. The Claimant denies each and every material allegation and statement of fact contained in the Statement of Defence dated 16 July 2013 and signed on behalf of the Defendants' as being true on 18 July 2013 by D1's Head of legal services- Kathleen Nicholson, (save and insofar as the Statement of Defence consists of admissions) and except where the Claimant expressly admits the allegation and statements to be true and otherwise puts the Defendants' to the strict proof thereof.

3. The Defence fails to answer the allegations of fact made in the Claimant's re-amended PoC signed and dated 31 July 2013, as required by CPR 16.5 and PD16 para, 10.2. This constitutes a serious breach of CPR and it discloses no reasonable grounds of defending the claim. It does not tend to prove or disprove the facts that are at issue. Instead it merely offers numerous sweeping blanket denials, unsupported allegations and evasive statements. General denials of the Claimant's allegations, or a general statement of non-admission of them, is not a sufficient traverse them.

4. The Defendants have deliberately failed to address the issue of the covert recordings and transcripts in their pleadings. The failure to answer the allegations of fact made in relation to this at paragraphs 11.1f, 11.1h, 20.3, 20.4, 20.4a, 21.2a - 21.2y, 21.3, 23, 45.1, 45.5a – 45.5ee, 46, 64 – 70 of her re-amended PoC, is a breach of CPR 16.5 and PD16 para, 10.2.

5. As set out in paragraph 69 of her re-amended PoC, the defamatory allegations made against the Claimant by the Defendants' required evidence to prove them to be true and that is the subject of any defence of justification or qualified privilege etc and there is nothing available, to support this proposition. The Claimant's covert recordings and transcripts, which were disclosed to the Defendants on 14 February 2013 and submitted to the Court in March 2013, and the extensive documentary evidence, (which the Defendants' already had in their possession), highlight the fact that the Defendants' were aware that there was no evidence to support the words complained of.

6. The response of the Defendants' to the Claimant's focused complaint in the re-amended PoC has been a disproportionate (and misconceived) attempt to justify meanings not complained of and so expand these proceedings beyond their proper ambit. This constitutes loose and ineffective pleading with excessive and irrelevant particulars, a state of affairs which was not permissible. The particulars have resulted in obscuring the issues rather than providing clarification. The Defendants' particulars of justification assert that they intended the words complained of to mean one thing, whilst the facts relied on by them clearly say another.

7. It is clear that the vast amount of time invested by the Defendants' on the details of matters relating to the Claimant's previous employment with Babcock and the related tribunal case, is a further smear tactic and attempt to imply that the Claimant is a vexatious litigant because she was unsuccessful in her previous tribunal case which was brought against Babcock. The liability for that Tribunal case simply transferred to the D1 when her employment transferred to it on 1 April 2011. It is important to point out the fact that the Defendants' fail to mention that the Claimant was offered sums of £10,000, £30,000, £40,000, £60,000 and £95,000 to settle the tribunal claim and agree to a 'gagging clause', but she refused all offers.

8. The Defendants' are required to deal with the Claimants' claim on its merits and are not entitled to seek to introduce matters and justify meanings which are not complained of and which, even if proved, could not justify the libel and slander which is complained of. Such an approach is impermissible as a matter of law and is wholly disproportionate. Irrelevant matters of this sort, in the manner described, is an abuse of process and the Claimant accordingly asks the Court to strike out paragraphs 23 – 26, 28 – 31 of the Defence, if the Defence is not struck out in its entirety.

BACKGROUND

9. **On or before 1 April 2011**, D1 was aware of the Claimant's psychiatric vulnerability. D1 failed to inform the Claimant in advance that she had been selected by it for transfer. She found out that she had been TUPE'd to D1 on 1 April 2011 purely by chance. She was one of only 5 staff who were selected based upon their intensive work output/statistics. Newspaper articles in the local

press on 1 and 5 April 2011, (Newsshopper and South London Press), covered this event.

10. **On 5 April 2011** the Claimant met with D5 briefly and disclosed her disability. On this day (and 8 April 2011), the Claimant e-mailed D5 asking when her Occupational Health referral would be made. She has to raise the issue again on 26 April 2011 during her meeting with Chris Threlfall and to D5 again on 16 May 2011. The referral was not made until 17 May 2011.

11. **On 6 April 2011**, the Claimant attended a team meeting. The Claimant's colleagues raised concerns relating to the service and TUPE. The Claimant is not recorded by D1 as having raised any concerns during the meeting. The minutes to the team meeting were sent out to all staff, including the Claimant and stated that staff with queries or concerns should raise them directly with Nick French, (which the Claimant did the following day). On this day, at 10.46, Cathy Robinson, (the Claimant's former colleague and D1's former employee), forwarded the Claimant e-mail correspondence sent between D1 staff and Babcock, with the attached e-mails dated 01/04/11, 04/04/11, 05/04/11, regarding the delay in the transfer of employment particulars of the transferred staff.

12. **On 7 April 2011**, the Claimant e-mailed Management regarding the legalities around ES9s. This was not addressed until 6 May 2011. The Claimant therefore had to raise the issue again on 17 April 2011 before it was even acknowledged. On 7 April 2011 the Claimant also attended a full time workers meeting. The Claimant's colleagues raised concerns relating to the service and TUPE. During that meeting, D1's former head of service and Consultant (Nick French), described the working environment as '*a pit of malicious rumours' that is in serious jeopardy of ruining individuals' personal and family lives and career prospects*'. He stated that if any staff were found to be engaging in this behaviour, D1 would initiate disciplinary action. The meeting was minuted by D1 and copies of the minutes were sent to all staff, including the Claimant.

13. **On 11 April 2011**, the Claimant e-mailed D5, (copying in her line manager D4 and Nick French), to request a 1-2-1. She suggested some agenda items, including Health and Safety, her disability and equipment and resources to enable her to undertake her role.

14. **On 11 April 2011**, the Claimant's e-mailed D5 and raised concerns regarding Health and safety. She had to raise the issue again on 26 April 2011, during her meeting with Chris Threlfall. This was not addressed until 18 May 2011, (by way of D5's workstation assessment) and on 7 July 2011, (by way of Bianca Foster's Venue induction dated 7 July 2011) and on 16 November 2011, when the Claimant was finally sent the risk assessment for her office, (which was attached to D1's equality form questionnaire supplementary response).

15. **On 13 April 2011** the Claimant attended her first supervision with D5. The meeting covered various issues, including the Claimant's disability and tools that she would need to enable her to do her job. D5 advised that she would action several points; however, she failed to do so. The Claimant received a copy of her supervision contract during this meeting and both she and D5 signed it.

16. **On 15 and 17 April 2011** the Claimant and D5 exchanged e-mail correspondence. The Claimant asked her if she could meet with her in person to explain the Claimant's role and she also requested adequate support, tools and resources to perform her role. D5 failed to do so and sent e-mails to the Claimant instead. On this day, the Claimant sent Nick French an e-mail at 12.11 attaching DfE documents, (copying in her colleagues and D4 and D5), regarding the completions of ES9s. Nick French would never respond to that e-mail.

17. **On 17 April 2011 at 22.39**, the Claimant e-mailed D5 a detailed outline of all her concerns, (which the Claimant claimed constituted protected disclosures relating to TUPE and health and safety). The Claimant also set out her concerns about Nick French's handling about the legalities around ES9's and the lack of guidance relating to her role and responsibilities. She also highlighted the ways in which management could support her at work, which was in line with HSE guidelines relating to the Management Standards. She attached the HSE documents and a copy of her job description. D4 and Nick French were also copied into this e-mail.

18. **On 18 April 2011** D5 advised the Claimant that she would be visiting her at her office to undertake a workstation and stress risk assessment. She would never complete a stress risk assessment on the Claimant. On this day Nick French was removed as the head of service and re-deployed to work alongside Chris Threlfall. This was communicated to staff by Carol Lewis (D3's PA), via e-mail on 18 April 2011 at 11.47. On this day, D4 advised staff via e-mail that Nick French

would line manage the Claimant and two of her colleagues, (who also happened to be disabled). The previous day, the Claimant had made a protected disclosure relating to Nick French. The Claimant had also been informed that Nick French would only be working part-time. The Claimant was a full-time worker.

19. **On 20 April 2011 at 9.17**, the Claimant sent an e-mail to Chris Threlfall, (copying in D4 and Unison), detailing her protected disclosures and her view on D1's proposed line management change. She also requested that D1 clearly explain her role and responsibilities, asking specifically for confirmation on whether or not she and her colleagues would be permitted to provide information, advice and guidance. Unison also corresponded with D1 about this matter via e-mail on 10 May 2011, highlighting its failure to do so. On 20 April 2011 day at 9.37, Benjamin Craig, (the Claimant's former line manager, who was also now working for D1), sent an e-mail to the Claimant and other former Connexions staff, regarding Nick French's Facebook comments.

20. **On 21 April 2011** at 06.31 and 07.58, the Claimant made a protected disclosure to Chris Threlfall via e-mail and also copied in Unison relating to comments that Nick French had made publicly on the social networking site 'Facebook' dated 23 March 2011 at 23.22pm. The Claimant attached a copy of the page from 'Facebook' and expressed her displeasure and outlined her concerns. She later forwarded that e-mail onto D3 and Frankie Sulke.

21. **On 25 May 2011** the Claimant e-mailed D5 regarding reasonable adjustment' and her failure to conduct monthly supervisions with her.

22. **On 26 April 2011** the Claimant attended the meeting with Chris Threlfall and Rita Lee from HR and discussed the concerns that she had been raising. The Claimant was categorically informed by Chris Threlfall that she had not '*blown the whistle*' and that she should raise a grievance instead. The Claimant was accompanied to this meeting by Tanya Davis. Chris Threlfall apologized for the delay in making reasonable adjustments, and D1's letter, (which had been sent to the Claimant by D1 after she had already started working at the Council), informing her that she was not employed by the D1 and that it had made a mistake. The Claimant's covertly recorded the meeting. The Claimant submitted 3 page notes to D1 in relation to this meeting and D1 provided her with its notes to

the meeting, which were taken by Chris Threlfall's PA. Chris Threlfall/D1 failed to action the points which were agreed during the meeting, 'in good time'.

23. **On 27 April 2011 at 12.55**, the Claimant e-mailed Frankie Sulke, (copying in D3 and Unsion), advising her that D1 had failed to deal with her protected disclosures properly and that she had been subjected to victimisation and detriments for making those protected disclosures. Frankie Sulke did not respond. On the same day Chris Threlfall sent the Claimant a copy of D1's draft OH referral, which suggested that she be re-deployed, (for no specific reason). On this day at 9.37, Benjamin Craig, sent an e-mail to the Claimant and other former Connexions staff, regarding his disapproval of Nick French's Facebook comments and his view on D1's alleged response.

24. **On 28 April 2011 at 9.37**, Margaret Cowan (Unison rep) sent an e-mail to Claimant and other former Connexions staff regarding her disapproval about Nick French's 'Facebook rant'. The Claimant responded to Chris Threlfall's e-mail regarding her OH referral in her forward e-mail to him sent at 11.10. At 14.20 the Claimant and Alfo Nduka Nzekwue exchanged e-mail correspondence (5 pages long), regarding late payment of the transferred staffs salary, this was a TUPE issue. On this day Unison sent the Claimant a forward e-mail at 28 April 2011 at 9.37, which was their correspondence with D1 regarding the provision Information advice and guidance (IAG).

25. **In May 2011**, Suzette Nicol (Chris Threlfall's PA), sent an outlook invite on behalf of Chris Threlfall to HR team, Alfo Nduka Nzekwue, Helen Glass and YSS management team, regarding a 'staffing issue' meeting on 13 May 2011. D4 also sent an outlook invite to D7, Alvan Wright, Barrie Tompkinson and Linda Brookbanks, regarding submission of draft service plan to D3 by 13 May 2011.

26. **On 3 May 2011**, Chris Threlfall sent an outlook invitation regarding a 'Babcock meeting' with Chris Threlfall, Frankie Sulke and Helen Glass.

27. **On 4 May 2011** D1 were ordered by the Employment Tribunal to 'step into the shoes' of the Claimant's previous employer Babcock- which essentially meant that liability for the Claimant's Tribunal claims had officially transferred to D1.

28. **On 5 May 2011**, Chris Threlfall sent an outlook invitation regarding a meeting with D3 and a reminder to circulate information relating to ES9s.

29. **On 6 May 2011**, at 15.43 and 10.10 the Claimant e-mailed Chris Threlfall to request training and he advised her via e-mail at 15.43 that he would forward her request to D5. On 9 May 2011 at 16.26 and 16.25 the Claimant contacted D5 regarding this and followed this up again with her on 18 May 2011 at 16.26. This was not addressed by D5 until 23 May 2011 at 11.27. On 6 May 2011, D4 sent out an e-mail to all staff on behalf of Chris Threlfall, it stated that the team would now be able to provide IAG and that guidance would be issued shortly which would clarify the responsibilities of key work staff, (prior to this, via e-mail sent by Tanya Studd on 8 April 2011 at 10.15), staff were advised that they could not provide IAG to clients. Guidance in relation to roles and responsibilities was not forthcoming from the Defendants' and staff were still requesting this guidance in October 2011. On the evening of 6 May 2011 at 19.45pm the Claimant sent an e-mail to managers and HR attaching a letter from her GP advising that her blood pressure is dangerously high and that the dosage for her medication had been increased. This was not responded to until 16 May 2011 at 14.05, by Rita Lee.

30. **On 9 May 2011**, the Claimant sent an e-mail at 10.13 requesting information and tools to enable her to do her job. She requested that this be listed as an agenda item at the team meeting. The team meeting was immediately postponed via D5's outlook cancellation notification to the team dated 9 May 2011 at 13.13. On 18 May 2011 at 11.39, the Claimant repeated the request to D5 for agenda items to be listed. The following day on 19 May 2011 at 06.46, D5 responded and advised that she would discuss with her line manager, she never got back to the Claimant regarding this issue. Following the cancellation of that meeting, there were more cancellations of team meetings, (on 25 May 2011). Keywork staff had access to management's outlook calendars: a) Nick French and Chris Threlfall's dated April 2011; b) Nick French, D3, D4 and D5's dated May 2011; c) Nick French, D4, D5 and D7's dated June 2011; d) Nick French, D4 and D7's dated July 2011 and e) D4's dated August 2011). Management met on a regular basis *without* keywork staff. Management and staff were required to record meetings they attended in their outlook calendars.

31. **On 11 May 2011** D1 wrote to the Claimant advising her that it had received her terms and conditions and that these had been transferred. The process followed

by the D1 cannot fairly be described as contractual, as the Claimant's contract of employment did not include consent to an SOSR procedure, (which the Claimant has pleaded at paragraphs 49 and 50 of her re-amended PoC). The Claimant's terms and conditions, which are set out in the London East Connexions Partnership Staff Handbook dated 2007, does not preclude her from making recordings, (covert or otherwise) and her terms and conditions/contract of employment were not amended by D1 when her employment transferred to explicitly preclude her from covertly recording.

32. **On 13 May 2011** the Claimant e-mailed Rita Lee, (copying in Chris Threlfall, D5 and Unison), requesting to know why no one had responded to her e-mail regarding the letter from her GP and notification about the deterioration of her health. On 16 May 2011 Rita Lee finally responded to the Claimant's e-mail of 6 May 2011, advising her that she had been off sick and had now arranged for her to see the OH consultant on 19 May 2011. She attached the OH referral dated 16 May 2011, (which set out D1's acceptance that the Claimant was disabled), and the documents that were to be sent off with the OH referral. This included a personal risk assessment by D5, (which the OH consultant rejected).

33. **On 17 May 2011**, D5 visited the Claimant at her office. When D5 showed the personal risk assessment to the Claimant they began to work their way through it. The discussion around the issue of signing the personal risk assessment took place towards the end of the assessment. D5 also undertook a workstation assessment, which the Claimant signed. The Claimant expressed her concern that D5 had not been trained in doing a personal risk assessment, (which D5 did not refute). D5 told the Claimant that if she didn't want to sign it, it was entirely up to her and stated that the Claimant may want to wait and see the outcome of the referral first. D5 then stated that this was fine and that she would just date and sign it herself. The Claimant's colleague Ahmed Abdi was also present during the assessment and made complaints to D5 about her handling of workplace issues relating to him. During the meeting the Claimant did not state that D5 was not capable as a manager. The Claimant covertly recorded this meeting.

34. **On 18 May 2011** the Claimant e-mailed D5 requesting clarification of her role and responsibilities and requested resources. At 11.36 and 11.56 the Claimant also exchanged e-mail correspondence with Pat Persaud regarding the breakdown of her salary.

35. **On 19 May 2011**, the Claimant attended her OH consultation with Dr Gigundidis. She was accompanied by her friend Wayne Davis. Dr Giagoundinis stated that D5's personal risk assessment was not a 'proper' risk assessment and stated that he would therefore recommend that D1 follow the Claimant's previous employer's risk assessment. Dr Giagoundinis advised the Claimant that he was confused by D1's referral letter and did not see the relevance of a number of questions that they were asking. He informed the Claimant that the issues were nothing to do with him and that they played no part in the assessment.

36. **On 23 May 2011**, D1 received specific advice and recommendations from Dr Chris Giagounidis in his OH report, including recommendations for 'reasonable adjustments', however, D1 failed to implement his recommendations 'in good time' or at all. On this day at 10.42, the Claimant e-mailed D4, (copying in D5 and Unison), asking her to confirm keyworkers' remit. D4 advised the Claimant that D1 were still awaiting advice from Babcock on the Claimant's and her colleague's terms and conditions and once all personnel information relating to staff had been gathered they would be able to review roles and responsibilities.

37. **On 24 May 2011** the Claimant e-mailed D4 (copying in Chris Threlfall and Unison), clarifying her position regarding changes to her job description, reiterating concerns that she had raised with D5. She asked for tools to enable her to do her job and requested that she clarify what the current roles and responsibilities were. There then followed a series of e-mails between the Claimant and D4, in which she failed to answer any of the Claimant's questions, refused to meet with the Claimant and her colleagues on 31 May 2011 regarding the matter, (a date D4 had suggested). The Claimant and her Colleague Cathy Robinson made it clear to D4 that they did not believe it was appropriate for D4 to meet with the Claimant alone to discuss team issues.

38. **On 25 May 2011** the Claimant e-mailed D5 regarding her request for a reasonable adjustment' and her failure to conduct monthly supervisions with the Claimant. Later that evening the Claimant was alerted by her colleague Cathy Robinson to the fact that D5 had 'cut and pasted' sensitive and confidential information about the Claimant's medical condition from her OH referral into Cathy Robinson's OH referral, (leaving the Claimant's name in it) and sent this to the OH consultant. In the early hours of that morning the Claimant sent D4 an e-

mail, (copying in D3, Frankie Sulke and Unison) expressing her distress. She asked that D5 be removed as her line manager. D4 did not acknowledge the e-mail on that day.

39. **On 27 May 2011 at 11.46**, D4 e-mailed the Claimant regarding her complaint about the data protection breach. She informed her that she would get back to her the following week, however, she failed to do so. This issue would not be addressed by her until 30 June 2011. D3, Barry Quirk and Frankie Sulke were all copied into the Claimant's e-mail regarding the data protection breach, via the Claimant's e-mail to Unison on 07 June 2011 10:19.

40. **On 31 May 2011** the Claimant sent an e-mail to Frankie Sulke, (copying in Barry Quirk and Unison), advising her that she would now be receiving psychotherapy at Maudsley Hospital because of the way that she had been treated by D1 and requested that they take all reasonable steps to prevent staff from bullying, harassing and victimising her. At 12.26 Suzette Nicol sent an e-mail and an attached letter to the Claimant on behalf of Frankie Sulke. The Claimant responded to this at 13.15. D4 failed to investigate the data protection breach and advise the Claimant accordingly. No formal action was taken against D5 and both D4 and D5 sent the Claimant e-mails requiring the Claimant to still accept being line managed by D5, (after the data protection breach and when no resolution had been reached into the Claimant's serious complaint about D5). D1 then denied any wrong-doing in relation to the data protection breach,which during the SOSR investigation on 1 November 2011, (which the Claimant covertly recorded), Jackie Lynham stated it was clearly wrong for them to do.

41. **In June 2011**, D7 sent an outlook invite from D7 to Nicollette Lawrence to D4 and D5 regarding a meeting about target setting for the keywork team on 22 June 2011. Nicollette Lawrence also sent an outlook invite to D4, D5 and D7 about unresolved operational issues and requested a meeting regarding this on 15 June 2011. The D4, D5, D7 and the other YSS managers, (including Nicollette Lawrence), accepted an outlook invite for a 'pre-meeting' on 3 June 2011, to prepare for their meeting with keyworkers 8 June 2011. **On 9 June 2011 at 17.28**, the Claimant's colleague (Cathy Robinson) e-mailed from the Keywork team including D4, D5 and Nick French regarding provision for young people.

42. **On 1 June 2011 at 16.43, 17.08, 17.20 and 17.31**, D3, D4 and Chris Threlfall exchanged e-mail correspondence regarding D4's request for a meeting and urgent advice regarding policies, clear direction and the role of key workers. On this day at 10.51 am and 11.21, D4 indicated that the Claimant would be having a one-to-one with D5. The Claimant responded to this reminding her that she had requested a different line manager. D4 failed to respond, despite the fact that the Claimant chased this up with her on 9 June 2011 at 09.56, (which she received an automated response to from D4 on the same date and time). D4 did not contact the Claimant until 13 June 2011, (via e-mail) and she again failed to deal with the Claimant's e-mail.

43. **On 7 June 2011** the Claimant sent an e-mail to a Unison rep Jackie Lynham, (copying in D3, Frankie Sulke and Barry Quirk), detailing the many incidents of this that had occurred since she advised D1 on 31 May 2011 that she was being subjected to numerous detriments, bullying, harassment and discrimination/victimisation in the workplace. She explained that this was the reason why she didn't wish to partake in any grievance process. However, despite sending this e-mail, the Claimant did go on to attend meetings to discuss her grievances and she also corresponded with senior management and HR staff regarding her grievances. As a result of this, D1 was then able to take her grievances to the appeal stage, (which was conducted by Ian Smith, without a panel). D3 also conducted her grievance investigation without a panel. This constituted breaches of D1's grievance policy.

