

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

**CLAIMANT'S SKELETON ARGUMENT
FOR HER APPLICATION NOTICE:
FOR THE HEARING ON 28TH & 29TH NOVEMBER 2013**

[Square brackets refer to [volume/tab/page/paragraph] in Bundles C1 – C5]. The Court is recommended to read the following documents in advance, together with this skeleton and the references contained within it- (Reading list):

- (a) Chronology [C1/5];
- (b) C's Application Notice dated 16 October 2013[C1/3];
- (c) C's Claim form dated 19 December 2012 [C1/8/110] and re-amended particulars of claim dated 31 July 2013 (including 14 page appendix), [C1/9];
- (d) D's Defence signed 18 July 2013 [C1/8/110];
- (e) D's Reply dated 13 August 2013 (including Reply summary and 17 page appendix) [C1/10];
- (f) C's skeleton argument no.1 dated 14 November 2013, (response to the D's 'strike out'/ summary judgment and civil restraint application) [C1/1];
- (g) C's seventh witness statement dated 14 November 2013 [C1/6];
- (h) C's eighth witness statement dated 14 November 2013 [C1/7];
- (i) C's Draft list of issues [C1/11/26.2 – 326.3].
- (j) C's Draft order [C1/4].

Estimated length of reading time: 7 hours

Length of hearing: 2 days (as requested by the D's, and 2 hours for C's Application Notice)

Introduction

- 1 This action is about the defamation of C's character, involving 7 Defendants' and the words complained of constitute libel, (approximately 34 statements) and slander, (approximately 50 statements). The D's have denied all C's allegations and issued a formal denial by way of their Defence¹.

- 2 The procedural history includes:
 - a) C issues her pre-action letter of claim on 16 November 2012;
 - b) the issuing of C's claim on 19 December 2012, [**C1/8/108 - 109**];
 - c) the D's send their response to C's letter of claim on 7 December 2012, [**C5/54/326.1534 - 326.1537**];
 - d) on 25 March 2013 the D's application for a stay is granted, C's application for an interim injunction is refused and a cost order is made against C;
 - e) on 17 April 2013 summary judgment is granted to D8 and a costs order is made against C;
 - f) in April 2013 C's makes an application to lift the 'stay', which is granted by Moloney J on 23 May 2013 and she withdraws her amendment application to add a claim for malicious falsehood;
 - g) on 25 June 2013 the D's file an application for an extension of time to file the Defence which is granted by Master Leslie on 26 June 2013;

¹The D's are falsely claiming that the words complained of are substantially true and are asserting that C made statements which she did not make. The falsity of their allegations is clearly evidenced by C's covert recordings and transcripts.

- h) C's files 3 amendment applications during the month of July 2013 and the D's file and serve their Defence on 18 July 2013;
- i) on 13 August 2013, C files and serves her Reply and on 23 August 2013 requests permission to serve defective witness statements and exhibits for the main trial
- j) on 2 October 2013 the D's file and serve their Application Notice to postpone the exchange of witness statements and the CMC and C requests permission to serve a defective witness statement and exhibit for the interlocutory hearing
- k) on 15 October 2013 the D's file and serve their Application Notice for an extended civil restraint order against C, the 'striking out' of her claim and costs and on 16 October 2013 C files and serves her Application Notice for a preliminary hearing and requests that the Court strike out the D's Defence of its own motion, or alternatively, specific passages of the Defence.

C's applications

- 3 C filed an Application Notice² on 16 October 2013 [C1/3], requesting a preliminary hearing to consider the issue of the meaning of the words complained³ (including the natural and ordinary meaning and the innuendo meaning), whether or not C's art.8 rights were engaged, whether her rights under the Data Protection Act 1998 were breached, whether the words are actionable as defamatory) and whether the D's can rely on justification of the lower meaning for which they contend and for the Court strike out specific paragraphs of the defence as an abuse of process and/or for the Court to strike out the D's entire defence of its own

²C originally intended her Application Notice to be dealt with at the Case Management Conference which had been listed for 1 November 2013, but was deterred from doing so because of the D's application to postpone the CMC and the exchange of witness statements.

³This is not an application for a ruling under CPR 53, PD 4.1.

motion, pursuant to CPR 3.4 and/or the inherent jurisdiction of the Court on the grounds that they:-

- a) disclose no reasonable grounds for defending the claim;
- b) are an abuse of the process of the Court and otherwise likely to obstruct the just disposal of the proceedings.
- c) or alternatively, that it strikes out the passages of the defence that C highlighted in her Reply to the Defence.