44. **On 8 June 2011**, the Claimant attended a team meeting with her keyworker colleagues. The keyworkers had jointly prepared a list of issues (notes and questions, dated 3 June 2011) and other documents, to discuss with the management team. They distributed copies during the meeting. Nick French, Nicolette Lawrence, D3, D4, D5 and D7 all attended this meeting. During the course of the meeting the Claimant's colleague Theresa Peters informed managers that she felt that there had been no clear direction for sometime and that she felt 'quite lost'. Cathy Robinson also stated that there was a lack of direction and advised management that when you asked a question it doesn't get answered. Cathy Robinson also complained about the lack of confidentiality and other keyworkers raised concerns relating to TUPE. D3 stated that management should have been '*much clearer*' and Nick French advised staff that the management chain were consistently getting different guidance and it was '*really*

incredibly foggy out there'. The Claimant and her colleagues raised concerns about issues relating to this state of affairs, (including legal implications, health and safety etc). The Claimant covertly recorded the team meeting. D1's minutes to not accurately record what transpired during the meeting. On this day, at 12.44 pm, D5 also sent the Claimant an outlook invite for supervision.

45. **On 9 June 2011 at 9.59 and 17.08** the Claimant and D3 exchanged e-mail correspondence regarding the Claimant's e-mail of complaint to D4, (her allegations of victimisation and harassment). D3 acknowledged that the meeting she was due to have with the Claimant regarding this needed to be brought forward, however, it was not brought forward.

46. **On 17 June 2011 at 12.32**, D7 e-mailed Keyworkers regarding the arrangements supplying staff with policies and procedures.

47. **On 21 June 2011** D5 engaged in a course of conduct towards the Claimant during the team meeting on 21 June 2011 which the Claimant complained constituted bullying, victimization and less favourable treatment. During the team meeting, the Claimant and her keywork colleagues raised concerns relating to the service and TUPE. The Claimant's covertly recorded the meeting. D1's minutes did not accurately record what transpired during the meeting. The Claimant raised her complaint about D5 to D4 via e-mail at 15.27. D4 failed to acknowledge the Claimant's complaint about D5. The Claimant's e-mail also addressed the issue of her required attendance at 'People's day' and her request to be excused from attending for reasons related to her disability. The request was dealt with by D3 during a meeting with the Claimant on 30 June 2011.

48. **On 22 June 2011 at 8.06** the Claimant e-mailed D4 regarding D5's management instruction regarding the sending of Common assessment framework (CAFs) and requested alternative arrangements. These arrangements were not forthcoming.

49. **On 28 June 2011** the Claimant met with D3 and Rita Lee about the data protection breach and other issues, (which D1 treated as 'grievances'). D3 had been copied into the Claimant's e-mail regarding the data protection breach and had met with Cathy Robinson the previous day with Rita Lee to discuss it. During the course of their meeting with Cathy Robinson, they apologised to her for the data protection issue. However, during the Claimant's meeting with them, both

Rita Lee and D4 denied any knowledge of the data protection breach. No apology was given to the Claimant regarding the breach. D3 and Rita Lee failed to provide the Claimant with an adequate explanation for the delay in implementing a personal risk assessment and 'reasonable adjustments' and the delay in implementing the Claimant's request for a change in D5's line management of her. When the Claimant asked D3 what had been done regarding D5's data protection breach, she advised the Claimant that she would need to speak to D4 to find out what she had done. Jackie Lynham also attended the meeting and took notes on behalf of the Claimant, which the Claimant received a copy of. At 12.04, the Claimant e-mailed D4 regarding time sheets, and she attached three time sheets dated 4 April – 26 June 2011 to her e-mail. At 20.20 pm the Claimant e-mailed D4 clarifying the time of her union meeting.

50. **On 29 June 2011**, D4 and D3 harassed the Claimant on the telephone regarding the requirement for her to attend a meeting with them both at extremely short notice and without having anyone to accompany her. The Claimant covertly recorded her 4 telephone calls with D3 and D4 regarding this issue.

51. **On 30 June 2011** the Claimant attended a meeting with D3 and D4. During the meeting D3 shouted at the Claimant. D4 advised the Claimant that the reason why she had failed to get back to her between 26 May and 29 June 2011 following the data protection breach was because '*she had work to do*', but that she had investigated her complaint about the data protection breach. When the Claimant asked D3 why she had not received supervision from D5, for over a month, prior to the data protection breach, she stated, *'I am not here to answer your questions*'. During this meeting D3 did not instruct or warn the Claimant not to copy Barry Quirk and Frankie Sulke into her e-mails.

52. During the meeting, the Claimant requested mediation for herself and D4. D4 stated that she did not know why the Claimant felt that mediation was required. In relation to the Claimant's request to be excused from attending People's Day', the Defendants' did not required the Claimant to clarify her request which was contained in her e-mail to D4 on 21 June 2011. D3 simply informed her that her request would be treated as part of reasonable adjustments for the Claimant. Jackie Lynham also attended the meeting and took notes on behalf of the Claimant, which the Claimant received a copy of. Following that meeting, D3 provided inaccurate/false notes of the meeting to the Claimant via e-mail at

16.56. The Claimant covertly recorded this meeting. D1's minutes to not reflect what transpired during the meeting. The subsequent handling of the 'investigations' into the data protection breach by D3 and Ian Smith were flawed- the findings were inaccurate / false.

53. **On 1 and 4 July 2011 at 10.44, 11.16, 14.24, 14.48, 12.12 and 12.16** the Claimant and D3 exchanged 3 page e-mail correspondence regarding reasonable adjustments. On 1 July 2011, the Claimant also had an advanced workstation risk assessment undertaken by Belinda Whippey. She covertly recorded this assessment. The Claimant did not make any objections to the assessment being done and during the assessment Belinda Whippey and D7 spoke on the telephone in the presence of the Claimant. During the course of that telephone call, Belinda Whippey stated that there was a slight problem over whether what she was doing was the right thing for the Claimant, because her company just does the workstation assessments, rather than the Claimant's other issues. She then confirmed with D7 that it was okay to proceed.

54. **On 5 July 2011** the Claimant attended her induction meeting with D4, where they discussed reasonable adjustments at length. The Claimant requested to see a copy of the service plan and D4 promised to send her a copy, which she claimed had just been completed in the last two days. However, she failed to send this document to the Claimant. The Claimant's covertly recorded the meeting, which is the only accurate record of what transpired.

55. **On 12 July 2011 at 12.10**, D3 sent the Claimant an e-mail attaching her grievance investigation outcome. The Claimant sent D3 her e-mail response at 12.41 pm advising that the outcome letter was not an accurate reflection of what had transpired. D3's outcome letter stated that the Claimant had discussed her grievances and that D4 had not investigated the Claimant's complaint about D5's data protection breach because she had specifically asked her not to, (because D3 would be dealing with it herself).

56. **On 13 July 2011** the Claimant requested to see the service plan during a team meeting and she was advised by D7 that she would need to check first '*if it would be appropriate for key workers to see it*'. The Claimant hardly spoke during this meeting and Cathy Robinson was the first member of the team to address the guest speaker. The Claimant (and her keywork colleagues) raised concerns

relating to the service and TUPE. During this meeting D7 stated that the new service manager job description went up on the internal job site yesterday, so she believed that a new person will be in post within a week. The Claimant covertly recorded this meeting. D1's minutes to not reflect what transpired during the meeting.

57. **On 14 July 2011** the Claimant received a letter from Frankie Sulke regarding her appeal.

58. **On 18 July 2011** the Claimant contacted Rita Lee, (copying in Jackie Lynham), requesting the notes to the meetings of 28 and 30 June 2011. She advised that she would send this to the Claimant the following day via e-mail, however, she failed to do so. On 8 August 2011 the Claimant e-mailed Rita Lee again regarding her notes. She did not receive her notes until 23 August 2011, the envelope containing the notes was postmarked 22 August 2011, but the cover letter was dated 19 August 2011.

59. **On 20 July 2011**, the Claimant attended her OH appointment with Marina Waters (Senior OH Adviser and Managing Director of OHWorks). She was accompanied by her friend Tanya Davis. Marina Waters was evasive when the Claimant asked if she had met with management prior to her OH appointment. She advised that she had not discussed the Claimant's case with management prior to her meeting with the Claimant. Later that afternoon the Claimant attended supervision with D4. D4 gave a conflicting account of the circumstances surrounding her contact with Marina Waters. D4 advised that Marina Waters had specifically requested a meeting with her to discuss the Claimant's case- because Marina Waters' had concerns about the stress risk assessment that she was going to do on the Claimant. The Claimant's covertly recorded her meeting with D4, which is the only accurate record of what transpired.

60. D3 Rita Lee (HR) met with Marina Waters to discuss the Claimant without her knowledge or consent and processed the Claimant's data without providing the Claimant with a copy of the referral form and the notes taken of the data which was processed at those meetings. This constituted a breach of the Claimant's rights under the Data Protection Act 1998. On 20 July 2011, the Claimant put a formal complaint in writing to the Chief Executive about Marina Waters' and D4's. Following the Claimant's referral to Marina Waters, D1 received specific advice

and recommendations from her regarding the Claimant's medical condition, including recommendations for 'reasonable adjustments'.

61. During the Claimant's supervision with D4 on 20 July 2011, the Claimant had requested to see the service plan again during her meeting with D4 on 20 July 201, but D4 informed her that she could not see it because it wasn't finished. This document is crucial as it would enable staff to understand their role better and the aims and objectives of the service. The Claimant continued to request clear guidance on her role and adequate support, tools and resources to perform her role, but the Defendants' persistently failed to properly address the issue. After Marina Waters' and D4's conduct on 20 July 2011, the Claimant was 'signed off' from work with work-related stress.

62. **On 20 July 2011 at 14.04**, D4 e-mailed KeyWorkers regarding the development of an induction pack. On 21 July 2011 at 8.57, the Claimant e-mailed D4 regarding her sickness absence.

63. **On 25 July 2011 at 15.41**, D4 sent a forward e-mail, attaching e-mails at 14.34, 10.54, 10.53, 10.26, 10.21, 15.33 and 14.26 regarding headsets (in relation to the Claimant's 'reasonable adjustments'). The Defendants' have pleaded that there were no specific adjustments required for the Claimant. At 9.13 and 14.29 the Claimant e-mailed D4 regarding her sickness absence.

64. **26 July 2011 at 12.30**, D5 e-mailed keyworkers requesting CAFs for the Ofsted inspection. The Defendants' would later state in their Tribunal pleadings that they only knew about the Ofsted inspection at the last minute, which is why D3's lead role in the Ofsted caused delays with the SOSR investigation.

65. **On or about 6 August 2011** the Claimant sent her Equality form questionnaire to D1, (which contained the facts and matters before the Defendants at the time that they made the defamatory statements). The Defendants' made reference to this in relation to the settlement negotiations, in their SOSR hearing bundle.

66. **On 8 August 2011** the Claimant returned to work after being off sick. On her first day back at work the Claimant found herself working in conditions of serious and imminent danger (as a result of rioting in Lewisham town centre where she was based- the riots were well covered by the press and the Claimant disclosed these

press articles to D1, in preparation for the Tribunal hearing). The articles covered the serious rioting in Peckham (where the Claimant lived) and Lewisham. 'Newshopper' newspaper, CNN, BBC news website, ran articles on the rioting in Lewisham and Peckham. The website Helsbels.org.uk published pictures of burnt cars in Albion Way, (which is only a 'stones throw' away from the Claimant's former office). The Map of Mercia Grove and Albion Way, shows just how close the two locations are. The Claimant's management team failed to warn her about the imminent danger or provide advice and guidance as to how she could avert the risk. On this day, the Claimant e-mailed Rita Lee and Jackie Lynham regarding their notes for the meetings which took place on 28 and 30 June 2011.

67. **On 9 August 2011**, the same risk of rioting was apparent and the Claimant did not receive any communication from her management team until around 11.30am, despite having sent an e-mail regarding this to D4 and expressing her distress at 2.34am. The Claimant e-mailed D4 at 11.41 requesting a 'reasonable adjustment'. At 12.47, D4 e-mailed the Claimant indicating her approval that she had followed the instructions of a senior manager from another service the previous day in relation to the riots and safety, (but would later deny doing so, in her e-mail to the Claimant dated 10 August 2011 at 9.22). The Claimant was subsequently advised to come to Laurence house; however she still believed that her health and safety would be at risk, as both her place of work (Lewisham) and the place where she resided (Peckham), were scenes of rioting and serious violence, hence why she had requested to be permitted to work from home, which D4 had not specifically responded to. The Claimant therefore decided to wait for a response to her request. She followed this up with another e-mail at 12.56 and 14.24 and several telephone calls to D4.

68. At around 1pm, Tanya Edwards (a senior D1 manager) came into the Claimant's office and asked the Claimant and her colleague Musa Jama to leave the Mercia Grove building because it was being shut and they were directed by her to go home and return to work as normal the following day. She advised that D1 was sending its entire staff home.

69. D4 eventually left a voicemail message for the Claimant at around 2pm. By this time the Claimant had reached the Peckham area where she lived and there were also disturbances occurring there. The Defendants' never asserted at the time that there was no record of the Claimant's numerous attempts to contact D4

by telephone. At 14:24pm, the Claimant was finally able to speak with D4 after calling Tanya Studd (D1's administrator), and after having e-mailed D4 at 2.24pm. D4 advised the Claimant that Tanya Edwards was '*sitting next to her*' and that she had spoken to her about the events that had transpired. During the telephone call, neither Tanya Edwards nor D4 refuted the Claimant's assertion that Tanya Edwards had sent the Claimant home. However, D4 unreasonably, kept insisting that the Claimant should have waited for instruction from her. The Claimant recorded the telephone conversation. In her grievance presentation, D4 would later state that Tanya Edwards could not remember what instruction she had given to the Claimant on this day.

70. **On 10 August 2011**, the Claimant subsequently arrived at work at 9.10am. The Claimant covertly recorded the meeting with D4 on 10 August 2011 and the Claimant relayed her version of events, (that she covertly recorded) to D2 and D3 during the SOSR process. The Claimant e-mailed Barry Quirk at 10.17am to make a formal complaint against D4, (copying in Unison and Frankie Sulke), he never responded to her e-mail.

71. Within an hour of the incident with D4, D3, summoned the Claimant to her office and she was suspended from duty with immediate effect. The Claimant had only been back at work three days, after being off for over two weeks with 'stress at work', when the decision was taken to suspend her. The Claimant covertly recorded her meeting with D3, which is the only accurate record of what transpired. The Claimant had never been informed formally under the disciplinary procedure, (verbally or in writing – as is her right under law and natural justice regards the right of reply), of any concerns regards her conduct or performance. At no stage before the Claimant's suspension, was she made aware that she was in danger of being dismissed. The Claimant never received any official warnings under the disciplinary procedure, (including a final warning). The Claimant was suspended just a day after D1 received her Equality form questionnaire, (which would have led it to believe that she would commence further Tribunal proceedings claim against it), and which she subsequently did.

72. **On 11 August 2011**, the Evening Standard news article on the rioting in Peckham. On this day D3 also wrote to the Claimant citing her and D1's concerns for the Claimant's health and indicating that this was part of the reason for the Claimant's suspension.

73. **On 8 September 2011**, the Claimant received D1' Tribunal pleadings. It is remarkable for its absence. It is remarkable for its absence of any of the words complained of, or indeed their pleaded alternative meanings. This point is significant, as the Claimant's Tribunal pleadings cover events between 1 April and 5 August 2011, just 5 days before the Claimant's suspension. D1 stated in its Tribunal pleadings that there were systemic and/or TUPE issues preventing D1 from running the service properly. In their pleadings the Defendants' denied that the Claimant's disclosures/concerns regarding the endangerment of her health and safety and her legal action regarding the Defendants' failures to comply with legal obligations had anything to do with the reasons for her suspension. The Tribunal pleadings acknowledge the fact that the Claimant was not informed of D3 and D4's arrangement regarding how her complaint about D5's data protection breach was to be handled. On this day the Claimant also received Marina Waters tribunal pleadings dated 8 September for claim number 2375023/2011.

74. **On 30 September 2011** the Claimant received D1's Equality form questionnaire and response, (which were the facts and matters before the Defendants at the time that they made the defamatory statements). D1 admitted in its response that there were systemic and/or TUPE issues preventing D1 from running the service properly.

75. **On 6 October 2011 at 14.40**, Tanya Studd, (D1's administrator) sent out D1's team meeting minutes to D1 staff dated 5 Oct 2011. This e-mail and the team meeting minutes was sent by D1 to it's former employee at her private e-mail address at 17.46 and that former employee forwarded it to the Claimant at 18.26 on the same day.

76. **On 10 October 2011** the Claimant e-mailed D3 regarding her concerns about the investigation, she did not respond to her letter until 17 October 2011.

77. **17 October 2011** the Claimant and Jackie Lynham exchanged e-mail correspondence regarding the length of D3's investigation interview. Jackie Lynham advised that D3 had informed her that she had allocated an hour for the interview. On this day D3 sent a letter to the Claimant stating that she intended to make another referral to OH. She did not make that referral until 15 November

2011, (over a month later), and well after the investigation interviews, (where reasonable adjustments' should have been made), had already finished.

78. **On 25 October 2011 and 1 and 4 November 2011**, the Claimant attended investigation interviews. D1/D3 falsified notes to the Claimant's investigation interviews on 25 October, 1 and 4 November 2011. During the investigation interview on 25 October 2011, D3 informed the Claimant that managers had advised her that the Claimant had not engaged with the team meeting that took place on 13 July 2011. During the investigation on 1 November 2011, D3 shouted at the Claimant and during this interview she also stated that there was no case against the Claimant, (see appendix 1 of this reply, page 330). During all of the interviews, D3 denied that the Claimant's disclosures/concerns regarding the endangerment of her health and safety and her legal action regarding the Defendants' failures to comply with legal obligations had anything to do with the reasons for her suspension and general treatment by the Defendants'.

79. The Claimant covertly recorded all the investigation interviews that she attended, (which lasted a total of around 8 hours). D1's minutes to not accurately record what transpired during the interviews. The investigations interviews were unreasonably long. The two Unison representatives, who attended the investigation interviews, made statements to the Claimant during the investigation interviews, (which the Claimant adduced as evidence for the High Court hearing on 25 March 2013), that are in line with the Claimant's plea of malice and allegation of wrong-doing on the part of the Defendants'. Jackie Lynham took notes on behalf of the Claimant during the investigation interviews, which the Claimant received copies of. D1 also requested and received copies of these notes prior to the SOSR hearings taking place. On 26 October 2011 at 10.47, 16.57 and 17.51 the Claimant e-mailed Unison regarding her concerns about the investigation process being abused. On 27 October 2011, at 9.27, the Claimant e-mailed Barry Quirk regarding the same issue and e-mailed Unison at 15.08 regarding this. On 28 October 2011 and 1 November 2011 the Claimant contacted Unison via e-mail again.

80. **On 4 November 2011 at 16.29 and 11 November 2011 at 16.49**, D1's in-house solicitor Francis Millivojevic e-mailed the Claimant regarding her equality form questionnaire.

81. In their Defence the Defendants' raise the issue of Tribunal's cost order against the Claimant. The Claimant has pleaded that the Defendants' were trying to 'get rid' of her and that she had asked the Defendants' to apologise and retract their false statements. These factors formed part of parties' discussions, which related to the issue of the cost order. The Defendants' made reference to settlement negotiations in their SOSR hearing bundle. **On 8 November 2011 at 16.42**, D1's legal representative, (Paris Smith) sent an e-mail to the Claimant on 8 November 2011 at 16.42, which stated the following:

'***I understand that Ms Vaughan does not wish to consider any settlement which involves the termination of her employment. I will need to obtain my client's instructions, as clearly the offer we put forward was conditional upon a termination of employment***'.

82. **On 16 November 2011 at 16.08**, a forward e-mail was sent to the Claimant by the same legal representative, regarding D1's offer of £95,000 and which stated the following:

'***The above offer is a final, non-negotiable, offer. It is far in excess of any sum that the Claimant would recover in tribunal, and accordingly we would view a rejection of it by the Claimant to constitute unreasonable conduct - and as such if the Claimant did decline the above offer it would be our intention to apply for costs at the hearing which commences in January 2012***'.

83. The Employment Tribunal's cost order, (which was made just 2 months after D1's settlement offer of £95,000- which the Claimant adduced as evidence at the Employment Tribunal), subsequently resulted in the Claimant's financial ruin- as a result of her inability to pay the Tribunal's cost order against her for over £94,000. The legal resource, '*IDS Employment Law Brief,* (the 975th June 2013 edition)', described the Tribunal's cost order against the Claimant as '*unrepresented*'. This foreward of the Law Brief featured an article about the Claimant's case called '*Litigants in person-the risk of going it alone*', which focused on the way that the Claimant's case had been dealt with by the Tribunal and the Employment Appeal Tribunal and stated that the decision to make the order for the cost award against her had '*raised a few eyebrows*'. Babcock would later serve the Claimant bankruptcy petition via e-mail to the Claimant on 18 June 2013. A bankruptcy order was subsequently made against the Claimant following a bankruptcy hearing 5 August 2013.

84. On 16 November 2011, the Claimant also received D1's Equality form questionnaire supplementary response from D1, (which were the facts and

matters before the Defendants at the time that they made the defamatory statements). Both the Defendants' equality form questionnaire responses are remarkable for their absence of any of the words complained of, or indeed their pleaded alternative meanings. This point is significant, as the equality form questionnaires and response cover events between 1 April and 5 August 2011, just 5 days before the Claimant's suspension and D1 had stated that the responses were approved by D3, (the individual who suspended the Claimant, investigated her and recommended her dismissal) and that the responses also had input from D4, D5 and everyone the Claimant named in her Tribunal claim.

85. D1 acknowledged in its Equality form response that it did not appreciate the full details of the Claimant's complaints and that it was not appropriate for her to continue to meet with the D5 after her complaint about D5, yet D3 questioned the Claimant on this very issue during the investigation interview, (two months after D1 had already acknowledged and accepted the Claimant's reason).

86. **On 24 November 2011 at 12.10**, D1's legal representative's sent a forward e-mail to the Claimant attaching an e-mail dated 22 November 2011 at 11.28 regarding D1's indirect threat to refer the Claimant to the Independent Safeguarding Authority (ISA), despite stating in a later e-mail that it had no reason to believe that she had ever put a child at risk of harm. In the e-mail D1 also refused to remove false data on her from its files.

87. **On 23 November 2011**, D3 sent the Claimant a copy of D1's 2 page guidance on the Occupational Health process via e-mail, which was undated.

88. **On 27 November 2011 at 11.48 and 28 November 2011 at 18.17**, the Claimant sent Dr Williams extensive evidence via e-mail, (which she copied D3 into). The Claimant also attached her 7 page letter and chronology regarding this issue dated 26 November 7.49 to the e-mails. The Claimant supplemented this with additional medical evidence for Dr Williams at her OH consultation with him the following day, (which he would later detailed in his OH consultation notes dated 29 November 2011- which his legal representative sent to the Claimant via e-mail on 14 March 2013 at 12.38, (attached to his High Court Application Notice sealed on 13 March 2013). D1 would have also had access to his consultation notes.

89. **On 29 November 2011** the Claimant attended an OH consultation with Dr Williams and she was accompanied by her friend Tanya Davis, (who took notes on behalf of the Claimant) and who intends to give evidence at trial on behalf of the Claimant. In her presence, Dr Williams advised the Claimant at the beginning of the consultation that she was classed as disabled. Dr Williams was not asked by D1/D2 to ascertain information regarding her original absence with her previous employer. Dr Williams is not qualified to diagnose depression, (only a GP or Psychologist/Psychiatrist can do this and a diagnosis by a GP and Psychologist had been made in relation to the Claimant, which the Defendants were aware of.

90. Dr Williams sent the Claimant and D1 a copy of his OH report on 29 November 2011. He recommended that the Claimant continue to take her prescribed medication (Citalopram, which he acknowledged that she has been taking since April 2011). This drug is anti-depressant. D1 and/or D3 unreasonably delayed making the three OH referrals for the Claimant and a) failed to follow D1's own OH referral guidance, which included failing to provide the Claimant's job description and any medical evidence for her, in support of their referral to Marina Waters, b) failing to provide any medical evidence to Dr Williams and c) following D1's receipt of Dr Giagoundinis in May 2011, it failed to discuss the report with the Claimant 'in-good time'.

91. **On 29 November 2011** the Claimant e-mailed Barry Quirk complaining about the conduct of Dr Williams. Barry Quirk would never respond to this e-mail. This email was forwarded by the Claimant to Unison's Dave Prentis on 30 November 2011 at 7.57, (with attached e-mails dated 29 November 2011 at 21.07, 27 November 2011 at 11.48 and 26 November 2011 at 7.49).

92. **On 30 November 2011** at 11.14 the Claimant's friend Tanya Davis also e-mailed Barry Quirk complaining about the conduct of Dr Williams. Barry Quirk would also never respond to this e-mail. On this day the Claimant's also wrote a letter to Barry Quirk complaining about the conduct of Dr Williams. Barry Quirk would never respond to this letter.

93. **On 10 December 2011**, Rita Lee sent the Claimant a letter informing her that Barry Quirk will not respond to her e-mails but that she was free to continue to copy him in.

94. **On 13 December 2011** at 10.07 and 8.07 the Claimant and D1 exchanged e-mail correspondence regarding her assertion that D1 was using settlement negotiations to intimidate her and her concerns that D1 was using the SOSR process as a preliminary to placing her name on a 'barred list' with the ISA. The Claimant e-mailed Frankie Sulke and Barry Quirk at 12.34 regarding this and D3's failure to set out the 'charges' against her. They failed to respond to these e-mails. On this day, at 9.35 Rita Lee sent the Claimant a copy of D1's grievance procedure via e-mail.

95. **On 16 December 2011 at 12.59** Rita Lee e-mailed the Claimant to inform her that D1 did not have a Harassment and Bullying procedure. On 19 December 2011 at 13.40, Linda Perks (Unison's Regional Secretary) sent the Claimant a forward e-mail of acknowledgement in response to the Claimant's e-mail to Dave Prentis about D1's manager's alleged misconduct.

96. **On 20 December 2011 at 9.37**, the Claimant received Rita Lee cover letter via e-mail. This cover letter and a package containing D1's copy of her medical records index and all of her attached full medical records (71 pages) was also sent to the Claimant via post on the same day. The envelope was postmarked 20 December 2011. The Claimant was asked to confirm that her full medical records could be disclosed to D3 and other managers. At 09.54 the Claimant responded via e-mail, (attaching the e-mail sent at 9.37) consenting to this.

97. The Claimant's full medical records includes reports from psychologists at Maudsley Hospital who treated the Claimant during July and August 2011 and who diagnosed depression, reports from psychologists at Maudsley Hospital who assessed the Claimant the previous year, who also both diagnosed depression, several GP sick notes indicating depression, GP print out detailing prescription medication that the Claimant had been taking since 2010, which included anti-depressants' (which she had been taking consistently without any breaks), several Occupational Health reports that indicated she was covered by disability legislation, including reports from D1's own Occupational health consultants recommending that the D1 make reasonable adjustments, (in relation to the Claimant's depression) and warning that she was in danger of a relapse of her condition.

98. **On 21 December 2011** the Claimant received the Defendants' original Tribunal pleadings for claim number 2390531/2011.

99. **On 9 January 2012 at 10.18**, Rita Lee sent the Claimant a copy of D1's Disciplinary procedure via e-mail. It asked her to note that this is not a disciplinary matter. It makes reference to an example of how a letter should be drafted. D1's Disciplinary Policy, states that allegations should be 'well drafted' and this is vital to ensure that the employee is fully aware of the nature of the charges which he/she will be required to answer at the hearing so that he/she has the opportunity to obtain and present all evidence relevant to his/her defence. It states that where appropriate, the employer should refer to the standard which the employee is alleged to have breached, (for example, by referring to the relevant sections of employee code of conduct; or to paragraphs in the contract of employment) and that the allegations should give the dates, times and locations. D1's disciplinary policy states that D1 should structure its dismissal letter by specifically listing each allegation made, taking each allegation in turn and referring to the evidence heard and the conclusion reached. It also states that all relevant evidence gathered as part of the management investigation should be disclosed to the employee and/or his or her representative at the same time as the disciplinary pack containing the documents on which the presenting manager proposes to rely on at the Hearing.

100. **On 13 January 2012** at 18.36, the Claimant e-mailed Helen Reynolds, (Unison's regional rep) regarding the provision of Unison support for her during the SOSR hearings. On 19 January 2012 at 13.40 Helen Reynolds responded to the Claimant via e-mail. The Claimant did not receive the notes to the SOSR investigations until 19 January 2011, sent via e-mail to her at 13.40.

101. **On 21 January 2012 at 16.21**, the Claimant e-mailed D1 to request a reasonable adjustment in relation to the SOSR hearings, (to be permitted to be accompanied by her friend Tanya Davis).

102. **On 6 February 2012 at 13.06**, D2 responded to the Claimant's e-mail requesting to know why she needed a reasonable adjustment. The Claimant responded to D2's e-mail at 13.56, clarifying the reason for the request. At 16.22, D2 responded via e-mail, granting her request and advising that the Claimant's friend would not be able to speak on her behalf at the hearing.

103. **On 13 February 2012 at 9.49, 10.45, 10.26, 15.54, 16.08 and 16.36**, there was e-mail communication between the Claimant and Carol Lewis (D3's PA) and D3. D1 also sent the Claimant letters. The Claimant advised that she had not received the SOSR bundle. At 17.42 the Claimant e-mailed Carol Lewis, D1, D3 and Unison, confirming receipt of the SOSR bundle. The publication complained of contained an unsigned witness statement/investigation interview notes from Nick French, stating that he never line-managed the Claimant. During the SOSR hearing (on the morning of 6 March 2012), the Claimant also stated clearly that Nick French never line managed her, and made reference to his witness statement, and she covertly recorded this. D1's note-taker failed to record this.

104. **On 14 February 2012 at 10.19 and 11.06**, the Claimant, Carol Lewis exchanged e-mail correspondence regarding the grievance hearing. At 12.15, 12.48, 6.27 and 18.39 there was e-mail correspondence between Claimant and Helen Reynolds, regarding the type of help the Unison rep can offer and the receipt of the Claimants SOSR bundle. On this day, Helen Reynolds confirmed that D1's SOSR bundle was received by Unison that morning. The Claimant sent a forward e-mail to Jackie Lynham at 19.03 and 12.15, advising that she would like Union support. D1 had access to all emails sent and received via its server, so they would have been able to access any e-mails exchanged between Jackie Lynham and the Claimant. On this day at 8.18, the Claimant e-mailed D1 regarding her request for a reasonable adjustment.

105. **On 15 February 2012** the Claimant, Carol Lewis, D2 and D3 exchanged e-mail correspondence at 8.18, regarding the Claimant's request to be accompanied by a rep and her own note taker. At 14.18 and 12.56 the Claimant e-mailed D3, and stressed the urgency on a decision being made on reasonable adjustments.

106. **On 16 February 2012** Helen Reynolds e-mailed the Claimant at 17.01, advising that they would request that D1 provide a note taker. The Claimant e-mailed her response to Helen Reynolds at 17.11 explaining why she should be permitted to bring her own note taker and advising of the reason why she will be accompanied her friend instead of a union rep.

107. **On 17 February 2012** at 10.45, Helen Reynolds e-mailed the Claimant reiterating her view and informing her that she would not be making contact with her employer until her claim form was received. The Claimant responded via e-mail at 11.10 advising that she had already sent case form days ago and that she would contact Barry Quirk and Frankie Sulke about her request instead.

108. At 3.10, the Claimant sent Dave Prentis and Helen Reynolds a forward e-mail, attaching her e-mails of 14 December 2011 at 7.54, 13 December 2011 at 21.02, 10.07 and 8.07, regarding misconduct in public office and alerting them to the fact that the Defendants' had fabricated/falsified evidence against her. At 5.40, the Claimant sent a forward e-mail to Barry Quirk and Frankie Sulke, (attaching her e-mails dated 13 December 2011 at 21.02, 10.07, and 8.07), regarding D1's managers misconduct in public office and alerting them to the fact that Defendant's had fabricated/falsified evidence against her. She also attached evidence (extracts D5's SOSR witness statement and D3's SOSR presentation). She requested that they investigate and stated that she would consider re-deployment. The Claimant e-mailed Michael Gove MP at 6.23, highlighting the misconduct in public office and waste of taxpayers' money. She followed this up with a forward e-mail to Michael Gove at 9.33, 5.40, (attaching e-mails dated 13 December 2011 at 21.02, 10.07 and 8.07), and advising him that D1 is aware that the Claimant had contacted him. Barry Quirk and Frankie Sulke never directly responded to the Claimant.

109. Shortly after the Claimant's disclosures, the Claimant received a letter via e-mail from D2, on the same day, advising her that she would not now be permitted to be accompanied by her friend to the SOSR hearing and that D1/D2 had decided to use the services of external note-takers at for the SOSR hearings and that she was not to contact him regarding the matter. At 10.15, the Claimant sent Dave Prentis and Helen Reynolds a forward e-mail to complain about this. At 11.32, the Claimant e-mailed Barry Quirk and Frankie Sulke as well to complain about the decision. At 11.48, Helen Reynolds sent the Claimant a forward e-mail, (attaching the e-mail sent at 11.32), advising that Unison cannot support the Claimant at the hearing. The Claimant responded to this via e-mail at 12.07, clarifying that she would still like Union support, but may have to rely on support from just her friend. At 12.21 the Claimant e-mailed Helen Reynolds regarding the use of external/third-party note-takers, setting out her objections to this and requested that Unison intervene and communicate her objections to D1.

110. The Defendants' had not sought the Claimant's consent for the use of external note-takers/third-parties and she had clearly not consented to this. This case involves personal information, which engaged rights and duties between an employer and the Claimant (ex) employee. The Claimant had attempted to exercise her right to prevent processing likely to cause damage or distress, but this was ignored and/or obstructed. Unison, D1 and D2 were aware of the Claimant's objections. D2 made reference to the Claimant's objections at the beginning of the SOSR hearing on 27 February 2011 and in D1's dismissal letter dated 5 April 2012.

111. The external note-takers were agency workers from Brook Street and REED. The Claimant contacted Brook Street after she was dismissed by D1 to complain about the conduct of its worker, however, Brook Street agency refused to take responsibility for Susan Funnell's actions, (which is set out at paragraph 48 of the her re-amended PoC).

112. **On 21 February 2012 at 14.47, 14.44 and 13.04** the Claimant sent a forward e-mail to Barry Quirk and Frankie Sulke, attaching her forward e-mail to Cynthia Maxwell, which also attached her PDFs of her SOSR hearing bundles 1 – 3 of 5 (up to pages 151). At 8.48, the Claimant sent a forward e-mail to Barry Quirk and Frankie Sulke attaching her e-mail to Cynthia Maxwell at 8.44, attaching her PDFs, (AAV pack 6- pages 261 – 286 of her SOSR hearing bundle). At 8.50, the Claimant sent another forward e-mail to Barry Quirk and Frankie Sulke, attaching her e-mail to Cynthia Maxwell at 8.46, attaching her PDFs, (AAV pack 6 - pages 287 – 315 of her SOSR hearing bundle). At 14.47 and 14.57 the Claimant sent two additional forward e-mails to Barry Quirk and Frankie Sulke, attaching her e-mails to Cynthia Maxwell and attaching her PDFs, (AAV pack 1 - 3 and pack 4 & 5 of her SOSR hearing bundles). Barry Quirk and Frankie Sulke never responded to the Claimant.

113. On the same day, at 12.03 and 11.34, the Claimant and Helen Reynolds exchanged e-mail communication regarding the Claimant's request for a referral for legal assistance in bringing a criminal case against D1's managers for misconduct in public office, her Case form and supporting evidence/paperwork. The Claimant highlighted the fact that Unison was yet to make any comment in relation to her evidence supporting her allegations. Also on this day, at 13.04, Gill

Moss (D1's HR officer) e-mailed the Claimant, confirming that her bundles had been received by it, Barry Quirk and Frankie Sulke. On this day Cynthia Maxwell sent the Claimant additional evidence which D4 relied on in relation to the SOSR hearing.

114. **On 23 February 2012 at 10.32**, Cynthia Maxwell (D1's HR officer) e-mailed the Claimant confirming that her SOSR bundles had been received by D1, Barry Quirk and Frankie Sulke, and that her following PDFs had been received: a) AAV pack 1 – 3, (pages up to 151, including Claimant's index to her SOSR bundle, her SOSR bundle witness statement); b) AAV SOSR hearing bundle packs 4 -5, (pages 152 – 260) and c) AAV SOSR bundle packs 6 and 7. On this day at 14.29, Unison's Solicitors, (Thompson's), e-mailed the Claimant a copy of Mervyn King's 5 page Tribunal witness statement, which was submitted by D1 in relation to the Union's collective claims against D1 regarding TUPE, which it lodged on behalf of the Claimant and her colleagues, (including the 4 staff who transferred to D1 with the Claimant). The statement confirms that Mervyn King took over Nick French's position in October 2011. D1 deliberately failed to consider Mervyn King line managing the Claimant. D3 would later state on 27 February 2012, (during the SOSR hearing), that the investigation arose out of the fact that principally she didn't have anybody to manage the Claimant. On this day Cynthia Maxwell also sent the Claimant additional evidence which D4 relied on in relation to the SOSR hearing.

115. **On 24 February 2012**, the Claimant e-mailed Barry Quirk and Frankie Sulke regarding her e-mail contact with the prescribed regulator regarding her allegation of 'Misconduct in Public office'. She highlighted the fact that she had made my protected disclosure in good faith and that she still believed that the individuals that she had named had breached the employee code of conduct and that these same individuals had failed to use the public funds entrusted to or handled by them in a responsible and lawful manner. She set out the reasons as to why she also felt that the actions of these individuals should be considered to be criminal. They never responded to this e-mail.

116. **On 27 and 28 February 2012**, the Claimant attended the SOSR hearings and she was accompanied by her friend Tanya Davis who took notes on behalf of the Claimant. Her 8 pages of notes were disclosed to D1 on 13 October 2012 via e-mail. At 06.23 on the first day of the hearing, the Claimant e-mailed D1 requesting

its equal opportunities policy, D3's investigation report and copies of her fact-finding reports for the Claimant's grievances. Susan Funnell was present throughout the hearings on 27 and 28 February 2012. D3's OH referral to Dr Williams was included in the publication complained of, (D1's SOSR hearing bundle) and D3 directed parties present at the hearing on 27 February 2012, to the OH referral in the publication, (see appendix 1 of this reply, pages 207 – 210), which set out the following:

'*Adele takes detailed notes during meetings with managers and communicates with management frequently through long e-mails'*;

'When answering some of the questions during the investigation meetings Adele began to speak very quickly. When asked to slow down, Adele stated that because of her impairment she has to speak very quickly because otherwise she is unable to remember the information which she wishes to share';

117. In the publication, D3 asked Dr Williams for his opinion on and/or to comments on her fitness to and/or her ability to perform her role:

'the potential effect of her diagnosis, if any, on her ability to form and maintain relationships with customers, colleagues, managers and others she comes into contact with in order to undertake her duties of her job role';

'Please comment on Adele's ability to carry out the usual activities of her role and the ease by which Adele can carry out these functions. In particular please comment on Adele's ability to provide face to face advice to young people, (including those who fall into the 'high risk' groups referred to above) especially given that Adele has stated that she prefers written communication rather than face to face meetings';

'***What is the effect of her symptoms/medication and how might this affect Adele's ability to carry out her job?'***

118. During the publication complained of (D3's SOSR presentation), D3 stated the following, (by way of example):

'***I have heard that she would not engage in a dialogue, but was over focused on writing detailed notes***'; '***However, when I interviewed Adele (pages 333-4) she stated that she preferred to have face to face meetings to receive "work instructions". This unconventional and literal interpretation has caused problems'***

'Officers were of the view that Adele avoided face to face meetings preferring to communicate in long emails'

'When I returned I asked her a supplementary question (page 346) which was about her ability to carry out her job, which required 70% of her time in face to face meetings with young people'

'A further example of Adele's unconventional communication is that when I met with Adele on 28th June, which I have already referred to, and confirmed in my letter…'

'I wanted to ensure that if she returned to work, that she would be able to meet face to face with young people, in order to carry out her role as a personal adviser'

'When we met, you claimed your productivity was the best in the team. I tried to substantiate this with Valarie etc., but it appears the opposite was true'

119. The publications complained of- D3's SOSR presentation/report- oral and written and the SOSR hearings, also contained the following:

'I would also ask you to consider whether Adele's complaints that the Council failed to implement reasonable adjustments are genuine…'
(D3).

'…The question arises whether Adele was making a genuine request for an adjustment,…'
(D3)

'This fact coupled with Adele's refusal to share detailed information about her condition to the Council's OH service raises serious concerns about the trust we have in her'
(D3 – also see paragraph 21.3g of the Claimant's re-amended PoC)

'….I think that this clearly demonstrates the breakdown in appropriate ways of working, and the trust and confidence in the relationship. On page 335 question 31, Adele denies that I asked her not to write to Barry and Frankie. I have also had sight of Adele's written presentation where at page 26 para aa she alleges that my comments in the investigation that I had asked her not to write to Barry and Frankie in my email of 30th June 2011, were false'
(D3)

'She states that Marina Waters (page 11), Ian Smith, Christine Bushell (14), Elaine (74,76), Valarie (75), Nicolette (67), Chris and myself have given false accounts. If this is the case, that very senior and middle managers are giving false testimony, Lewisham as an organisation is amoral. That is not the Lewisham that I know'
(D3)

'I would also point out that Adele on Page 67 of her bundle now accuses Nicolette of false statements. This further underlines that there is no one to manage Adele'
(D3)

'Do you think it fair that there are a number of allegations made which I have not known about before, so am having to address on the spot? I have not had the opportunity to gather the necessary documentation to prove that they are all false'

(Claimant)

'I looked at it from the other perspective. When we met, you claimed your productivity was the best in the team. I tried to substantiate this with Valarie etc., but it appears the opposite was true': (D3)

'You have accused me and most of your colleagues of lying. This supports my case that relationships have irretrievably broken down'
(D3)

'You sighted the request for mediation with Elaine on 30 June but in the report you have submitted to the hearing officer and in your email to Barry Quirke about me, you say we are lying. Can you point to any aspect of your bundle where you are prepared to repair the relationships?'
(D3)

'CG: Your managers have said you were reluctant to meet with them to discuss things.
AV: I said I would meet.
CG: So your managers were lying? Do you have trust and confidence in your employer?'
(D3)

CG: Are you referring to your last sentence – that you are prepared to repair the relationships – looking forward?
AV: Yes. And I have trust and confidence.
CG: I have heard in response to my questions that you still feel we were lying'
(D3)

'RW: P.35 para 145 – evidence fabricated in your absence'
AV: My analysis is on the witness statements p.66. False allegations were being made in the context of management statements and evidence given during the hearing. You would have to read it from start to finish (21 pages). I am expecting you to go away and read it to see all my allegations before you reach a decision. That is not the only support for my allegations – you will find them throughout my bundle and the additional information I have provided since the hearing started'
(D2 and Claimant)

120. During the hearing on 27 February 2012, D3 stated in the publication complained of, (D3's SOSR presentation/report), that she and D1 were not looking at the Claimant's conduct and/or attributing any blame to the Claimant. She repeated this numerous times during her presentation. D3 complained about the alleged 'tone' of the Claimant's e-mails and their alleged affect on management, however, prior to the Claimant's suspension, this had never been raised with her by the Defendants' via e-mail/letter or face-to-face in meetings and the Defendants' produced no evidence during the SOSR hearings to demonstrate that it was raised with her. D3 also stated that she was not advised of any alleged fear of the Claimant until after the Claimant was suspended, (it

didn't come out until during the investigation interviews). On 27 February 2012 at 14.04, Helen Reynolds e-mailed the Claimant advising that she report the alleged Misconduct in Public office to the police. She sent a follow up letter to the Claimant on 5 March 2012 repeating this advice and asking the Claimant to stop contacting Unison about her case.

121. During the hearing on 28 February 2012, D3 asked D4 to confirm the standard of the Claimant's output of work. During this day of the hearing the Defendants' maintained that the Claimant's alleged conduct/behaviour did not warrant any complaints being made about her and indeed, no formal complaints had been made about the Claimant. D4 also stated that she did not receive any formal complaints about the Claimant. D2 also made it clear during the hearing that the Claimant was not being investigated for capability. During the hearing on 28 February 2012, (in the morning), D3 questioned D4 about the Claimant's standard of output of work D4 responded in great detail, conveying the meaning that she was unfit for her office/job/post/purpose. D1 noted some of the words complained of, which were spoken, and the Claimant covertly recorded all of them. The external note-taker's notes of these hearings are grossly inaccurate and deliberately falsified.