4 C also relies on her Application Notice set out above at [C1/3], her skeleton argument in relation to her response to the D's 'strike out'/ civil restraint application [C1/1], her seventh witness statement [C1/6] and eighth witness statement [C1/7] dated 14 November 2013 and attached exhibit AAV1 [C1 – C5/11 – 60/326.1a- 326.1815]. C will also rely on the aforementioned in support of her contention that committal proceedings should be brought against the D's or an alternative penalty imposed.

5 The court may strike out a statement of case if it appears to the court –

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

C's request for the Court to strike out the entire Defence of its own motion and the issue of Contempt

6 The D's stated in its response to C's Letter of Claim [C5/54/326.1534 - 326.1537] that they intend to rely on their pleadings in connection to C's employment tribunal claims. The D's Defence clearly indicates that they rely on the facts and

matters related to their Defence of C's employment tribunal case⁴. This specifically makes reference to C's employment tribunal claims and their Defence of them⁵. It is important to note that the D's denied in their Tribunal pleadings, that their treatment of C was in any way related to her concerns regarding the endangerment of her health and safety and the D's (alleged) failures to comply with legal obligations⁶. D1 also denied in its Tribunal pleadings that their treatment of her was due to her disability.⁷ C has stated in her Reply to the Defence that it is clear from the D's particulars of justification, that the treatment she was subjected to, was based on and/or related to the reasons which they had previously denied [**C1/10/143 – 145/182.3 - 183**].

- 7 The Defendants' deny in their Defence that C was disabled during the period of her employment with D1 [**C1/8/112/11**], yet the evidence that they rely on in this action, (their tribunal pleadings), accept that C was disabled during this period of time.⁸ This is evidence of inconsistent/untenable evidence which is designed to mislead the Court and evidence that the D's submitted a false statement in a document verified by a statement of truth.⁹ Presumably, in order to assess the merits of the case and review their case against C's statements of case, disclosure

⁴At paras 7, 99 – 106, 114 - 116, 183, 190 - 194, 198.1 – 198.3 of the Defence [**C1/8/110**].

⁵However, confusingly, they also argue that this action constitutes an abuse of process because it relates to facts and matters which formed part of the issues in my previous Tribunal case, (which C withdrew in March 2013).

⁶[**C5/53/326.1419 - 326.1421**]: D1's amended tribunal pleadings for claim number 2375023/2011, at paras 1 – 9; [**C5/53/326.1498 - 326.1499**]: D1's amended tribunal pleadings for claim number 2390531/2011A, at paras 3 – 8; [**C5/53/326.1465 - 326.1467**]: D1's tribunal pleadings for claim number 2302643/12, at paras 3 – 9; [**C5/53/326.1487 – 326.1489**]: D1's tribunal pleadings for claim number 2302645/12, at paras 3 – 7 & 10 & [**C5/53/326.1515 - 326.1516**]: D1's amended tribunal pleadings for claim number 2313031/12, at paras 3 – 7 & 10.

⁷See the above reference.

⁸[**C5/53/326.1449**], at para 103 of D1's amended tribunal pleadings for claim number 2375023/2011 dated 4 May 2012.

⁹It also constitutes inconsistent evidence and/or the publication of matters calculated to prejudice a fair trial and/or mislead the Court.

and witness statements, the D's would have had to examine the covert recordings and transcripts. The D's Barrister(s)/Solicitor(s) owe certain duties to the Court and are bound by certain standards of professional conduct in accordance with the code of conduct of their profession. They are prohibited from lying for their clients or knowingly allowing their clients to take the witness stand to lie¹⁰.

- 8 As required by RSC Ord.52 r.2, the covert recordings and transcripts contain the facts and matters which prove that the D's were aware that their statements were false (and they knew them to be so when they made them) and C's reply to the Defence sets out the material facts and matters said to be false, each alleged act of contempt including, where known, the date of each alleged act. It also contains reasons why it is said that the statements made by the D's are false, (to their knowledge).
- 9 The inconsistent and untenable evidence given by the D's 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.¹¹ The D's 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 D's are not in a position to rebut in the light of the facts and matters set out in C's 2 statement of case and her seventh and eighth witness statements in support of her application notice, which includes their own pleaded evidence and the facts and

¹⁰They have a primary duty to preserve the integrity of the adversarial system by presenting the Court from being misled by the presentation of false or perjured evidence. One might deceive or mislead the Court by, for example:(a) submitting inaccurate information or allowing another person to do so; (b) indicating agreement with information that another person puts forward which you know is false and (c) calling a witness whose evidence you know is untrue.