122. Both external note-takers were given access to/given copies of D1's SOSR hearing bundle, which set out: a) D3's and D4's long discussion during their investigation, regarding the Claimant's alleged work output, (see appendix 1 of this reply, pages 292); b) the Claimant's investigation interview on 4 November 2011 which detailed D3's questioning of the Claimant regarding the Claimant' ability to do her job, (because it requires her to meet face to face with clients) and the Claimants' response to D3's question, denying that she was incapable of performing her role, (see appendix 1 of this reply, pages 340 and 342); c) the investigation interview with D5, which featured D5's comments and statements of fact regarding the Claimant's communication skills i.e. her 'rambling' e-mails and her complaint that the Claimant would bring her 'internet searches' to meetings to back up her arguments; that the Claimant was doing research relating to work issues 'in work time'; that the Claimant found it difficult to work face-to-face and 'made no eye contact' and D3's and D5's long discussion regarding the Claimant's alleged poor work output, (see appendix 1 of this reply, pages 301 - 302 and 304 – 305).

123. **On 28 February 2012 at 4.46 and 7.44**, the Claimant sent two forward e-mails of complaint, (and attachments containing evidence) regarding D3's conduct to Frankie Sulke, however, she would never responded to these e-mails. Frankie Sulke's and Barry Quirks persistently failed to directly respond to the Claimant and ensure that D1 properly dealt with the Claimant's complaints and concerns and this was in breach of their own grievance, employee code of conduct, disciplinary and whistleblowing policies. D1's own policies explicitly state that employees should direct these types of complaints to the Executive Director.

124. **On 1 and 2 March 2012 at 13.59, 15.50, 9.46 and 17.11**, the Claimant's former colleagues sent her thank you e-mails for giving evidence on their behalf at the Employment Tribunal. Her colleagues won their case for unfair dismissal.

125. **On 3 March 2012 at 7.13**, the Claimant sent a forward e-mail to D6, (attaching her e-mail dated 28 February 2012 at 7.44), regarding her complaint relating to D3's conduct during the SOSR hearing. She attached further evidence, (her analysis of D3's SOSR hearing presentation) for her defence in relation to the allegations made against her. D6 e-mailed confirmation of receipt of this on 5 March 2012 at 10.43.

126. **On 6 March 2012**, the Claimant attended the SOSR hearing and was accompanied by her friend Tanya Davis. During this day of the hearing D2 and D3 extensively questioned the Claimant regarding her ability to perform her role and her performance. The external note-takers notes of these hearings are grossly inaccurate and deliberately falsified, therefore the Claimant's exchange with D3 were not accurately recorded. D1 noted some of the words complained of, which were spoken, and the Claimant covertly recorded all of them.

127. **On 9 March 2012 at 11.35**, D6 e-mailed the Claimant advising her that the grievance hearing would take place on 22 March 2012. D1 failed to inform her that part of the grievance hearing had would take place/ had already taken place on 28 February 2012, (after the Claimant attended the SOSR hearing), even though the Claimant specifically questioned D2 about when the grievance hearing would be held, before she left on that day. On 21 March 2012 at 7.37 the Claimant e-mailed D1 requesting the minutes/notes for the SOSR and grievance hearings. D6 responded via e-mail on 23 March 2012 at 9.04.

128. **On 5 April 2012**, the Claimant received D1/D2's 14 page dismissal letter via e-mail from D2. D2 stated in the dismissal letter that he was unable to determine what happened because both the Claimant's and D4's accounts of the events of 10 August 2011, (which D1 stated triggered the Claimant's suspension), differed and there were no witnesses. On this day, D6 also sent the Claimant D1's incomplete SOSR hearing notes. At 8.21 the Claimant received an e-mail from Babcocks' legal representative, (which he copied into Marina Waters' legal representative and D1's legal department). He attached documents which included the Claimant's individual risk assessment done by Babcock, an e-mail from Babcock to D6 dated 31 March 2011 at 11.24, employee information spreadsheets and an e-mail from Babcock to D6 dated 1 April 2011 at 17.04. D1 had denied knowledge of this information, (evidence of the Claimant's disability), since April 2011.

129. **On 10 April 2012 at 17.58 and 12.30**, the Claimant's e-mailed Rita Lee regarding D1's failure to appoint a panel for her grievance hearing.

130. **On 20 April 2012** the Claimant e-mailed the Tribunal and the Defendants' her application to rely on covert recordings and transcripts. The Defendants' objected to this in their letter to the Tribunal, (copying in the Claimant), dated 26 April 2012. After learning of the existence of the recordings, the Defendants' refused to take receipt of the recordings, attempted to suppress them and refused and/or failed to listen to them and failed to partake in the proper pre-action conduct in relation to exchanging information before the start of these proceedings.

131. **On 4 May 2012**, the Claimant received the Defendants' Tribunal pleadings, in relation to the Claimant's suspension, D1 stated that the suspension was not disproportionate or inappropriate, because the Claimant had already refused to work with two managers and it was clear that there was a significant risk, that the relationship with D4, who was the only remaining option as a line manager in the service, had broken down. The reason given for the suspension was not the Defendants' pleaded alternative meanings, any of the words complained of or any alleged specific risk posed to managers. In its pleadings it stated that it received the Claimant's Equality form questionnaire on 9 August 2011.

132. **On 15 May 2012** the Claimant received the Defendants' Tribunal pleadings for claim numbers 2302643/12 and 2302645/12, (which included its response to her unfair dismissal claim).

133. **On 19 June 2012** the Claimant received the Defendants' original Tribunal pleadings for claim number 2313031/12.

134. **On 19 July 2012 at 11.19, 18 July 2012 at 08:34, 17 July 2012, at 17:20, 10 July 2012 at 13:48, 9 July 2012 at 16:06 & 2 July 2012 at 14:21 & 14.19**, the Claimant, Unison regional office/Dave Prentis exchanged email correspondence regarding the Claimant's request for legal assistance and D1's data protection breach.

135. **On 24 July 2012** the Claimant received the Defendants' amended Employment Tribunal pleadings dated 24 July 2012 for claim number 2390531/2011A. The Defendants' denied that they made any defamatory statements and stated that D1 had not invoked the disciplinary procedure. The Claimant had not accepted any SOSR code as part of her contract of employment and D1 did not have a formal SOSR code. Consent is also not taken to include a disciplinary code which is not properly applied.

136. **On 26 July 2012** at 14.35, D1 announced the departure of the D3 from its employment in a forward e-mail to staff. This e-mail was forwarded to the Claimant on 27 November 2012 at 14.55. D1 continued to legally represent D3 after her departure from its employment.

137. **9 August 2012 at 18.05** D1 e-mailed the Tribunal to advise it that only D2, D3, D4 and D5 would be giving evidence at the Tribunal.

138. **On 13 September 2012** the Claimant received the Defendants' amended Tribunal pleadings for claim number 2313031/12. All of the Defendants' Tribunal pleadings denied that the Claimant's disclosures/concerns regarding the endangerment of her health and safety and her legal action regarding the Defendants' failures to comply with legal obligations had anything to do with the reasons for her suspension and/or treatment by the Defendants'.

139. **19 September 2012 at 20.03** the Claimant e-mailed D1, requesting an apology from Barry Quirk and stating that she would not settle her Tribunal claims unless an apology is given and the false statements retracted.

140. **On 5 October 2012 at 10.10 and 19 October 2012 at 9.16 and 9.39** the Claimant e-mailed D1's legal department and the attached covert recording (and transcript) of Claimant's meeting with D3 on 10 August 2011. D1's legal department e-mailed wrote letters of response on 5 October 2012 at 12.06 and 19 October 2012 at 17.01 regarding the Claimant's covert recordings.

141. **On 15 October 2012 at 10.01**, the Claimant sent D1 her forward e-mail, (attaching their attached e-mail correspondence dated 13 October 2012 at 19.23 and 4.32), and also attaching her 70 page bundle index for the tribunal hearing, and her related attached 8 PDF's of all her evidence. D1 confirmed receipt of all this.

142. **On 31 October 2012 at 16.01 and 2 November 2012 at 11.04**, D1 and the Claimant exchanged e-mail correspondence and D1 attached its draft Tribunal bundle index and 23 page draft bundle, to the e-mail.

143. **On 12 November 2012** Unison sent a letter to Claimant regarding compensation for D1's failure to consult.

144. **On 14 November 2012 at 17.13** D1 e-mailed the Claimant attaching D4's grievance presentation. The Claimant should have received this 7 months prior, (with the SOSR notes sent on 5 April 2012), which constitutes a breach of her right of access under the Data Protection Act 1998.

145. **On 19 November 2012**, Unison sent the Claimant a letter refusing to assist her with her legal claims.

146. **On 21 November 2012**, the Claimant sent the Defendants' her pre-action Letter of Claim and attached Annex A: 'Elements of Defamation'. At 6.34, the Claimant sent a forward e-mail response to Unison's Vicky Easton, (attaching e-mails dated 25 October 2012, 20.34, 25 October 2012 and 19.44), regarding its refusal to refer her to Thompsons Solicitor's and requesting that it reconsider.

147. **On 28 November 2012** Unison sent the Claimant a letter reiterating its refusal to assist with Claimant's legal claims. **On 4 December 2012** the Claimant e-mailed D1 at 18.25 and attempted to make arrangements to exchange evidence. D1 responded on the same day and the Claimant replied at 7.22.

148. **On 7 December 2012** the Claimant received the Defendants' pre-action response to her Letter of Claim. It asserted that it intended to rely on its Employment Tribunal pleadings and its Eqaulity form questionnaire responses. At 12.06, D1 e-mailed the Claimant to advise her that it had not reviewed the SOSR notes before sending them out to the Claimant and attached a copy of D4's grievance presentation to the e-mail. D1 was required to send this data to her on 5 April 2012, (with the SOSR notes) and by failing to do so it breached the Claimant's rights of access under the Data Protection Act 1998. The Claimant also required the grievance presentation to deal with her appeal. D4's presentation stated that in response to the Claimant's request to work from home, she had instructed the Claimant come to Laurence house instead and had allegedly enforced that instruction three times. The Claimant then e-mailed D1 at 7.46.

149. **On 12 December 2012**, D1 was issued with a monetary penalty notice for £70,000 by the ICO because their social worker left sensitive documents in a plastic shopping bag on a train, after taking them home to work on. The files included GP and police reports and allegations of sexual abuse and neglect. Just 2 months later D1 set about breaching the Claimant's Data Protection rights as well. D1 continues to contravene the Data Protection Act 1998 by keeping excessive and false/inaccurate data about the Claimant, (which it unlawfully processed during the SOSR internal process), despite being in possession of the evidence set out in this reply.

150. **On 14 December 2012 at 15.00**, D1 e-mailed the Claimant confirming that Susan Funnell did not take verbatim notes and was not required to do so.

151. **On 19 December 2012**, the Claimant filed her claim form for defamation. Her original PoC was filed on 13 February 2013. The Court served this on the Defendants' on 16 February 2013.

152. **On 18 February 2013**, D1's e-mailed the Tribunal in response to it and the Tribunal's receipt of the Claimant's covert recordings and transcripts. It reinforced its defence and refused to listen to the recordings/read the transcripts.

153. **On 11 March 2013 at 16.32** D1 sent an e-mail to the Claimant attaching Susan Funnell's half page notes to D4 grievance presentation and Susan's Funnell's Tribunal witness statement date 6 March 2012, setting out her sparkling credentials as a short- hand note-taker. The Claimant should have received these notes a year prior with the SOSR notes, (on 5 April 2012), which constitutes a breach of her right of access under the Data Protection Act 1998.

154. **On 21 March 2013** the Claimant and the Defendants' Counsel (Stuart Brittenden) attended a pre-hearing review on at the Tribunal. The Claimant was accompanied to the hearing by 4 individuals. Stuart Brittenden advised Judge Balogun that the Defendants' had not listened to or read the covert recordings and transcripts. The Claimant e-mailed the Tribunal the following day (22 March 2013 at 3.03) regarding the issue of the covert recordings and transcripts. The Claimant e-mailed the Tribunal on 26 March 2013 at 4.40 withdrawing her claims; the Defendants' were copied into this e-mail.

155. **On 11 June 2013**, the Claimant served her original schedule of damages. **On 21 June 2013 at 9.07** the Claimant sent D1 notice in accordance with section 10(1) of the DPA).

156. **On 2 July 2013**, the Claimant filed her Application Notice dated 2 July 2013 at the Court and a 28 page witness statement and 18 exhibits, which made reference to her two witness statements dated 13 March 2013, her covert recordings on a USB stick and the related transcripts, which the Court confirmed, would remain on the Court file. **On 5 July 2013 at 15.26**, D1 e-mailed the Claimant in response to her e-mail dated 21 June 2013, (with attached e-mails dated 24 June 2013 at 9:30 and 27 June 2013 at 7:40, 8.14 and 11.23), refusing to acknowledge the breach of the DPA. **On 9 July 2013**, the Claimant amended her PoC, (via consent of the Defendants') and served this on the Defendants' on 11 July 2013. Those amendments added 26 new paragraphs.

157. **On 16 July 2013** the Claimant filed an Application Notice withdrawing her claim for 'special damages', which was granted on the same day. The Claimant

failed to delete all paragraphs in her PoC which made reference to her withdrawn claim for special damages and rectified this with another Application Notice to the Court, (via consent of the Defendants'), dated 17 July 2013 at 9.47, (with attached e-mails of the same date at 9:47, 19.33, 6.04, 5.06 and 5.00, 16 July 2013 at 9:28, 9.20 and 8.48, 15 July 2013 at 15:57, 15.36, 8.03 and 7.04 and13 July 2013 at 9:06). This was granted on 31 Jul 2013 and the Claimant filed her revised re-amended PoC at the Court and sent a copy to the Defendants', (along with copies of the sealed Court Order and sealed Application Notice), via 1st class 'signed for' post, on the same day.

158. **On 25 July 2013**, (via consent of the Defendants') and by Order of Master Leslie dated 16 July 2013, the Claimant filed and served her amended schedule of damages dated 13 July 2013.

159. The above chronology consists of facts and matters that were before the Defendants' at the time they made their defamatory statements and/or before the Claimant submitted her Claim form and PoC and/or before the Defendants' submitted their Defence. It is pleaded in response to the Defendants' chronology, (which extends to 20 pages), and without prejudice to the Claimant's contention that this action is not an attempt to litigate her previous Tribunal claims and the Defendants' are not entitled to seek to justify meanings which are not complained of and which, even if proved, could not justify the words complained of.

MEANING AND THE RISK OF CONTINUED PUBLICATION/UTTERANCES

160. The Claimant denies in paragraphs 182.1 & 182.2 that the words complained of meant or was understood to mean that: **'*The Claimant's behaviour was such as to entitle an employer to conclude that she could not continue to be employed by it*'** or **'*The Claimant's behaviour (whether it was in good or bad faith) had an extremely damaging effect upon her fellow employees, particularly her managers. The harm caused to her fellow employees, whether the Claimant intended it or not, was such that an employer could not permit her to continue to be employed*.'**

161. The Claimant joins issue with the Defendants' on its untenable attempt to diminish the gravity of the defamatory allegations of which the Claimant complains. The inference will be invited that the Defendants' seeks to play down

the obvious meaning of the words complained of because it cannot justify the words complained of. The true meanings are pleaded in the Claimant's re-amended PoC. Where there is an issue as to meaning, this is normally a matter for the jury, and in theory there is only one true meaning – see Gatley at para 3.15.

162. The determination of meaning does not depend solely on the documents, but on an evaluation of those words in their context, see ***Charleston v News Group Newspapers*** [1995] 2 AC 65. The words used by the Defendant's in their context reinforced the defamatory meanings and contradict and do not support the Defendants' alternative meanings. The words complained of are an attack on the Claimant's reputation and her general character, and hold her up to ridicule and contempt.

163. The Claimant contends that the Defendants' will be unable to establish at trial the facts stated in the words complained of and the facts set out in the Defence. The facts advanced by the Claimant, (which are the true facts); fatally undermine the Defendants' case. Further and in the alternative, the Claimant denies that the facts relied on by the Defendants to support this Defence are true. The material facts pleaded by the Defendants' are false, or alternatively, they do not in fact or in law afford a foundation for the plea of justification and qualified privilege.

164. On the face of it alone, the Defendants' general charge cannot even begin to be support the following statements, (the words complained of at): 20.2l- **'*She wouldn't meet face-to-face with any young person…..very poor work output*', 20.2m- '*I think she avoided doing all work*'**, 20.2n- '***There is no evidence of the work she was doing*', and 20.2n- '*Did AV have any face to face meetings with young people?': 'No*'**, (which convey the obvious meaning pleaded by the Claimant), because it they are not even in line with the process to be followed by any employer's capability procedure.

165. D3, also stated in the Publication complained of, (her SOSR presentation/report), that she and D1 were not looking at the Claimant's conduct and/or attributing any blame to the Claimant and repeated the statement several times. In light of this and given the fact that the Defendants' made it clear during the SOSR hearings that they did not feel sufficiently strongly about the Claimant's alleged behaviour/conduct to either speak to the her about it at the relevant times

or report her, the Defendants' alternative pleaded meanings cannot properly bear the words complained of.

166. It is clear that the Defendants' alternative pleaded meanings contradict their own abuse of process argument. In any event, the Defendants' alternative meanings are absurd formulations, since the burden on any Defendant seeking to prove justification is to establish the charge on a balance of probabilities. How is possible to understand the burden of proving that '*the behaviour of the Claimant was such*?' The concept of proving on a balance of probabilities that someone's behaviour '*was such*' is simply ludicrous. In the alternative meanings, there is an absence of a description of the alleged behaviour which the Claimant is supposed to have engaged in. The meanings say nothing about her character and are incapable of lowering her in the estimation in the mind of a right-thinking person. The Defendants' pleaded meanings say nothing about what it is that the Claimant allegedly engaged in that right-thinking members of society would not condone.

167. In addition, nobody could reasonably think the worse of the Claimant for acting '*in good faith*', which is what one of the Defendants' meanings accept that she may have been doing. The concept of good faith being taken to mean: having sincere and honest intentions and beliefs/ motive without any malice / compliance with and accordance with standards of honesty, trust, sincerity / an absence of intent to harm other individuals or parties. The Defendants' also accept the possibility that the Claimant was acting in good faith in their particulars of justification at paragraph 182.3i. This acceptance by the Defendants' is not in line with the nature of the serious allegations made against her/the words complained of, and the Defendants' Tribunal pleadings, (which they rely on in support of their plea of justification) and which assert that the Claimant *did not* act in good faith.

168. Nobody could reasonably think the worse of the Claimant for acting 'in good faith' and in circumstances, where the Defendants' had stated that the Claimant's alleged conduct/behaviour did not warrant any complaints being made and indeed, no formal complaints had been made about the Claimant, she had received no formal warnings and the words complained of at paragraphs 20.1 – 20.2q, 20.4 - 20.5b, 20.7 – 20.7l and 21.1- 21.3l of the Claimant's re-amended PoC (and the alleged effects on the Defendants' had never even been brought to

the Claimant's attention before the SOSR hearing). How can a party be liable for alleged harm caused to others if that party acted in good faith?

169. The Defendants' alternative meanings accept the possibility that the Claimant's complaints/disclosures may have passed the 'good faith test' and therefore were not made for some other dominant improper motive/ undesirable purpose, (which is contrary to what the Defendants' assert in their particulars). The Claimant should have therefore been protected against reprisals for asserting in good faith her statutory rights, concerns regarding health and safety, the Defendants' failures to comply with legal obligations, criminal offences and the 'cover-up'/concealment of the aforementioned, rather than in the manner which she was treated. Accordingly, the alternative meanings are flawed.

170. The Defendants' are not permitted to plead justification and assert that a meaning is true in substance and in fact, without specifying any particular imputations, see ***Slim and Others v Daily Telegraph Ltd and Others*** [1968] 2 W.L.R. 599 [1968] 2 Q.B. 157169b – c. The Defendants' alternative meanings do not impute any moral fault or defect of personal character, lack of qualification, knowledge, skill, capacity, judgment or efficiency in the Claimant's conduct of her trade or business or professional activity, (which is what the Claimant's pleaded meanings and the Defendants' allegations/words complained of convey). Even if the Defendants' alternative meanings did say something about the Claimant and her character, and people might think the less of her, if that is what the words complained of did mean, (which is not admitted), these meanings *are not* the meaning of which the Claimant complains. The Claimant's complaint *is not* that D2 had recommended the Claimant's dismissal or that it was said that D1 was entitled to dismiss her. The gravamen of the allegations is set out in her pleaded meanings.

171. A substantial portion the words complained of were made during the investigation stage of the SOSR and cannot even be connected to the general charge advanced by the Defendants', as the words complained of were made *before* D3 recommended the Claimant's dismissal, when there was only allegedly 'cause for suspicion' that relationships had broken down, so the Defendants' pleaded general charge would be impermissible in this context, (in order to ensure a fair and unbiased SOSR investigation was conducted).

172. In addition to the above, D2's role was supposed to be that of a neutral adjudicator, (with D6 assisting him in this capacity), again rendering the Defendants' general charge impermissible. Further to this, D2, D4, D5 and D6 had not made any recommendation that the Claimant should be dismissed. The first publication complained of, (D1's SOSR bundle), also made no reference to and did not end with a cross reference to D1 general charge and/or D3's SOSR written presentation/report, (which D1/D3 ambushed the Claimant with on the first day of the SOSR hearing). The first publication complained of was not linked by references leading the reader forward from it to D3's written SOSR presentation/report. Therefore the distinct allegations/words complained of, cannot be said to be all connected by the alleged common sting pleaded by the Defendants'. The alleged sting of their pleaded general charge is also nowhere near as sharp as that of the very distinct and specific charges in the publications and the sting of the publications lay not in D3's recommendation of the Claimant's dismissal.

173. This above issue is addressed in ***Warren v Random House Group Ltd*** [2009] QB 600, in which Sir Anthony Clarke MR (as he then was) said this:

"102. The principle on which the judge struck out the Lucas-Box meaning and the particulars is that a claimant is entitled to confine his complaint to a published defamatory meaning, and that a defendant is not then entitled to enlarge the ambit of the contest by asserting and seeking to justify a separate and distinct meaning, in the sense that the defamatory imputation is different, of which the claimant does not complain and which is not embraced within a common sting of the publication complained of. An example of this would be if a publication asserts that the claimant is a thief, and the defendant seeks to assert and justify a quite separate meaning to the effect that the claimant is an adulterer. By contrast, provided it is not oppressive to do so, a defendant is entitled to justify a common sting derived from parts of a publication, taken as a whole, of which the claimant does not complain, in so far as they are relevant to the meaning of the words complained of and to the sting of the alleged libel. The claimant is not entitled to use a blue pencil on the words published of him so as to change their meaning and then prevent the defendant from justifying the words in their unexpurgated form. Whether a defamatory statement is separate and distinct is a question of fact and degree in each case. The action should concern itself with the essential issues necessary for a fair determination of the dispute between the parties..."

174. The fact that D3 recommended the Claimant's dismissal, (during the SOSR hearing) is not in itself defamatory. If merely recommending someone should be dismissed or stating that the employer is entitled to dismiss them was considered

defamatory, then every employee who is investigated by their employer, (with a view to possibly being dismissed), could sue an employer for defamation.

175. The true meaning the defamatory words complained of in the publications is essentially concerned with the specific allegations imputing a defect of personal character, actual guilt of the grave allegations (and her denials of them-dishonesty), incompetence, laziness, obstructiveness, unruliness and intimidation, and/or unfitness *for her office/job/post/purpose*', which was the serious theme of the publications. The words complained of are therefore incapable of bearing the alternative meanings pleaded by the Defendants' and their plea of justification fails. Even if the Defendants' pleaded alternative meanings had merit, (which is not admitted), only D3's SOSR presentation/report, made the recommendation that the Claimant should be dismissed and by D3's own admission, there was no case against the Claimant during the investigatory stage of the SOSR process. In which case proof of the Defendants' pleaded general charge will not justify the other publications and/or 'the whole''. Further to this, the defamatory sting is no where near as grave as that of the specific words complained of, therefore proof of its truth in relation to all the words complained of will also not justify the other publications and/or 'the whole', this rationale is in keeping with the comments of Laws LJ in ***Rothschild v Associated Newspapers Limited*** [2013] EWCA Civ 197 (at [2]).

176. The alternative meanings of the words complained of are too vague and lacking in clarity and coherence to convey a defamatory meaning and reasonably convey any imputation of actual guilt of the grave allegations, including dishonesty, (in relation to the words complained of), deficiencies with her personal character, incompetence and/or laziness and/or obstructiveness and/or unruliness and/or intimidation, and/or of unfitness to carry on her business in a proper and satisfactory manner. It is also not supported by the facts relied on by the Defendants', which is particularly highlighted in their particulars of justification at paragraph 182.3h of the Defence: '***The Claimant would not cooperate and was positively obstructive when Dr Williams attempted to ascertain whether the was disabled and, if so, to what extent such disability would affect her ability to perform the role in which she was employed***.'

177. The Defendants' fail to specify what behaviour they are referring to in the alternative meanings, this is contrary to ***Lucas Box v News Group Ltd*** [1986] 1

WLR 147, which states that the Claimant (and the court) should know unequivocally what the Defendant is seeking to justify. Distinct meanings are what should be pleaded. Given the fact that the meanings merely describe the effect of the Claimant's unspecified behaviour, there is nothing inherently defamatory in it, and so the Defendants' meanings are hopeless and not properly arguable. The words complained of are not capable of giving rise to the alternative meanings or any innuendos, implications or imputations defamatory of the Claimant.

178. In any event, in light of the aforementioned, there is no objective and corroborative evidence to suggest that any alleged behaviour displayed by the Claimant's adversely affected anyone in the team, particularly, the 'non-managers' in her team. Indeed D1/D3 did not even deem it necessary to even interview the other 7 keyworkers in the team as part of the investigation process.

179. The matters and facts relied on by the Claimant shows that the other keyworkers in the Claimant's team were raising the same concerns as she was and were supportive of her in raising those concerns. Reference to individuals who had not been interviewed and/or called to provide evidence during the SOSR process provides an obviously unsatisfactory evidential basis on which to invite a Court to conclude that the words complained of bear the alternative meanings relied on by them and to find facts or draw adverse inferences as to the alleged behaviour of the Claimant on those individuals.

180. D1 stated that the Claimant's alleged behaviour was not 'blameworthy'. That being said, the Defendants' alternative meaning, is not probative or capable of bearing the meanings of the words complained. The Claimant's behaviour cannot therefore be culpable, because by D3's own admission, she was not. This is also in line with the paragraph 7 of the Defendants Defence, (where no reference to behaviour is given as the reason for dismissal).

181. At paragraph 14.1 the Defendants' refuse to admit the Claimant's pleaded meanings. The Claimant has pleaded at paragraphs 20 and 21 of her re-amended PoC that she relies on the innuendos, imputations, their implied meanings and on their natural and ordinary meaning, including, but not limited to the following:

181.1. Libel by Valerie Gonsalves- 17 November 2011, (published on or around 13 February 2012): ***'She wouldn't meet face-to-face with any young person…..very poor work output'***: at [20.2l] of the Claimant's re-amended PoC;

181.2. Libel by Valerie Gonsalves- 17 November 2011, (published on or around 13 February 2012)- in response to Christine Grice's question: ***'You will see that regular face to face meetings are a feature. Did AV work co-operatively with you to follow this plan?': 'She frustrated my attempts'***: at [20.2p] of the Claimant's re-amended PoC;

181.3. Slander by Christine Grice- 22 March 2012- ***'Another key issue is can the Council comply with our statutory duties to Adele and to other employees, particularly given Adele's lack of co-operation in making reasonable adjustments'***: at [21.3b] of the Claimant's re-amended PoC;

The Claimant's Pleaded Meanings

182. At paragraph 20 and 21 the Claimant has pleaded that the words complained of are **'*meant understood to mean that the Claimant was 'obstructive' and/or 'intimidating' and/or 'dishonest' and/or 'incompetent' and/or 'lazy' and/or 'unruly***'. At paragraph 24 the Claimant has pleaded that the words complained of 'involved statements about the Claimant's personal character and professional reputation and that the statements meant and were intended to convey **'*that the Claimant had manifested particular deficiencies and was also not fit for her office/job/post/purpose***'. The Defendants' have not pleaded that this meaning is not capable of bearing the words complained of and there is there has been no plea of justification, qualified privilege or any other Defence in relation to it. In this meaning, the Claimant is merely indicating that the defamation resulted in her dismissal, the words '*hence her dismissal*' cannot form part of the meaning she has pleaded, as this was not a fact or matter before the Defendants' when the defamatory statements were made. The Claimant's claim form and PoC was issued after her dismissal, which is the only reason why there are references to it.

183. The dismissal was a by-product of the defamation. At paragraph 82 of the Claimant's re-amended PoC, she states that the damages for loss of reputation would be made even if they had not been accompanied by dismissal, (in the form of actionable defamation). The dismissal and the findings of D2 was not a fact or matter before the Defendants' when they made their defamatory statements and the dismissal letter does not form part of the publications complained of. References to the dismissal and the dismissal letter relate to the Claimant's

withdrawn claim for special damages, which is no longer a matter for the Court. The Claimant therefore also contends that the findings of D2 are not evidence upon which the Defendants' can rely in support of their Defence of justification.

184. The Claimant's pleaded meaning: '*that the Claimant had manifested particular deficiencies and was also not fit for her office/job/post/purpose*', essentially means that the words complained of imputed a defect of personal character and a lack of qualification and/or knowledge and/or skill and/or capacity and/or judgment and/or efficiency in the conduct of her trade/professional activity. Paragraphs 140 – 141, 167- 168 of the Defence are therefore incorrect and not admitted. The intention of the author is irrelevant. All that matters is the impression which the words give to listeners/readers.

185. The Claimant has also pleaded at paragraph 22 of her PoC that: *'The Claimant's case had been in opposition with the Defendants' allegations, therefore the imputation was that she was dishonest in relation to the allegations made against her….*'. The inferences, implied meanings, imputations and innuendo's of dishonesty connote a degree of moral failure on the part of the Claimant and that she lied in her denials of the Defendants' allegations, which the Claimant submitted in the form of both written and oral statements. The meaning conveyed by the publications was one of actual guilt of dishonesty, deficiencies with her personal character and unfitness for her office/job/post/purpose'.

186. The Claimant has pleaded that the facts giving rise to the inferences, implied meanings, imputations and innuendos are facts that were known to the listeners/readers. In taking into account the context, including the facts relied on by Claimant; the reasonable reader/listener could also understand this. It has long been held that it is defamatory of an individual to impute incompetence in their profession, see for example, what is said in Gatley at para 2.27, which cites ***Hackenschmidt v Odhams Press***, The Times, October 23, 24 1950.

187. The Claimant has pleaded that the third-parties receiving the publications had special/requisite knowledge of the facts required. The third party note-takers were present throughout the SOSR hearings and they were given copies of/access to, the publications, (as is admitted by the Defendants' in their Defence).

188. The Claimant contends that there is a mismatch between the alternative meanings pleaded by the Defendants' which relate to a general vague and incoherent charge not complained of and the dozens of very clear specific false and defamatory factual statements made by the Defendants', which she contends bear the meanings attributed to them. The alternative meanings relied on by the Defendants do not bear any defamatory 'stings' and it pales into insignificance beside the gravity of the words complained of and the dozens of very specific false allegations made by the Defendants' against the Claimant. The alternative meanings fall so far short in gravity of the specific false allegations that they cannot substantially justify the sting of the words complained of and the meanings are not probative of the Claimant's dozens of very specific complaints.

189. The factors to be considered in determining the meanings borne by the publications complained of are: (i) the governing principle was reasonableness; (ii) the hypothetical reasonable reader was not naive but he was not unduly suspicious and could read between the lines; (iii) over-elaborate analysis was best avoided; (iv) the intention of the publisher was irrelevant; (v) the article had to be read as a whole; (vi) the hypothetical reader was taken to be representative of those who would read the publication in question; (vii) limiting the range of permissible defamatory meanings, the court should rule out any meaning which could only emerge as the product of some strained or forced, or utterly unreasonable interpretation; (viii) it was not enough that the words might be understood in a defamatory sense, see ***Jeynes v News Magazines Ltd*** [2008] EWCA Civ 130.

190. The Claimant does not complain about D3's assertion that her employment with D1 is unsustainable, she is complaining of this statement in the specific context in which it was made. The words complained of in relation to this, at paragraph 20.3 of the Claimant's re-amended PoC: '***I also refute the following statement which you state I made: your employment from LBL is unsustainable***', clearly imputes the plainest allegation of dishonesty, (which is in line with the Claimant's pleaded meaning and not the Defendants'- as D3 denied having made the statement). The inference, implied meaning, imputation and the meaning conveyed was one of actual guilt of dishonesty in relation to her claim that D3 had made that statement, (on the day of her actual suspension from work, which was inappropriate for her to do).

191. The sting of the defamation the Claimant has pleaded is capable of the meanings that she has pleaded. The Defendants' alternative meanings do not specifically address the grave allegations made by the Defendants' against the Claimant. The Claimant relies on the comments made by Lord Devlin in his speech in ***Lewis v Daily Telegraph Ltd*** [1964] AC 234 at p 282 when he said:

"I do not mean that ingenuity should be expended in devising and setting out different shades of meaning. Distinct meanings are what should be pleaded; and a reasonable test of distinctness would be whether the justification would be substantially different. In the present case, for example, there could have been three different categories of justification – proof of the fact of an inquiry, proof of reasonable grounds for it, and proof of guilt."

192. The facts are not sufficient to allow the Defendants' to justify the defamatory meaning the words complained of are capable of bearing. There can be no rational conclusion other than that the claim of justification cannot succeed. The Claimant's pleaded meanings and the Defendants' pleaded meanings do not share a common sting, (even in their context) and, accordingly, the Defendants' pleaded meanings should not be allowed to stand on the authority of ***Polly Peck (Holdings) Plc v Trelford*** [1986] Q.B. 1000. There is not a sufficient communality of features between the Claimant's and the Defendants' meanings. In fact the Defendants' pleaded meanings have no feature at all in the sense that they fail to set out what behaviour the Claimant is specifically accused of engaging in. To say '*the Claimant's behaviour was such…*' and '*The Claimant's behaviour (whether it was in good or bad faith)…'* does not impute anything at all, much less something defamatory. The Defendants' are trying to squeeze out meanings which simply aren't there.

193. As the Defendants' have failed to identify what the specific behaviour is in their alternative meaning, then accordingly, the alternative meaning makes no sense at all, it has nothing to do with the 'sting' of the specific words complained of, and therefore cannot be justified as self-standing allegations, as they are not probative of the Claimant's dozens of very specific complaints. If the Defendants' alternative meanings are allowed to stand, with specific reference to the words, 'the Claimants' behaviour was such…' and '*The Claimant's behaviour (whether it was in good or bad faith)…',* this would allow them free reign to apply these unspecified meanings to any facts and matters in support of their plea of justification, which do not meaningfully relate, in any way at all, to the words complained of. It is not acceptable or fair to expect the Claimant to guess what

type of alleged behaviour the Defendants' intend to attribute to her, rely on and justify.

194. An unspecified behaviour, cannot be defamatory and the fact that this is said to '*entitle an employer to conclude that the Claimant could not continue to be employed by it*' and/or '*(whether it was in good or bad faith) had an extremely damaging effect upon the Claimant' fellow employees, particularly her managers. The harm caused to her fellow employees, whether the Claimant intended it or not, was such that an employer could not permit her to continue to be employed,*' cannot change that. The Defendants' alternative meanings are therefore impermissible. As in all cases the Court has a duty to see that the Defendant, in particularising a plea of justification, does not act oppressively.

195. The alternative meanings do not impute anything tangible relating to a sector of the Claimant's reputation. The Defendants are required to inform the Claimant and the Court in their pleadings precisely and clearly what meaning they intended to justify, without circumlocution or obfuscation. At paragraph 149 of the Defence, the Defendants' have admitted that some of the words complained of are defamatory of the Claimant, (at 20.2 l, m and p and 21.3d, g, k and l of her re-amended PoC), yet the Defendants' alternative meanings do not identify what the Claimant was allegedly supposed to have done that was so reprehensible and warranted the action taken against her.

196. The Defendants' alternative meanings are ambiguous, and/or are not defamatory of Claimant, or are so mild by comparison to the allegations made against her by the Defendants', that proof of it cannot amount to substantial justification of the words complained of, and in any event that the general sting is not borne out by the facts at all and/or the words complained of are incapable of bearing the alternative meanings. The alternative meanings relied on by the Defendants' sets too low a threshold given the serious nature of the allegations made. It is obvious that the allegations made went to the core of the attributes of the Claimant's personality and professional reputation and abilities and entirely destroyed her reputation for integrity.

197. Since the principal defamatory meaning conveyed by the publications are of the Claimant's actual guilt of the grave allegations, (in relation to the words complained of), which were intended to mean that there were deficiencies with

her personal character and she was unfit for her office/job/post/purpose'- i.e. incompetence and/or lack of knowledge/skill/capacity/judgment/efficiency in the conduct the Claimant's trade/professional activity, and they involve sensitive and damaging allegations, allowing a defence of justification based on the Defendants' unspecified meaning to go forward is impermissible and unjust, see ***Lord Ashcroft v Foley*** [2011] EWHC 292 (QB), where Tugendhat J struck out defences of justification and commented:

'if there was a viable defence, it was in "everyone's interests" that it should see the light of day and be properly addressed on a "fair and open basis"; but the case should not be allowed to go forward on a "muddled" basis': [at 63].'

'While it was not for the court to dictate how a defence of justification should be pleaded, it was legitimate for it to "try and focus the parties on the real dispute between them", and to ensure that the defence was directed to a "coherent defamatory meaning" and that the claimant knew what s/he was supposed to have done': [at 28].

'This was particularly so in relation to the "sensitive, and potentially scandalous" allegations made; a case – whether tried by judge or jury – should not be conducted on the basis of "nods and winks" [at 52].

198. The meanings sought to be justified cannot be properly argued, because:

198.1. It is not an issue before the Court whether the Claimants dismissal was unfair and/or whether it was 'justified' and/or whether D1 was entitled or not to dismiss her. The Claimant withdrew her claim for special damages in relation to the loss of her employment/loss of earnings and cannot recover damages in respect of the Defendants' pleaded meanings, therefore no plea of justification in respect of it can be relevant, (also see paragraph 157 - 158 of this reply). The Claimant filed Application Notices dated 16 (and on 17 July 2013 with attached 4 exhibits). The Claimant also filed a witness statement dated 16 July 2013 and 23 exhibits in support of her applications and the Court issued Orders authorizing the applications on 17 and 31 July 2013;

198.2. Accusations of outright guilt were made against the Claimant- the meanings sought to be justified are insufficient to convey the gravity of allegations. The allegations against the Claimant's are so grave and assert her guilt; accordingly any particulars of justification advanced in relation to lesser defamatory meanings should be struck out.

199. D1, D2, D3 and D6 asserted that an investigation report was not produced by D3. The Claimant asserted that D3 had stated that she had produced one. The imputation was that the Claimant was dishonest in relation to her assertion that D3 had stated that she had produced one. The meaning conveyed by them was one of actual guilt of dishonesty. The Defendants' made dozens of false statements about the Claimant which was intended to mean that she was dishonest in relation to her denials of the allegations made against her and her SOSR case/defence. It is reasonable to impute the Claimant's pleaded meanings from the context of the entire publications and the tone. The meanings pleaded by the Claimant are meanings within the range of meanings which reasonable readers/listeners could understand the words complained of to bear, in the context of the entire publications.

200. The publications complained of, (including her covert recordings and transcripts) contain the Claimant's denials of the words complained of, which she expressed in firm and convincing terms and the words complained of, in context, is couched in terms which clearly cause the ordinary reasonable reader/listener to conclude that the Claimant's denials are untrue. The words complained of cast doubt on the truth of the Claimant's case that she offered to the Defendants'.

201. The principles governing the approach of the Court to the determination on meaning are well-known, see ***Gillick v Brook Advisory Services*** [2001] EWCA Civ 1263 at [7], where Lord Phillips MR approved the formulation of the principles by Eady J:

'The court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naive or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task."

202. The Claimant also relies on Lord Devlin's comments in ***Lewis v Daily Telegraph Ltd*** [1964] AC234 at 277:

'My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of

construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.'

203. A ruling on meaning must be 'an exercise in generosity and not parsimony', see ***Berezovsky v Forbes*** [2001] EWCA Civ 1251 (2001) EMLR 45).The words complained of are capable of being understood in the meaning attributed to them. The question is still whether the pleaded meaning is one which a reasonable jury could find the article to bear, see ***Alexander v Arts Council of Wales*** [2001] E.M.L.R.713. A judge should be wary of an overly narrow delineation of the range of meanings, see ***Jones v Skelton*** [1963] 1 W.L.R.1362 at 1377 C to D. The court should ascertain the meaning most damaging to the plaintiff that could be put on the words by a reasonable reader, see ***Lewis v Daily Telegraph Ltd*** [1964] A.C. 234, 259.

204. The ordinary, reasonable and sensible person would and did think less of the Claimant as a result of what was published and the words adversely reflected on the professional reputation of the Claimant in the eyes of reasonable people. The determination of meaning does not depend solely on the documents, but on an evaluation of those words in their context. The words complained of contain strongly worded criticisms of the Claimant, (which are factual in nature), involving repetition of the allegations and assertions that those allegations were true. They were in fact false and therefore unsupportable. The words complained of affected the Claimant's livelihood. In such a case the imputations, implications, innuendoes and damage is therefore presumed and need not be proved.

205. The Defendants' continued efforts to defend the defamation action and their continued failure to address the Claimant's the covert recordings and transcripts, which support her defamation claim and plea of malice and reveals their continuing reckless disregard for the truth and belies the moralising in its Defence. The Claimant also relies on this as evidence of aggravated damage.

206. It is impossible to know how far the defamatory statements have spread and so long as withdrawal is not communicated to all those to whom it has reached it may continue to spread. D1's former head of service and Consultant (Nick French), described the working environment as a pit of malicious rumours that is in serious jeopardy of ruining individuals' personal and family lives and career prospects.

207. The Claimant wrote to D1's legal department seeking a retraction/apology/and offer of amends. Far from retracting the malicious, false and defamatory statements, or in any way being conciliatory, the Defendants' proceeded to smear the Claimant's reputation further. The Defendants' refusal to cease making and retract the allegations complained of, and the sustained and aggressive assertion of the plea of justification, in the face of the damning evidence, amply justifies the Claimant's decision to bring these proceedings and should increase the damages recoverable by a substantial amount. These proceedings are not simply to compensate the Claimant for harm already done. It is to prevent harm being done in the future if the falsity of the allegations is not publicly established.

INJUNCTION, HUMAN RIGHTS & REAL AND SUBSTANTIAL TORT

208. Paragraph 213 of the Defence, in which the Defendants' deny that the Claimant is entitled to an injunction, is denied. The words complained of were minuted / documented by third-parties and the Defendants' and this factor is highly significant because documents are stored electronically where they may very easily be searched and distributed onwards. The Claimant's reputation continues to be destroyed by the fact that the Defendants' have failed to retract the unfounded and defamatory statements and allegations. The loss of the opportunity to obtain a permanent injunction and/or an apology and/or a retraction at trial will have severe consequences for the Claimant. It is impossible to know how far the defamatory statements have spread and so long as withdrawal is not communicated to all those to whom it has reached it may continue to spread, see , Bingham LJ's comment in ***Slipper v British Broadcasting Corporation*** [1991] 1 QB 283, [1990] 3 WLR 967, [at 42].

209. D1's pre-action protocol response *does not* assert that the claimant has a blemished reputation. The proper purpose of the tort of defamation claim is to protect the Claimant's reputation. The fact that there are a small number of recipients is not, of itself, sufficient to render a case an abuse where the allegations are serious see for example, ***Underhill v Corser*** ([2010] EWHC 1195 at para.143) rejecting a Jameel abuse of process argument in relation to publication to 13 people of an allegation that the Claimant had dishonestly misappropriated funds and ***Sanders v Percy*** ([2009] EWHC 1870 (QB)) refusing to strike out on Jameel grounds slander published to one person alleging benefit fraud.

210. Even if the Defendants' abuse point had merit, (which is not admitted), the Claimant's claim involves serious damaging allegations of dishonesty, therefore the Court must therefore be reluctant to exercise the abuse jurisdiction, since it would deprive the Claimant of the opportunity to vindicate her reputation see for example the decision of Mrs Justice Sharp in ***Stelios Haji-Ioannou v Mark Dixon*** [2009] EWHC 178 QB [at 43]. As Tugendhat J said in ***Clarke v Bain*** [2008] EWHC 2636 (QB), defamation actions are not primarily about recovering money damages, but about vindication of a claimant's reputation. A claimant who recovers £30,000 in damages may well out of pocket after paying his irrecoverable costs, but that does not mean that the litigation is not worthwhile.

211. Details of the Claimant's dismissal and the existence of the covert recordings and transcripts are already in the public domain. The issue of the Claimant's dismissal and covert recordings and transcripts has received massive publicity throughout the jurisdiction. In particular, the issue of the admissibility of the Claimant's covert recordings and transcripts in relation to her previous tribunal claims was adjudicated by the Employment Appeal Tribunal in ***Vaughan v London Borough of Lewisham & Ors*** [2013] UKEAT/0534/12/SM, which recommended hat the Tribunal judge, (who had refused to allow the Claimant to adduce them as evidence should reconsider her decision). It has also been referred to in ***Vaughan v London Borough of Lewisham & Ors*** [2013] EWHC 795 (QB) and been widely reported on online by law firms and legal resources. For theses reasons and the public interest features of the case, it is also likely to receive extensive media coverage both locally and nationally.

212. It is alleged that the Defendants' are thereby also, in law, responsible for the foreseeable re-publications of the words complained of, (most particularly those that would be repeated in Court and may feature in the media). This is based on the principles set out in ***Speight v Gosnay*** (1891) 60 L.J. QB. 231, C.A. (recently considered in ***McManus v. Beckham*** [2002] E.WC.A. Civ 939). On the basis of that argument, the Claimant prays in aid, for the purposes of damages, any devastating consequences caused to her by widespread publication of the words complained of. The Defendants' actions have so 'stigmatised' the Claimant that she will find it difficult to find alternative employment. Much is at stake and she has real and pressing fears that she will probably never be able to work again. The accusations/defamatory statements have seriously destroyed the Claimant's prospects of obtaining employment in the future. In such a case, the overriding objective requires the Court to be very slow to find that the Claimant's claim has no real and substantial tort.

213. There is also a claim pursuant to the Human Rights Act, and when considered alongside the fact that the claim involves a vast number of serious defamatory statements, it is therefore proportionate for the Claimant to be permitted to proceed with this claim. Any refusal would reduce the Claimant's access to justice in such a way and an extent that the very essence of her right to a fair hearing and the protection and vindication of her reputation will have been denied. This offends the principle of proportionality. The Court must protect the Claimant's right to have her case tried. It would be wrong to shut the Claimant out from advancing a case founded on the Human Rights Act 1998- which the Defendants' have also failed to address and which therefore constitutes a breach of CPR 16.5 and PD16, paragraph10.2.

214. The Supreme Court accepted that the right to protection of reputation is a right which, as an element of private life, falls within the scope of Article 8. The Supreme Court accepted that an attack on reputation must attain a certain level of gravity and must impact on a person's relationship with other people. This is consistent with the approach taken in Strasbourg, see ***A v Norway*** Judgment of 9 April 2009.The Claimant cannot recover from her illness or find employment until she has vindicated herself. In the Claimant's view, the claim is therefore 'worth the candle'. The European Convention on Human Rights states that where a state fails to provide a remedy to an aggrieved individual by way of an action for defamation the state may be responsible under Article 8(1).

DEFENDANTS' PLEADINGS: THE CLAIMANT

215. As to the particulars beginning at paragraph four of the Defence, (the Claimant adopts the Defendants' headings). The Claimant will rely on the full statements from which the passages quoted are extracted, (and further statements made by the Claimant in relation to them), for their meaning and context, and the Claimant pleads as follows:

215.1. At **4**, the Claimant's employment transferred to D1 1 April 2011;

215.2. At **5**, this sentence is admitted;

215.3. At **6**, as to this paragraph, it is only admitted that the Claimant was informed that an investigation took place, it is not admitted that the alleged investigation was a proper or a contractual one, or one commenced for a proper motive;

215.4. At **8**, as to this paragraph, the first sentence is admitted and the second is only admitted insofar as to say the Claimant was dismissed with effect from 13 April 2012. As to the third sentence, (as the Claimant did not attend) it is only admitted that she was informed that a hearing took place to consider her grievances and at paragraph 57 of her re-amended PoC, the Claimant has pleaded that she was mislead by the D1 and D3 about the reason for her referral to Dr Williams. The fourth sentence is admitted;

DEFENDANTS' PLEADINGS: THE CLAIMANT'S DISABILITY

215.5. At **10 – 12.2**, as to these paragraphs, in support of the Claimant's opposition to the Defendants' assertions, firstly, the Claimant has already made it clear that this action is not about disability-discrimination and/or unfair dismissal, however, for the purposes of responding to the particulars of the Defence, it is contented that anti-discrimination is a fundamental principle of contemporary liberal society. Its rationale lies in respect for human dignity. Protection of human dignity also underpins defamation law. These shared underpinnings suggest that it would be incongruous for right-thinking members of society to conclude that being characterised as belonging to a minority group and/or suspected of belonging to a minority group and asserting in good faith your statutory rights as a member of this group, would lower their opinion of a person and/or that right-thinking members of society would not condone this. The Defendants' particulars in these paragraphs, (and also at paragraphs 182.3 – 183), attempt to justify their alternative

meaning by asserting that the Claimant, (a person with a protected characteristic- disability), is objectionable and that her actions in relation to her disability meant that D1 was entitled to dismiss her.

215.6. At **11**, as to this paragraph, D1 did admit in its OH referral to Dr Giagounidis , dated 16 May 2011 that the Claimant was disabled, but then sought to deny it thereafter on numerous occasions;

DEFENDANTS' PLEADINGS: '**THE DEFENDANTS'**

215.7. At **13 – 15**, these sentences are admitted;

215.8. At **16**, as to this paragraph, it is only admitted that D3 was the Head of Access and Support and that she made a presentation and recommended that the Claimant be dismissed.

215.9. At **17 – 20**, these sentences are admitted;

DEFENDANTS' PLEADINGS: 'BACKGROUND'

215.10. At **21 – 22**, these sentences are admitted. However, the service did much more than provide career advice to young people and adults and the Claimant was specifically involved in the other aspects of its work, involving intensive support to young people and young adults;

215.11. At **23 – 26 & 28 – 31**, these matters are irrelevant and constitute an abuse of process and the Claimant accordingly asks the Court to strike them out of the defence;

215.12. At **32**, as to this paragraph, the first sentence is admitted. With regards to the second and third sentences, the Claimant is uncertain of the true reason why D1 terminated it contract with CEL/Babcock and has no knowledge of the extent of its agreement made with CEL/Babcock. As to the last sentence it is only admitted that the Claimant was one of the Babcock employees who were transferred;

215.13. At **33 – 34**, these sentences are admitted;

215.14. At **35**, this paragraph is admitted, insofar of the Claimant's knowledge at the time before her suspension. In relation to the second sentence, the Claimant does not know what the hierarchical structure was after her suspension;

215.15. At **36**, as to this paragraph, the Claimant's position was set out in her e-mail to D5 dated 8 April 2011;

215.16. At **38**, as to this paragraph, the Claimant position was set out in the her e-mail to D5 dated 17 April 2011 and she clarified this during her investigation interviews with D3, in her SOSR witness statement and evidence submitted by her for the SOSR hearing and the oral evidence she gave during the course of the SOSR hearing;

215.17. At **40**, as to this paragraph, the Claimant's position was set out in the e-mail correspondence exchanged regarding this issue and during her meeting with Chris Threlfall on 26 April 2011. This was also clarified by the Claimant in her Tribunal pleadings, during her investigation interviews with D3, in her SOSR witness statement and evidence submitted by her for the SOSR hearing and the oral evidence she gave during the course of the SOSR hearing;

215.18. At **41**, see the Claimant's answer to paragraph 40;

215.19. At **42**, this sentence is admitted. However, the Claimant was never line managed by Nick French;

215.20. At **43 – 47.2**, as to these paragraphs, the Claimant's position was set out in the e-mail correspondence, letters and evidence exchanged regarding these issues and during her meeting with Chris Threlfall on 26 April 2011. This position was also clarified by the Claimant during her investigation interviews with D3, in her SOSR witness statement and evidence submitted by her for the SOSR hearing and the oral evidence she gave during the course of the SOSR hearing;

215.21. At **48**, as to this paragraph it is only admitted that the Claimant e-mailed Chris Threlfall (and Rita Lee), regarding the OH referral and that this evidenced by the series of e-mails exchanged between 28 April 2011 and 18 May 2011, regarding the first OH referral;

215.22. At **49 – 50**, as to these paragraphs it is only admitted that the Claimant exchanged correspondence with Kath Nicholson and that this correspondence is documented, along with the supporting evidence (2 documents totalling 13 pages), including the minutes and notes to the Claimant's meeting with Chris Threlfall, that the Claimant attached to her e-mail to Kath Nicholson regarding this matter on 6 May 2011 at 8.37;

215.23. At **51**, as to this paragraph it is only admitted that the Claimant met with D5 and that the Claimant's position was set out in her meeting with Chris Threlfall;

215.24. At **52**, as to this paragraph it is only admitted that the Claimant met with Dr Giagoundinis and that the matters relating to this are set out in D1's

OH referral, Dr Giagoundinis's subsequent OH report and OH notes and what she advised the Defendants' during the SOSR process;

215.25. At **53**, as to this paragraph it is only admitted that the Claimant exchanged e-mail correspondence with D4, that she spoke to her on the telephone, and that the Claimant's position was set out in the documentary/e-mail evidence relating to this on this date, in her telephone call with D4 on this date and what the Claimant advised the Defendants' during the SOSR process in relation to this event;

215.26. At **54**, as to this paragraph, it is only admitted that the Claimant was informed by her colleague Cathy Robinson that the Claimant's personal, sensitive and confidential information had been copied into Cathy Robinson's OH referral and that the Claimant e-mailed D4 regarding this matter and that the Claimant's position is was set out in the e-mail correspondence regarding this matter and during the Claimant's meeting with D3 and D4 on 30 June 2011 and her SOSR witness statement and attached evidence;

215.27. At **55**, as to this paragraph, the Claimant's position in relation to this paragraph was set out in the e-mail correspondence exchanged regarding these issues, (including the e-mail dated 7 June 2011);

215.28. At **57**, as to this paragraph, it is only the first 2 sentences that are admitted. In the fifth sentence that Defendant fails to state what e-mail it is referring to (failing to give the details of the date and time), therefore the Claimant is unable to meaningfully engage with this allegation;

215.29. At **58**, it is only admitted that the Claimant was signed off sick from work by her GP with 'stress at work', that she attempted to contact D4 via telephone regarding the issue and that she sent the sick note to the D1 and D4;

215.30. At **59 – 63**, as to these paragraphs, the Claimant's position in relation to these paragraphs was set out in the e-mail correspondence exchanged regarding these issues from 8 August 2011. In relation to the sixth, seventh and last sentences of paragraph 59 of the Defence, it actually supports the Claimant's position in relation to the words complained of, at 20.1 of the Claimant re-amended PoC: ('On 10 August 2011 at 10.18: Elaine Smith's e-mail, stating: '***I did not instruct her not to work from home***');

215.31. At **66**, as to this sentence it is only admitted that D3 was the investigation officer. D3 had informed the Claimant during the first day of the SOSR hearing that she took the decision to take on the role of the investigation officer herself. D3 was not therefore appointed;

215.32. At **67**, as to this paragraph, it is only admitted that D3 wrote to the Claimant on 4 October 2011. The letter did not inform the Claimant that she would be interviewed by Cynthia Maxwell, it stated that she would attend as a note-taker;

215.33. At **68**, as to this paragraph, (which is not admitted), the first sentence of the paragraph actually contradicts paragraphs 7 & 65 - 65.2 of the Defence;

215.34. At **69**, as to this paragraph, the full position in relation to this paragraph is set out in the Claimant's communication to D3 on 10 October 2011;

215.35. At **70**, as to this paragraph, it is only admitted that the Claimant was interviewed on 25 October, 1 and 4 November 2011. All the interviews were unreasonably long, hence the need for the interviews to reconvene at a later date, on both occasions;

215.36. At **72**, see the Claimant's response to paragraph 8 of the Defence;

215.37. At **74**, as to this paragraph, it is only admitted that the Claimant issued Tribunal proceedings against Marina Waters and that her position in relation to the issue of the D1 and D3 requirement that she attend an OH appointment in Kent and the Claimant's objection to this was set out in the e-mail correspondence, letters and documentary evidence regarding this matter, (including the Claimant's forward e-mail to D3 on 25 November 2011 at 13.46);

215.38. At **75 – 77.5**, as to these paragraphs, it is only admitted that the Claimant met with Dr Williams on 29 November 201, that she was accompanied to this consultation by her friend and that her position in relation to these paragraphs was set out in the e-mail correspondence, (including that of her friend Tanya Davis), the letters and documentary evidence exchanged between the Claimant from 26 November 2011, Dr Williams, Barry Quirk and the D1 and D3 regarding this matter and her oral and written statements made during the SOSR hearing stage, (along with her supporting evidence that she submitted to D1 in relation to this);

215.39. At **78**, as to this paragraph, only the first sentence is admitted;

215.40. At **79**, as to this paragraph, it is only admitted that the Claimant e-mailed Barry Quirk and Frankie Sulke on 17 February 2012 at 05.40 and that the Claimant's position in relation to this paragraph was set out in that e-mail and the 2 PDF documents which the Claimant also attached to that e-mail

entitled '*Extract of Valerie Gonsalves witness statement'* and '*CR documentation'*- which was Cathy Robinson's complaint about D5;

215.41. At **80**, this sentence is admitted;

215.42. At **81**, as to this paragraph, only the first three sentences are admitted;

215.43. At **82**, as to this paragraph, it is only admitted that an independent note-taker attended on each day of the hearing. In support of the Claimant's opposition to the Defendants' assertion that the use of the third-party note-taker was in pursuit of a legitimate aim, the Claimant set out her position at 28, 32, 45, 45.1, 45.2, 45.3, 45.4, 46 , 47- 48, 54 – 56, 62b, 63a-c, 67- 68, 71- 75, 77 – 78 of her re-amended PoC, (the details of the contravention of the Data Protection Act and the breach of confidentiality by D1);

215.44. As **86**, as to this paragraph, it is only admitted that D3 made statements in her written and oral presentation. The full content of what was presented orally by D3 is set out in the publications complained of, (including the Claimant's covert recordings and transcript of the SOSR hearing on 27 February 2011). What was presented in libel form is set out in the copy of the presentation which the Claimant received a copy of *after* D3 finished reading out her presentation;

215.45. At **87**, as to this paragraph, it is only admitted that the Claimant received a copy of the presentation once D3 had finished reading out her statement. D2, D6 and Susan Funnell were all permitted to refer to the copies of the presentation whilst D3 was reading out her presentation;

215.46. At **89** as to this paragraph, it is only admitted that the Claimant e-mailed Frankie Sulke and Kath Nicholson on 28 February 2012 at 4.46 and 7.44 and that her position in relation to this paragraph was set out in those two e-mails and 4 attached PDF documents entitled, '*CG's presentation Investigation report*', '*AV correspondence with Dr Williams*', '*HR correspondence with AV re full medical records and 'LBL's admission re AV's disability*';

215.47. At **90**, this sentence is admitted;

215.48. At **91**, as to this paragraph, it is only admitted that the only reasonable adjustment made was to allow the Claimant to be accompanied by her friend. The last sentence of this paragraph of the Defence contradicts paragraph 11 of the Defence;

215.49. At **92**, this paragraph is admitted;

215.50. At **93**, as to this paragraph, only the first sentence is admitted;

215.51. At **94, t**his sentence is admitted;

215.52. At **96 – 99**, as to these paragraphs, it is only admitted that the Claimant issued Tribunal proceedings against Babcock Education and Skills Limited and a number of individual respondents' in 2010 for race and disability discrimination and PIDA detriment and that the hearing took place in January/February 2012 and that these matters do not form part of the Claimant's complaint. D1 was not added, it was substituted for CEL. It is also admitted that her previous Tribunal claims were dismissed on 2 March 2012 and that she was ordered to pay substantial costs. It is also only admitted that the Claimant issued Tribunal proceedings against Babcock Education and Skills Limited, CEL, D1 and Marina Waters for disability discrimination in August 2011;

215.53. At **100 – 103.2**, as to these paragraphs, it is only admitted that the Claimant issued Tribunal proceedings against Barry Quirk, Frankie Sulke, D1- D6, for disability discrimination, PIDA detriment and unfair dismissal between November 2011 and May 2012;

215.54. At **104 – 113**, as to these paragraphs, it is only admitted that there have been a number of interim applications, (which are usual in these types of proceedings) and that these applications are fully documented (and will be relied on by the Claimant) and that upon 'staying' the Defamation action in March 2013, [at paragraph 16] of Mrs Justice Sharp judgment, she made reference to the Tribunal claims as constituting an 'employment dispute', and she stated the following: ***'….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***.' By the Defendants' own admission at this stage, they had not listened to, or read the covert recordings and transcripts. It is therefore not feasible that a significant portion of the alleged £350,000 spent by D1 concerned its defence of the Claimants' allegations of false and fabricated evidence;

215.55. At **116**, as to these paragraphs, only the first sentence is admitted. It is denied that the D1 is entitled to any costs in relation to her withdrawn Tribunal claims. It is admitted that the Claimant has made an offer of payment towards the cost order made by Mrs Justice Sharp in relation to her failed application for an interim injunction against the Defendants' (as is acknowledged at paragraph 111 of the Defence);

215.56. At **117**, this sentence is admitted;

DEFENDANTS' PLEADINGS: 'PUBLICATION'

215.57. At **120**, as to this paragraph, the Claimant's position is set out clearly in the Claimant's re-amended PoC, at paragraphs 19d, 20.1 – 20.2, 20.3, 20.4, 20.5 & 20.7. One of the publications complained of is D3's SOSR presentation/report, which had not been included when the SOSR hearing bundle were collated and published, but was added *after* having been already published and distributed to the Claimant and third-parties, (after the first day of D1's internal hearing had been completed). Therefore the Defendants assertion that the Claimant's complaints of libel are limited to D1's 358 page hearing bundle, (which does not list the SOSR presentation), is clearly incorrect;

215.58. At **122**, as to this paragraph the Claimant's position is that the Defendants' also fail to state who it disclosed the publication to, but admit that the publication was sent to Unison at paragraphs 125 and 131 of its Defence. The Claimant contends that the Defendants are therefore aware of the identity(s) of the recipient(s), and if not, it is reasonable to assume that the identity of the recipient(s) could be easily ascertained by them and that it is also reasonable to assume that these recipient(s) would have also read the SOSR bundle and that the recipient(s) would include Jackie Lynham and Delroy Bent, (who previously accompanied the Claimant to the SOSR investigations on 25 October and 1 and 4 November 2011 and who worked at the Lewisham Branch of Unison) and/or any other Unison representatives who worked in the Lewisham Unison office, where D1 sent the publication to. The Claimant's case is also that the SOSR presentation was also published to the third-party note-takers, not just the SOSR hearing bundle;

215.59. At **125 – 129**, as to these paragraphs, the Claimant's position is set out in the e-mail correspondence, letters and related documentary evidence, exchanged between the Claimant, Barry Quirk, Frankie Sulke, Helen Reynolds, Jackie Lynham, Rita Lee, Carol Lewis and D2 and D3, from 20 December 2011, regarding these matters. In opposition to these paragraphs the Claimant's position is that she asked that the SOSR bundle be sent to Unison *before* she was aware of the contents it. The Claimant did not even receive a copy of the SOSR bundle until the evening of 13 February 2012, (after D1's offices were closed) and Unison confirmed that it had received the bundle by 11am on 14 February 2012. Clearly, the Claimant had requested that the SOSR bundle be sent to Unsion *before* she had received it, and was

aware of the full contents of the 358 page bundle, (which took her a long time to digest). The Claimant did not lodge her complaint regarding fabrication of evidence until 17 February 2012. The Claimant's request for the SOSR bundle to be sent to Unison had clearly been made before she received the bundle and there is no evidence which can contradict this fact.

215.60. At **130**, as to this paragraph, (which is not admitted), the Defendants' have admitted in paragraphs 125 and 131 of the Defence that the publications were disclosed to Unison, yet they deny that the publications were read. The Claimant had requested that Unison refer her to their legal representatives regarding her legal claims. Unison would have therefore read the publications, as this information was requested by it and it would be the evidence that would be forwarded by Unison to their solicitors as part of the referral relating to the Claimant's request for legal assistance and assessing the appropriateness of the referral.

215.61. At **123, 132 – 133 & 163**, as to these paragraphs, the Defendants' have admitted that the publications were made available to the third-party notes-takers, both during the hearing and after, (allegedly to assist them in typing up their record of what had been said at the hearing- which is not admitted by the Claimant, as she contends that the disclosure to these parties was not in pursuit of a legitimate aim), and that the D1 and D3 is responsible for the publications, yet it unreasonably denies at paragraphs 133 and 164 of the Defence that the third-parties read any of the words complained of. However, in paragraph 164 the Defendants' admit that Susan Funnel read the SOSR presentation, (which contradicts paragraph 133 of the Defence). In support of the Claimant's opposition to the denial by the Defendants' she relies on ***Dee v Telegraph Media Group*** [2010] EWHC 924 (QB), where the Judge said at [27] to [30]

'27. When one is considering a single article the ordinary reasonable reader is taken to read the whole article before reaching a conclusion on meaning, even though, as the courts have readily recognised, many readers will not in fact have read the whole article. So too, where one article is spread over a number of pages, presumably for space or other editorial reasons, the ordinary reasonable reader is to be taken to have turned over the pages and found and read what he or she is directed to, on the continuation pages.'

215.62. At **134 – 135, 137 – 138, 163, 169, 171, 172 & 174**, as to these paragraphs the Defendants' have admitted that the words complained of in paragraphs 21.1 – 21.1m of the Claimant's re-amended PoC were spoken

and heard by third-party notes-takers and they admit that the Defendants' identified by the Claimant as having uttered the words complained of (where proven), is responsible for the slanders complained of and that D1 is also responsible for these slanders. The Claimant contends that all the words complained of were spoken by the Defendants' and heard by the third-party note-takers;

215.63. At **136**, this sentence is admitted;

215.64. At **175**, as to this paragraph, the Defendants unreasonably deny that the words complained of in paragraphs 21.2 – 21.2y of the Claimant's re-amended PoC were spoken (despite evidence of this having been disclosed to them by the Claimant in the form of covert recordings and transcripts), see paragraphs 11.1f, 11.1h, 20.3, 20.4, 20.4a, 21.2a-y, 23, 26, 45.1, 45.5a – ee, 46 and 64 – 70 of her re-amended PoC). The Defendants' state that if the words complained of are proven to have been spoken, that it admits that Ms Heyford heard them. The Claimant contends that all the words complained of were spoken by the Defendants' and heard by the third-party note-takers;

215.65. At **179**, the Defendants' unreasonably deny that the words complained of in paragraphs 21.3 – 21.3l of the Claimant's re-amended PoC, were spoken. The Defendants state that if it is proven that the words were spoken, that it admits that the words complained of in paragraphs 21.3d, g, k and l, did defame her and that Ms Heyford heard them. The Claimant contends that all the words complained of were spoken by the Defendants' and heard by the third-party note-takers.

215.66. In support of her opposition to above paragraphs of the Defence, (and her plea of malice and aggravated damages), the Claimant relies on all the facts and matters set out in this reply and her re-amended PoC.

PARTICULARS OF FACT SHOWING MALICE

216. At paragraph 118 of the Defence, the Defendants' deliberately and incorrectly assert that her Particulars of Malice are only set out in paragraph 11.1a- o of the Claimant's PoC. Some of the other facts and matters relied on by the Claimant in support her allegation of malice against the Defendants' are set in paragraph 23 of her re-amended PoC. The Defendants' deliberately fail altogether to address the Particulars of Malice in her re-amended PoC at paragraphs 33 – 70; this is a

breach of CPR 16.5 and PD16 para, 10.2. In any event the Claimant is entitled to plead further Particulars in support of her plea of malice in this reply to the Defence.

217. The malice relied on is the Defendant's state of mind and the covert recordings and transcripts which support this and which disprove the words complained of. Following ***Horricks v Lowe*** [1975] AC 135 [at 151], it has become trite law that malice defeats qualified privilege in two situations: a) Where the defendant did not believe that what he said was true or was indifferent to the truth; and b) Where the defendant's dominant motive in publishing was improper (in the sense of not being related to the duty or interest which founds the existence of the privilege. Knowledge that what is said is false is generally conclusive evidence of malice. It follows that if the Defendant's did not genuinely hold the alleged views expressed- see ***Merivale v Carson*** [1887], 20 QB 275 [A1.280 - 281], or made the statements knowing that they were untrue- see ***Fountain v Boodle*** [1842] 3 QB 5, then the Claimant can rely on this as evidence of malice. This will vitiate any defence relied on by the Defendant's.

218. It can be inferred from the number and pattern of the false claims/allegations that the Defendant's had known them to be untrue. In these circumstances, the Defendant's acted maliciously, and their publications do not attract qualified privilege. The Defendant's are, accordingly liable to the Claimant; ***Horrocks v Lowe*** [1974] 1 All ER 662, ***Reynolds v Times Newspapers Ltd*** [1999] 4 All ER 609 apply.

219. The Claimant was never specifically accused by the Defendant's of covertly recording, nor was she suspended, investigated or dismissed on the suspicion or proof that she was. The fact that the Claimant subsequently revealed that she was covertly recording, (which was not precluded by her terms and conditions/contract of employment) does not constitute evidence that she had a dishonest reputation or that she was generally dishonest. To covertly record conversations is not reprehensible if there is proper justification for it, as is the case here.

220. The Claimants' contends that she was forced to secretly record conversations as a precautionary measure, because she knew that the Defendants' were intent on destroying her reputation and 'smearing' her and that her decision to covertly

record was reasonable and justified having regard to the facts and matters relied on by her and the following:

220.1. Covertly recording should not affect a person's credibility and/or reputation. Even though the Defendants' specifically refer to the covert recordings in their pre-action protocol response, despite this, in their response they do not totally reject the idea that Claimant had a good reputation which was capable of being injured or that she may be able to succeed in proving that her reputation was injured;

220.2. It is not illegal to covertly record someone. The fact that the Claimant covertly recorded does not constitute evidence of general bad reputation and only evidence of general bad reputation should be taken into account. The fact that Claimant secretly recorded also does not justify the words complained of. The Courts routinely permit covert recordings into evidence, so to characterise the Claimant as having a bad reputation because she took the decision to protect herself by covertly recording would not be in line with the legal system's current approach to this;

220.3. The covert recordings/transcripts were clearly available to D2 – D7, by virtue of the fact that it showcases them. The fact that the recordings were in existence at the relevant time, (despite the Defendants' being unaware that they existed), is not a basis upon which they can defend the Claimant's claim;

220.4. It also important to note that the Claimant is not a Data Controller. The recordings are not be a breach of D1's (the Local Authority's) right to privacy under Article 8 of the European Convention on Human Rights — the right to respect for private and family life, as D1 is engaged in public work, not work of a private nature, and there was no evidence of any likely or potential interference with the private life of any public officer. D1 can also not rely on judicial immunity, since D1 was not acting in a judicial capacity, but in the capacity as senior managers (public officers) of a public body.

221. The Claimant believes that the Defendants' will knowingly give what they know to be false witness statements, and lie on the witness stand. The Claimant relies on the following in support of her opposition to the facts and matters

pleaded in the Defence, and in support of her plea of malice and aggravated damages:

221.1. Covert recordings x 31 on USB stick

221.2. Feedback from Jackie Lynham to Claimant re her meeting D3 over AV suspension (undated)

221.3. Claimant's call to Jackie Lynham regarding D3's request to meet about suspension (undated)

221.4. Claimant's call to D4 regarding team meeting or 1-2-1 meeting (undated)

221.5. Claimant's meeting with Chris Threlfall on 26 April 2011

221.6. Claimant's risk assessment meeting with D5 on 17 May 2011

221.7. Team meeting on 8 June 2011

221.8. Team meeting with D5 and Nicolette Lawrence and Keyworkers, part 1 on 21 June 2011

221.9. Team meeting with D5 and Nicolette Lawrence and Keyworkers, part 2 on 21 June 2011

221.10. Claimant's 1st telephone conversation with D4 on 29 June 2011

221.11. Claimant's 2nd conversation with D4 on 29 June 2011

221.12. Claimant's 3rd conversation with D4 on 29 June 2011

221.13. Claimant's telephone conversation with individual Respondent Christine Grice on 29 June 2011

221.14. Claimant's meeting with D3 and D4 on 30 June 2011

221.15. Claimant's advanced workstation assessment with Belinda Whippey on 1 July 2011

221.16. Claimant's induction meeting with D4 on 5 July 2011

221.17. Team meeting on 13 July 2011

221.18. Claimant's supervision meeting with D4 on 20 July 2011

221.19. Claimant's call to D4 on 9 August 2011 at 2.30pm

221.20. Claimant's meeting with D4 on 10 August 2011 at 9.30pm

221.21. Claimant's suspension meeting with D3 on 10 August 2011

221.22. Claimant's investigation interview on 25 October 2011

221.23. Claimant's investigation interview on 1 November 2011

221.24. Claimant's investigation interview on 4 November 2011

221.25. Call from Jackie Lynham to Claimant on 8 December 2011

221.26. SOSR hearing with Claimant and D2, D3 and D6- morning on 27 February 2012

221.27. SOSR hearing with Claimant and D2, D3 and D6- after lunch on 27 February 2012

221.28. SOSR hearing with Claimant and D2, D3, D4, D6 and D7- part 1 morning on 28 February 2012

221.29. SOSR hearing with Claimant and D2, D3, D5, and D6- after lunch, part 2 on 28 February 2012

221.30. SOSR hearing with Claimant and D2, D3, and D6- part 1 on 6 March 2012

221.31. SOSR hearing with Claimant and D2, D3, and D6-part 2 before lunch on 6 March 2012

221.32. SOSR hearing with Claimant and D2, D3 and D6- after lunch on 6 March 2012.

222. The covert recording set out in paragraph 221.15 above, relates directly to the defamatory statement made by D7- Kate Parsley. The transcript of the recording was disclosed to D1 on 11 July 2013. Both will be relied on in support of the Claimant's claim of defamation and malice. In relation to the words complained of at 21.2q of the Claimant's re-amended PoC, the imputation conveyed by D7 is that the Claimant was dishonest in relation to the words complained of. The imputation was also that the Claimant was dishonest in relation to her denials that she had generally prevented reasonable adjustments being made. The Defendants accused the Claimant of dishonesty in relation to her denials, which is set out at 21.3b of the Claimant's re-amended PoC. The meaning conveyed by them was one of actual guilt of dishonesty in relation to the words complained of.

223. The Defendants' asserted that the Claimant had generally prevented reasonable adjustments being made, and the Claimant clearly denied the Defendants' allegations in relation to this. The Defendants accused her of dishonesty in relation to her denials, which is set out at 21.3b of the Claimant's re-amended PoC. The meaning conveyed by them was one of actual guilt of dishonesty in relation to the words complained of.

224. The allegations made by the Defendants' during the SOSR investigation and hearings and the hearing outcome contained criticisms of the Claimant which has not been put to her in advance of publication, (with an opportunity for her to respond), this was deliberate and is contrary to what D2 and D3 asserted in the publications complained of, and which is contrary to paragraph 163 of it's

Defence, which concedes that they had not been put to the Claimant prior to publication.

225. The Claimant also relies on the extensive tampering of notes/minutes by the Defendants', (including via D1's use of the third-party note-taker Susan Funnell), the Defendants' persistent denials of knowledge about the Claimant's disability/medical condition and the fact that the Defendant's failed to provide corroboratory documentary evidence, (Who, What, Where, When, How, Why?) in support of their allegations against her. The Defendants' relied on unsigned witness statements from managers, (Nick French and Nicollette Lawrence). Undue weight was also applied by D2 to the subjective verbal word of the other Defendants', (particularly D4 who she made serious allegations about, in the hours leading up to her suspension) and in the absence of any initial objective evidence to support D4's allegation, which D1/D2 stated triggered the Claimant's suspension on 10 August 2011.

226. There were various conflicting, contradictory statements made by D3, D4, D5 and D6 and unsubstantiated allegations. The fact that the Claimant had previously made complaints about D3, D4 and D5 and brought legal proceedings against them would have had a good reason for D2 to doubt their credibility and motives, particularly when presented by conclusive evidence supporting the Claimant's innocence.

227. D1's pre-action protocol response states, that the reasons for the Claimant's dismissal were not founded on defamatory statements. This undermines the Defendants' Defence, which assert that the meanings relate to defamatory statements at paragraphs 20.2 l, m and p and 21.3d, g, k and l of the Claimant's re-amended PoC. The Claimant relies on this as evidence of malice and in support of her claim for aggravated damages.

228. In support of her plea of malice, (and aggravated damages), the Claimant relies on all the facts and matters set out in this reply and her re-amended PoC.

JUSTIFICATION

229. These parts of the Reply are pleaded without prejudice to the Claimant's contention that this action is not an attempt to litigate her previous Tribunal claims

and that the Defendants' are not entitled to seek in this way to justify allegations which are not complained of and which, even if proved, could not justify the central sting of the publications complained of.

230. At paragraph 182 – 184 of the Defence the Defendants' set out there Defence of justification. Neill LJ in ***McDonald's Corporation v Steel*** [1995] 3 All ER 615, where it was held that before a plea of justification was included in a defence the following criteria should normally be satisfied: (a) the defendant should believe the words complained of to be true; (b) the defendant should intend to support the defence of justification at the trial and (c) the defendant should have reasonable evidence to prove the allegations will be available at the trial. This is would be analogous with the rule in ***Somerville v Hawkins*** (1851) 10 CB 583 in relation to malice, whereby a claimant has to show that his particulars are more consistent with the presence of malice than with its absence. The Defendants' have failed to meet the requirements, particularly in light of paragraph 118 of this reply.

231. It follows that, if the Defendants' have no evidence at the time of pleading the Defence, and there is no solid basis for assuming that evidence will emerge by way of disclosure of documents or the supply of further information pursuant to a request, the Court should be astute to prevent a weak plea going forward and thus wasting everyone's time and money. The Defendants' should also not be permitted to rely on any pleaded particulars of justification in such a way as to have the effect of transferring the burden to the Claimant of making a positive case to disprove them. This was a point made by May LJ in ***McPhilemy v Times Newspapers Ltd*** [1999] EMLR 751, 774.

232. A statement is presumed to be false; the publisher has the burden of proving its truth. To prove the truth of some lesser defamatory meaning does not provide a complete defence. The Defendants' will not able to prove the literal truth of the words and/or the 'stings' that are inferences, innuendos and imputations. It is clear that the Defendants' cannot do this and that they will also not be able to show that they were protected by privilege.

233. D1's pre-action protocol response makes reference to the Claimant's suspension and the subsequent investigation possibly effecting and damaging her reputation. This undermines the Defendants' alternative meanings and the inference that the words complained of relate solely to the assertion, (which was

only D3's assertion, and which she made after the investigation stage), that D1 should dismiss the Claimant. The other Defendants', who made many of the defamatory statements complained of, had never asserted this, (in relation to the words complained of). D3 also stated during the investigation stage that there was no case against the Claimant.

234. The Defence which contains some 69 paragraphs of particulars in support of the plea which seeks to justify two alternative meanings and consequently, it confuses the issues and the meanings are insufficiently clear and/or precise. The particulars relied on represent an attempt to justify matters about which the Claimant did not complain. The imputations of the Claimant's pleaded meanings are clear. The sting of this is amply supported by the words complained of at paragraphs 20.2b and 20.2l - o, 20.2d and 21.2j, of the Claimant's re-amended PoC.

235. The Defendants' have stated that they intend to rely on the matters pleaded in 2 – 110.5 in support of their plea of justification. The particulars which, even if proved, cannot meet the defamatory 'stings'. There is a lack of clarity on what the Defendants' are saying about the Claimant in paragraphs at 182.3 (a –b), (d – g) and (i), where they state as follows:

'a) Her frequent unjustified and disproportionate complaints in regard to aspects of her employment'.

'b) The inclusion of those complaints of highly personal attacks upon her fellow employees, whom she often accused of bullying, victimising and harassing her and discriminating against her on the basis of her avowed disability. Whether she was disabled or not, such attacks were grossly unfair and/or caused considerable distress to LBL/D1's employees.'

'd) Her tendency to react to any act or statement with which she disagreed by alleging that the person was carrying out the act or making the statement was bullying, victimising and harassing her and discriminating against her on the basis of her avowed disability. Whether she was disabled or not, such attacks were grossly unfair and/or caused considerable distress to LBL/D1's employees.'

'e) The Claimant's use of her avowed disability as a lever to get her own way. When she was asked to so something she did not want to do, she would then threaten that if she were made to do it her health would be seriously damaged and allege that she was being subjected to 'disability discrimination'. Whether she was disabled or not, such attacks were grossly unfair and/or caused considerable distress to LBL/D1's employees.'

'f) When the Claimants complaints were rejected, the Claimant would allege that the very act of rejecting her complaint amounted to bullying, victimisation and harassment against her on the basis of her avowed disability. Whether she was disabled or not, such behaviour was unjustified.'

'g) The Claimant would make complaints which included serious personal allegations but would then not follow them through to conclusion, often citing her alleged ill health as the reason why she would no longer engage with them.'

'i) The Claimant's behaviour, regardless of her intention or whether she acted in good or bad faith, intimidated and caused considerable distress to her fellow employees, particularly those whose job it was to manage her.'

236. The Claimant, (setting out to meet the above case), will have difficulty in knowing how to even engage with it, as the particulars at paragraphs 182.3 (a – b), (d – g) and (i) are so generalised and also reverse the burden of proof onto the Claimant, therefore they cannot stand, and accordingly, the Claimant respectfully requests that they be struck out. It is perhaps relevant to bear in mind the words of Lord Hewart C.J. in ***The King v Bailey*** [1924] 2 K.B. 300, 305:

"The risk, the danger, the logical fallacy is indeed quite manifest to those who are in the habit of thinking about such matters. It is so easy to derive from a series of unsatisfactory accusations, if there are enough of them, an accusation which at least appears satisfactory. It is so easy to collect from a mass of ingredients, not one of which is sufficient, a totality which will appear to contain what is missing. That of course is only another way of saying that when a person is dealing with a considerable mass of facts, in particular if those facts are of such a nature as to invite reprobation, nothing is easier than confusion of mind; and, therefore, if such charges are to be brought in a mass, it becomes essential that the method upon which guilt is to be ascertained should be stated with punctilious exactness".

The Claimant therefore contends that the Defendants' should not be permitted to formulate particulars of justification, as being a 'job lot'.

237. The matters set out at paragraphs 96 – 110 of the Defence were not the matters before the Defendants' when they published/made the statements complained of and the Defendants' cannot plead matters arising after publication as supposed grounds, see ***Chase v News Group Newspapers Ltd*** [2002] EWCA Civ 1772. The Defendant's have failed to implicitly or explicitly state the facts on which the Defence of justification is based. The allegations are particularly grave and require clear facts. The words complained of have had to

be justified by reference to the underlying allegations of fact and not merely by reliance upon some second-hand report or assertion of them, see ***Shah v Standard Chartered Bank*** [1999] QB 241 at 263).

238. Without accepting any reversal of the burden of proof, which remains on the Defendants', the Claimant outlines below the substance of the facts and matters relied on in opposition to the Defendants' pleaded particulars of justification.

239. The Claimant has pleaded facts and matters in her re-amended PoC, (which the Defendants' have deliberately failed to meaningfully engage with). The Claimant has pleaded at paragraph 11.1 j and k of her re-amended PoC that she intends to rely on Equality form questionnaires and responses and Employment Tribunal pleadings, (which were the facts and matters before the Defendants at the time that they made the defamatory statement).

240. According to D3, the allegations made against the Claimant had not been reported until *after* the Claimant's suspension. The absence of any contemporaneous documents recording the account of events given by D3 or the process of reasoning leading to her decision to suspend the Claimant with immediate affect effect leads to the obvious conclusion that the decision was part of the plan to get 'rid of her'.

241. Further in support of her opposition to the Defendants' pleaded particulars under justification and the Defendants' assertions/allegations regarding the alleged amount of time that they were required to deal with the Claimant's complaints, the management of the Claimant, and the alleged detrimental impact on the running of the service and managers, the Claimant relies on the fact that there were systemic issues preventing D1 from running the service properly. The Claimant contends that the Defendants' were aware that these issues had nothing to do with the Claimant's alleged conduct/behaviour and relies on this as evidence of malice.

242. D1 had an obligation to carry out a root cause analysis (RCA) before the start of any investigation into possible systems or organisational failures. Systems and organisational failures included, (but are not limited to) the following:

242.1. D1 failed to properly inform, educate, equip and support the Claimant to do the role/task expected of her, before suspending her; a) there was no data protection/privacy form in place until July 2011, (which the keyworkers required to enable them to properly perform their role and which the Claimant volunteered to help develop/draft); b) there was no proper referral form in place until July 2011, (which the Claimant also helped develop/draft); c) an assessment tool was not identified 'in good time' and Key Workers were given incorrect advice in relation to this; d) Staff were not given any information on provision for young people until July 2011; e) the Claimant and her keywork colleagues did not obtain stamps to use to send mail to their client's until June 2011; f) D1 also failed to provide the Claimant and other staff with adequate training; g) no PEP was done and PES's were not arranged 'in good time' and h) there was changing advice/directions given in relation to ES9 work and other issues/matters;

242.2. There was a failure to set targets for keywork team and the Defendants' failed to implement performance management;

242.3. The Defendants' admitted that TUPE issue significantly affected the running of the service, this issue was created by Babcock and D1 and related to all transferred staff, (not just the Claimant) and many of the concerns that the Claimant raised were linked to the TUPE issues;

242.4. There was no service plan in place for a protracted period of time; a) it was not shared with key workers and there was reluctance on the part of managers to share the service plan with the Claimant and her keywork colleagues; b) there had been no clear direction, leadership and guidance from management and c) this state of affairs caused the keywork staff to be (including the Claimant) confused about their role and responsibility and left the Claimant at a particularly disadvantage as a disabled employee;

242.5. Specific policies and procedures for the keywork team were not in place and in June 2011 they were given policies and procedures for the role of a youthworker, (which was not their role);

242.6. Health and safety policies and procedures and/or guidance was not followed correctly and/or conflicting advice was given in relation to this;

242.7. Health and Safety was not a priority for the Defendants' and a) D1 failed to consult staff about the workplace survey/Inspection. There was a high sickness absence rate within the team, including management; b) No stress surveys undertaken, risk assessments not undertaken 'in good time'; c) the Claimant was informed by D3 at he SOSR hearing that no manager

was available, to discuss her OH report with her when D1 received it from Dr Giagoundinis; d) D1's managers were not properly trained to do risk assessments; e) D1/D2's dismissal letter typifies the Defendants' trivialising attitude towards the Claimant's disability and f) the Defendants' persistently failed to implement reasonable adjustments, in line with the recommendations of OH consultants;

242.8. The Defendants' persistent postponed team meetings and one-to-one meetings and Management failed to hold regular team meetings/regular supervisions (see below);

242.9. There was a failure to provide regular supervision: D1's former head of YSS (Nick French) stated clearly that supervision structure must be adhered to, to help all managers to support staff who may be struggling with health issues. The Claimant contends that the Defendants' failed to comply with their own guidelines. The Defendants' failed to provide the Claimant with adequate line management support and supervision between 13 May and 4 July 2011- (the Claimant had only one supervision with D5);

242.10. There was a lack of confidentiality within the service;

242.11. There was a persistent failure by the Defendants' to acknowledge/respond to 'in good time', or at all, and properly deal with the Claimant's e-mails and the issues raised by her via letter and/or face-to-face, to/with management.

243. In addition, D1 had ceased having one-to-one contact with the Claimant in May 2011and had little or no contact with her thereafter. Throughout her employment with D1, the Claimant also had very little contact with D7, Nick French, Chris Threlfall and Nicolette Lawrence, (another manager in the team).

244. The Defendants' have indicated that they intend to rely on the Defamation Act 1952 s.5. However, the innuendos, implications and imputations, do materially injure the Claimant's reputation, and in any event, the Defendants will be unable to prove any of them against the Claimant. The Defendants' will not be able to succeed in its Defence of justification, since their Defence will not 'get off the ground'.

245. Where the meaning is at Chase level 1, in order to establish a Defence of justification, a Defendant must prove the truth of the allegation of guilt. The allegations were uncorroborated and based on the subjective verbal word of the

Defendants'. As the defamatory statements were based on this, the Defendants' cannot rely on this to prove that the statements are true. There must be substance behind their alleged proof. The Defendants' did not reasonably believe in the Claimant's guilt, therefore the words complained cannot be proven to be substantially true. It is clear that the Defendants' did have direct knowledge that the words complained of were false; accordingly they were aware that they had no evidence in support of the words complained of.

246. The evidence relied on by the Defendants' has no probative value whatsoever in supporting their Defence. No particulars are provided by the Defendants' which could enable the Court to assess their Defence. The Defence of justification is that the words complained of were true in substance and in fact. Where the Defendants' alleged the Claimant was guilty of the specific allegations complained of, (in their natural and ordinary meaning), which the Claimant says are disproved by the facts and matters relied on by both her and the Defendants', the Claimant is entitled to such specificity as the Defendant can provide.

247. None of the particulars of justification refer to the dozens of serious allegations made about the Claimant. This ignores the burden on the Defendants' to set out their case, and grave allegations of guilt should not be pleaded on the basis of bare assertions, without providing the details to support the serious defamatory meanings pleaded by the Claimant. It would not be right to permit the Defendants' to contend that the words complained of are justified on grounds which do not emerge clearly from their particulars. The Defendants' must state clearly what their case is so the relevant issues are properly delineated in advance of trial and so the Claimant has a proper opportunity to know exactly what the Defendants' are really seeking to justify and/or to find facts or draw adverse inferences from.

248. A Defendant has to believe the words it is defending are true, intend to support them at trial and have reasonable evidence upon which to do so. Vague pleadings of general allegations cannot stand. It is not permissible to make reference to events documenting the Claimant's entire employment with D1 and then use them as an opportunity to support unspecified alleged behaviour on the part of the Claimant. So far as inferences are concerned, they need to be properly pleaded so that it appears that there is a rational nexus between the

facts and the inference to be invited. The Claimant reserves the right to plead further should such necessary particulars be given.

249. There was no basis on which the Defendants' could believe the allegations/words complained of were true. They were content to put forward the allegations whether it was true or not. The whole of the facts which will be proved by the productions will mean that the Defendants' will be unable to establish the essential or substantial truth of the "sting" of the words complained of.

250. The Defence as pleaded is as such incapable of justifying the words complained of and the meanings which the Defendants' seeks to justify, and should be struck out. The facts relied on by the Defendants' is contradicted by the facts and matters relied on by both parties, which indicates that the Defendants' had active knowledge of what the Claimant stated had taken place and the truth of it.

251. The Claimant has already made it clear that this action is not about disability-discrimination and/or unfair dismissal, however, for the purposes of responding to the particulars of the Defence and in the event that the Court finds that the Defendants' alternative meanings are capable of bearing the words complained of, (which is not admitted), the Claimant contends that the Defendants' pleadings clearly evidence the fact that the Claimant's disclosures/complaints/grievances caused or influenced the Defendants' to treat the Claimant in the manner that it did, (subject her to detriments, including D3 recommending her dismissal), and that their treatment of her was also for a reason related to/arising from her disability. It is also contended that such treatment/detriments, (particularly in circumstances where the Defendants' accept that she may have been acting '*in good faith*'- see paragraphs 182.2- their alternative meaning, and 182.3i), cannot be justified because:

251.1. the Defendants' denied in their Tribunal pleadings, in response to the Claimant's claims under the Public Interest Disclosure Act 1998 (PIDA) that the Claimant acted 'in good faith' and that their treatment of her was in any way related to the Claimant's concerns regarding the endangerment of her health and safety and the Defendants' failures to comply with legal obligations, (which included reporting breach of her own employment

contract); and

251.2. the Defendants' denied in their Tribunal pleadings, in response to the Claimant's claims under the Equality Act 2010 (for disability discrimination), that their treatment of the Claimant was due to her disability and/or reasons related to/arising from her disability and/or as a result of her allegations that someone had contravened the Act and/or because it was believed or suspected that the Claimant had done or intended to bring or give evidence or information in connection with, proceedings under the Act and/or or do anything else under the Act.

252. The aforementioned, (notwithstanding the fact that the Defendants' have denied all the Claimant's allegations and issued a formal denial by way of their Defence, despite the Claimant adducing audio productions, for the hearing which took place at the High Court on 25 March 2013- see paragraph 154 of this reply), constitutes submitting a false statement of case to this Court and engaging in criminal conduct, including the publication of matters calculated to prejudice a fair trial, as the Defendants' are relying on the facts and matters related to their Defence of the Employment Tribunal case, as is set out in paragraph 183 of the Defence and paragraphs 7, 99 – 106, 114 - 116, 190 - 194, 198.1 – 198.3 of the Defence, which specifically makes reference to the Employment Tribunal claims and their Defence of them. The facts and matters relied on by the Defendants', (particularly at paragraph 7 of the Defence- their reference to the Employment Rights Act (ERA)); contradicts their abuse of process argument and in any event, it does not support their plea of justification, particularly as Section 103A of the ERA states that an employee shall be regarded as being unfairly dismissed if the reason (or, if more than one principal reason) for the dismissal is that the employee made a protected disclosure.

253. The public interest requires that committal proceedings be brought and the Claimant accordingly applies to the Court for permission to commence committal proceedings (to commit the Defendant(s) / contemnor(s)), for contempt of court under CPR 32.14. The Claimant's relies on this reply in support of her application for permission, which sets out a chronology of events and the facts and matters related to the act of contempt, and reasons why it is said that the statements made in the Defence are false. The appropriate test is set out by Sir Richard Scott VC in ***Malgar Ltd v R.E. Leach (Engineering)*** [2000] FSR 393:

I. Not only must part of a statement verified with a statement of truth be false;
II. The complainant must prove that the maker of the statement knew that it was false or was reckless as to whether it was true or false at the time he verified it, and
III. The false statement must have been likely to have interfered with the course of justice.

254. The Defendants' do not have a credible alternative factual case to put forward. For the reasons pleaded above, the evidence relied on by the Defendants' is of no probative value in establishing either the allegations which it published, or those which it seeks to justify.

255. It is denied that extracts quoted from the emails referred by the Defendants' can properly be relied on by the Defendants' in support of its Defence of justification.

256. It is denied that the use of any of the particulars set out in the Defence can or does provide any probative support for the allegations made by the Defendants'.

257. Further, and in the alternative, and specifically in reply to the plea of justification, if the words were justified, which is not admitted, but denied:
257.1. the statements were based on false facts stated in the respective publications; and
257.2. the facts, stated or understood, were not sufficient to support the statements so as to justify them it;
257.3. alternatively, the Claimant's reply clearly sets out the fact that the Defendants' case discloses antecedent dishonesty. The Court should use its power to punish contempt, that power encompasses the power to dismiss the action. In doing so it protects the integrity of its procedures by preventing the Defendants' from compromising the just and proper conduct of the proceedings, see paragraphs 251 - 252 above.

258. The Defendant's are required to prove that the statements are based on facts which are true (at the time the statements were made). The facts that the Defendant's claim that they relate to are untrue. The statements failed to make

reference to or identify any true facts which could form a basis for the statements complained of.

259. In opposition to the Defendants' particulars of justification, the Claimant relies on all the facts and matters set out in this reply and her re-amended PoC.

260. In light of the complete lack of probative value of the evidence on which the Defendants' rely, it is invited to withdraw forthwith the allegations in the Defence and to cease publishing and apologise for the words complained of. The Defendants' are invited to withdraw this part of its Defence.

QUALIFIED PRIVILEGE

261. At paragraph 181 of the Defence, the Defendants' have alleged that the words complained of were published on a privileged occasion, but the circumstances they rely on in support of that contention do not lend any credence to the Defendants' that proposition. Qualified privilege will not protect those statements made with actual or express malice, or for an improper purpose. The Claimant's covert recordings are conclusive proof of malice. The Claimant is able to defeat this Defence, by showing "malice", namely that the maker of the statement had no honest belief in the truth of the statement made, or that it was made for an improper motive. It has become trite law that malice defeats qualified privilege in two situations:

261.1. Where the defendant did not believe that what he said was true or was indifferent to the truth; and

261.2. Where the defendant's dominant motive in publishing was improper (in the sense of not being related to the duty or interest which founds the existence of the privilege.

262. Further, and specifically in reply to the plea of qualified privilege contained in the Statement of Defence:

262.1. the words complained of were not published on an occasion of qualified privilege; or

262.2. alternatively, the limits or duty of interest were exceeded; or

262.3. the publication was not consistent with its public law duties, (including the contravention of the Data Protection Act 1998 and observing/protecting the Claimant's Human Rights, therefore the privilege was lost; or

262.4. the related investigation was not fairly conducted and also evidences D3 shouting at the Claimant during the investigation interview on 1 November 2011, an investigation report was not produced (and provided to the Claimant in advance of the SOSR hearing), the hearing outcome contained criticisms of the Claimant which has not been put to her in advance of publication, with an opportunity for her to respond; or

262.5. D1 also failed to observe the requirement of confidentiality; or

262.6. alternatively, the statement went beyond what was germane and reasonably appropriate; or

262.7. alternatively, the defamatory statements were communicated to those without proper reciprocal interest in receiving it, the duty-interest relationship was therefore breached, and the privilege was lost;

262.8. and the Defendants' were actuated by express or actual malice in publishing the words complained of, therefore breached, and the privilege was lost.

263. As in ***Clift v Slough Borough Council (1) and Kelleher (2)*** [2009] EWHC 1550 (QB) the Court is equally under a duty to ensure that Convention rights are respected, it follows then that D1's duty to the Claimant trumps the duty to any personnel of the external partner organisations. The Defendant's have shown nothing that could properly have prompted them to make the statements; they had no legal, social or moral duty to pass on the false, malicious and defamatory statements and sensitive data in the discharge of their office and such people had no interest in receiving it. There was no basis on which they could believe the allegation was true. It was simply a barrage of accusations made by the Defendant's, without any proper factual basis, and without any inquiry and without giving the Claimant the opportunity to rebut it.

264. As to paragraph 210 of the Defence, which refuses to admit that it contravened the Data Protection Act 1998/breached the Claimant's confidentiality and rights under the Data Protection Act 1998 and that it did not prejudice the Claimant's position, the true position is as follows:

264.1. D1 is a public authority and therefore should only be entitled to rely on the defence “qualified privilege” in respect of a defamatory publication if it the publication was consistent with its public law duties; if the related investigation has been fairly conducted; if the subsequent investigation report and hearing outcome

(a) is about a serious matter of genuine public interest

(b) only contains judgments and apportionment of blame where they are supported by the factual findings, and

(c) only contains criticisms of people which have been put to them in advance of publication, with an opportunity for them to respond and, subject to the requirements of observing confidentiality, those responses are fairly represented in the report

(d) should only publish information disclose or the purpose of and to the extent necessary for performance of its public duty and in accordance with its obligations under the HRA;

264.2. A public authority should only be entitled to rely on the defence “qualified privilege” in respect of a defamatory publication if it the publication was consistent with its public law duties; if the related investigation has been fairly conducted; if the subsequent investigation report and hearing outcome only contains criticisms of people which have been put to them in advance of publication, with an opportunity for them to respond and, subject to the requirements of observing confidentiality, those responses are fairly represented in the report;

264.3. The Data Protection Act defines personal data as that which relates to a living individual who can be identified. Data is defined as information which is processed automatically or recorded with the intention to process automatically or recorded as, or with the intention that it be, part of a manual ‘relevant filing system’ which is further defined in the Act. ‘Processing’ of the data is widely defined and covers all manner of use including obtaining, recording, holding, altering, retrieving, destroying or disclosing data. The First Principle of the act relates to processing of any personal data. D1 and D2 failed to seek the Claimant’s consent in relation to this. In particular, if anyone is deceived or misled when the information is obtained, then this is unlikely to be fair;

264.4. More stringent protection is provided for sensitive data, which includes data about racial or ethnic origin, physical or mental health or condition, and sexual life. D1 also breached the Claimant’s ‘rights of rectification’. The

Claimant was not given the opportunity to correct any data recorded about her, which were inaccurate or have any expression of opinion based on it, rectified, blocked, erased or destroyed;

264.5. D1 and D2 claimed that the use of the third-party note-takers was to ensure that the notes were accurate. The matters set out in this reply and the Claimant's re-amended PoC supports the Claimant's contention that the use of a note-takers from outside agencies was not in pursuit of a legitimate aim. All processing must satisfy at least one of the conditions in Schedule 2 of the DPA. In the case of the processing of sensitive personal data, at least one of the conditions in Schedule 3 of the DPA must also be met. In order for sensitive personal data to be processed fairly it must meet one of the conditions in Schedule 3 as well as at least one of the conditions in Schedule 2;

264.6. Even if, (which it is not admitted), the publication of the words served a legitimate aim, the means used to impair the Claimant's Article 8 rights were more than was necessary to accomplish any legitimate aim and a fair balance was not struck between the Claimant's rights and the interests of D1. Such a balance would have been properly struck if and only if the Defendants' had: a) properly investigated the allegations and seeking proper corroboration of the allegations; b) put the allegations to the Claimant and given her a proper opportunity to respond and c) after making such an investigation and taking the Claimant's response into account, and having decided to write and/or utter and/or publish the words complained of, written/said in qualified terms, making clear the low status of the evidence relied on and the unverified nature of the conclusions;

264.7. The Defendants' alleges that they were merely responding to the Claimant's 'attack' on them, however, the Defendants' cannot enjoy a privilege to protect themselves against the Claimant's justifiable complaints about their conduct, and for the purpose of undermining what they knew to be perfectly valid complaints. This destroys any question of privilege. It either demonstrate that no such privilege properly arises in the first place or it would defeat the defence by my plea of malice;

264.8. The Defendants' statements do not constitute a proportionate rebuttal as they were made more widely than the Claimant's alleged 'attacks' (her complaints and grievances made in good faith), see paragraph 43 of the Claimant's re-amended PoC. The Defendants' made dozens of defamatory statements, which were all false, and involved a breach of the Data

Protection Act 1998 and/or were irrelevant statements. It can not be proportionate to make such extensive allegations in circumstances where no formal warnings and/or complaints had previously been given / made about the Claimant, and the allegations made were false and had never even been brought to her attention before.

265. The reference to lawfully' in the First Data Protection Principle applies to any form of conduct that is unlawful, including breach of confidence, libel, and harassment. As Patten J said in ***Murray v Express Newspapers Ltd*** [2007] EWHC 1908 (Ch) [200] EMLR 22 at para [72]:

'It seems to me that the reference to lawfully in Schedule 1, Part 1 must be construed by reference to the current state of the law in particular in relation to the misuse of confidential information. The draftsman of the Act has not attempted to give the word any wider or special meaning and it is therefore necessary to apply to the processor of the personal data the same obligations of confidentiality as would otherwise apply but for the Act'

266. As Patten J made clear in Murray, where the DPA applies, if processing is unlawful by reason of it breaching the general law of confidentiality (and thus any other general law) there will be a contravention of the First Data Protection Principle within the meaning of s.40(1), and a breach of s.4(4) of the DPA. See also ***Douglas v Hello! Ltd*** [2003] EWHC 786 (Ch) [2003] 3 All ER 996 paras 230-239 and ***Clift v Slough Borough Council*** [2009] EWHC 1550 (QB) [2009] 4 All ER 756.

267. It is clear that the D1 cannot hide behind the cloak of qualified privilege where they have not complied with their obligations under human rights law and their responsibilities under the Data Protection Act 1998. It is obligated under the HRA 1998 to respect the Claimant's Art 8 right to her reputation and therefore under a duty not to publish the offending material. The Court as a public authority is equally under a duty to ensure that Convention rights are respected. Since the Claimant's Art 8 right to the protection of her reputation must be respected by both Court and D1, if D1 was prevented by operation of the HRA 1998 from publishing, it therefore lost the foundation for its claim to qualified privilege.

268. In support of her opposition to the Defendants' particulars of qualified privilege, the Claimant relies on all the facts and matters set out in this reply and her re-amended PoC.

269. In light of the complete lack of probative value of the evidence on which the Defendants' rely, it is invited to withdraw forthwith the allegations in the Defence and to cease publishing and apologise for the words complained of. The Defendants are invited to withdraw this part of its Defence.

ABUSE OF PROCESS/ESTOPPEL

270. The Claimant could not have litigated the issue of 'defamation' in the Employment Tribunal, in relation to the words complained of, (that she had not pleaded in that action), and in respect of which she is entitled prima facie to trial by jury. The Claimant withdrew her tribunal claims, so the tribunal never reached the substantive stage of investigating their factual or legal merits, because there was no full hearing. The issue of estoppel, could not arise because, it is a claim for defamation, which the Employment Tribunal has no jurisdiction to hear/adjudicate. In this action there is also a claim pursuant to the Human Rights Act. An Employment Tribunal does not have the power to make an order preventing D1 from breaching the Claimant's human rights and/or the power to award damages for a breach of the Convention rights under the Act. There is a real and practical difference between the issues to be litigated in this action.

271. In their Tribunal response, (which the Claimant relies on), the Defendants' denied the Claimant's allegations of defamation and claimed that they were unclear as to what they are, yet asserted that she should be put to proof of the allegations. It would have been impossible for the Claimant to do this because the Tribunal had no jurisdiction to deal with such a claim. In addition to this, only D2, D3, D4 and D5 were due to give evidence at the Tribunal.

272. An Employment Tribunal cannot determine the scope of the defamatory meaning or meanings. It would not be able to address in any comparable way, the important issues of justification, qualified privilege and the Claimant's allegations of dishonesty and malice on the part of the Defendants', therefore only the High Court can adjudicate on the truth of disputed facts relating to the words complained of. It cannot be said that the Claimant is using the Court's process "for a purpose or in a way significantly different from its ordinary and proper use" (a definition of abuse of process applied by Lord Bingham in ***Attorney General v Barker***, The Times, 7 March 2000). The High Court is the

judicial body that will be determinative of the real issues between the parties in the defamation action.

273. The Claimant's present action cannot be described as a collateral attack on the final decision of a Court of competent jurisdiction, harassment or dishonesty. In ***Bradford & Bingley Building Society v Seddon*** [1999] 4 All ER 217, it was held, (allowing the appeal), that, provided neither cause of action estoppel nor issue estoppel arose, it was not necessarily an abuse of process to relitigate an action, nor even to commence a second claim which could have been included in, or was inconsistent with, an earlier one. The burden lay on the person alleging abuse of process to demonstrate some additional ingredient such as harassment, dishonesty or a collateral attack on the earlier judgment. The Tribunal decision in relation to the issue of the admissibility of the Claimant's covert recordings and transcripts is (and was described by the Employment Appeal Tribunal), as a case management decision, *not* a judgment

274. The decision of the House of Lords in ***Johnson v Gore Wood*** [2001] 2 WLR 72 cautions against too ready an application of the ***Henderson v Henderson*** principle to stifle legitimate claims on abuse of process grounds. The Claimant's withdrawal of her Tribunal claims was not about 'side-stepping the 'stay', but about having the opportunity to clear her name, and therefore the Defendants' unfounded estoppel argument is misconceived and accordingly should not be entertained.

275. The withdrawal of the Claimant's claim for special damages resolves any potential argument from the Defendants' regarding the question of estoppel /abuse of process, also see paragraphs 157 - 158 and 198.1 of this reply. The Claimant contends that she has a right to pursue the cause of action (as set out in her re-amended Claim form and PoC dated 31 July 2013), which makes it clear that her claim relates *only* to a cause of action personal to her. Under the bankruptcy order which was made against the Claimant in August 2013, the Claimant will not be required to pay any money to her creditors, because she is in receipt of benefits, (and she has no savings or any assets of value). All of the Claimant's debts, (including all of the outstanding costs orders) will be 'written off' after one year. The Claimant has been deemed unfit for work by her GP and the DWP since this April 2012, due to her disability, which was and continues to be

severely exacerbated by the scandalous conduct of the Defendants' and the many aggravating features of the case.

276. The inconsistent and untenable evidence given by the Defendants' constitutes an abuse of process. They have put forward so many contradictions and inconsistencies that it is impossible to identify any clear position in relation to their case- see in particular paragraphs 251 - 252 of this reply. The Defendants' are conducting the proceedings in a grossly dishonest manner with the objective of preventing a fair trial. There is ample evidence of dishonesty which the Defendants' are not in a position to rebut in the light of the facts and matters set out in this reply, which includes their own pleaded evidence and the facts and matters relied on by them. The Claimant also relies on the principles discussed in ***Arrow Nominees Inc v Blackledge*** [2000] C.P. Rep. 59 [2001] B.C.C. 591 [at 54 - 56] in support of her request for the Defence to be struck out and dismissed pursuant to CPR 3.4 and/or the inherent jurisdiction of the Court.

DAMAGE

277. To the best of the Claimant's knowledge and belief, the domain name www.School-info4u.com, which the Defendants' make reference to in their Defence, is not 'live' and/or contains no content at all about the Defendants', let alone defamatory content. The scandalous conduct by the Defendants' since the Claimant lodged her claim, continues to have a severe impact on the Claimant's mental health. Given the many aggravating features of the case, including the gravity of the allegations made, the effect on the Claimant's life and reputation, and the Defendants' persistence in maintaining their case even when it became obvious that their allegations about the Claimant were untrue, the Claimant contends that she is entitled to defend her reputation and is entitled to the maximum compensation claimed, as set out in her re-amended PoC at paragraphs 87 – 89 and in her re-amended schedule of damages.

278. With regards to exemplary damages, it is well settled that this is designed to make it clear that "tort" does not pay. In the Court of Appeal case, in ***John v Mirror Group Newspapers Ltd*** [1997] QB 586, 618G-619A, it was said that:

'We therefore consider that where exemplary damages are claimed the jury should in future receive some additional guidance to make it clear that before such damages can be awarded the jury must be satisfied that the publisher had no genuine belief in the truth of what he published. The

publisher must have suspected that the words were untrue and have deliberately refrained from taking obvious steps which, if taken, would " have turned suspicion into certainty.'
'Secondly, the publisher must have acted in the hope or expectation of material gain. It is well established that a publisher need not be shown to A have made any precise or arithmetical calculation. But his unlawful conduct must have been motivated by mercenary considerations, the belief that he would be better off financially if he violated the plaintiffs rights than if he did not, and mere publication of a newspaper for profit is not enough.'

The Claimant believes that she has established this beyond reasonable doubt. The Claimant pleaded that the Defendants had a financial or similar motive financial for publication, (they engaged in their actions in order to conceal their own misconduct and protect themselves). This constitutes engaging in frauds and deceits and therefore intentionally exceeding authority for improper reasons, i.e. to obtain an improper private advantage for themselves and over the Claimant, without reasonable excuse or justification and presumably to avoid potential disciplinary action and dismissal.

279. The Defendants' will be unable to 'make good' the separate and serious distinct charges that the Claimant complains of. The Claimant contends that these allegations will require compensation, including their allegations of dishonesty, (in relation to her denials of the Defendants' allegations/the words complained of); how much will be for the court to assess in all the circumstances.

280. Further, and specifically in reply to the Statement of Defence, the allegations contained therein do not state a defence known to the law nor are they relevant to a lawful determination of the general, aggravated, punitive or exemplary damages to which the Claimant is entitled.

STATEMENT OF TRUTH

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

Ms Ayodele Adele Vaughan

13 August 2013

Claim No. HQ12D05474
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

B E T W E E N:

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
Defendant

REPLY

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

Defendant

APPENDIX 1 TO THE REPLY: EXTRACT OF PUBLICATION COMPLAINED OF:

3 PAGE EXTRACT OF D1'S SOSR HEARING BUNDLE INDEX & 14 PAGE EXTRACT OF HEARING BUNDLE

Signed:

Ayodele Adele Vaughan

12 August 2013