¹¹see in particular paras 251 - 252 of C's reply [C1/10].

matters relied on by them. C 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 this application.

10 The purpose of contempt law is to maintain public confidence in the administration of justice. Therefore the Court can and should, of its own motion, dismiss the D's case. It is clear from the damning evidence that the C's allegations are right. Justice must not only be done, but must be seen to be done. What the C is most concerned with is the fact that the D's application sets out to deceive the Court, by the giving of untenable, untruthful and inconsistent evidence and the presentation of an unmeritorious case. It is clear that the D's are seeking to subvert the process of the Court by fraudulent means.¹²

11 In **Connelly v Director of Public Prosecutions** [1964] AC 1254, Lord Morris said that a court must enjoy the powers necessary to enable it to act effectively within its particular jurisdiction in order, among other things, to suppress any abuses of its process. In **Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corpn Ltd** [1981] AC 909, 979 which Lord Woolf CJ quoted in **Taylor v Lawrence** [2003] QB 528, 546-547, paras 52-53, Lord Diplock said that it would be conducive to legal clarity if the use of the two expressions, the inherent power and the inherent jurisdiction of the court, was confined to the doing by the court of acts which it needs must have power to do in order to maintain its character as a court of justice.

¹²The D's will be well aware of the consequences of taking the stand and giving evidence in line with their pleadings, (which is contrary to what the covert recordings and transcripts reveal).

12 D's are engaging in criminal conduct 'Perverting the course of justice contrary to The Common Law and Fabrication of false evidence contrary to The Common Law. A party who uses the Courts' process for the commission of a crime or a civil wrong is abusing it. A Court which allows its process to be abused in that way will lose public confidence. **The particulars of the offence of 'Perverting the course of justice contrary to The Common Law'**: D1 and/or D2 and/or D3 and/or D4 and/or D5 and/or D6 and/or D7 and/or their legal representative(s), did acts and/or embarked upon a course of conduct which has a tendency to, and is intended to pervert the course of public justice. By their acts or omissions they individually and/or collectively are responsible for conspiring, assisting and encouraging one another, acting in concert with one another, in relation to the alleged below:

- 12.1 Publishing matters calculated to prejudice a fair trial;
- 12.2 Fabricating evidence with intent to mislead a Court;
- 12.3 Unlawful means conspiracy;
- 12.4 Concealing the above offences;
- 12.5 Submitting a Defence containing false statement(s) and/or references to false and inconsistent evidence in relation to this action, which is verified by a statement of truth. Reliance on this evidence by them and their legal representatives, in order to deny access to untainted justice is unacceptable and has led to conscious participation in activities used as obstructions to justice, which in themselves constitute criminal offences. This also constitutes provision of a fraudulent statement of case to the Court;
- 12.6 Submitting a false disclosure statement which relies on false information/evidence;

12.7 The intent to mislead the Court by using fraudulent evidence and/or evidence unlawfully obtained against the European Convention to unlawfully make an application for a cost order and civil restraint order against C.

13 The particulars of the offence of ‘Fabrication of false evidence contrary to The Common Law’: D1 and/or D2 and/or D3 and/or D4 and/or D5 and/or D6 and/or D7 and/or their legal representative(s), did acts and/or embarked upon a course of conduct which involved the fabrication of evidence, which they knew or should have known, would be used in legal proceedings and by their acts or omissions they individually and/or collectively are responsible for conspiring, assisting and encouraging one another, acting in concert with one another, in relation to the alleged below:

13.1 Submitting a Defence containing false statement(s) and/or references to false inconsistent evidence in relation to this action, which is verified by a statement of truth. Reliance on this evidence by them and their legal representatives, in order to deny access to untainted justice is unacceptable and has led to conscious participation in activities used as obstructions to justice, which in themselves constitute criminal offences. This also constitutes provision of a fraudulent statement of case to the Court;

13.2 Submitting false disclosure statement(s) which relies on false information/evidence.

14 The public interest requires that committal proceedings be brought for contempt of court under CPR 32.14. Proceedings for contempt in this case will promote the

integrity of the legal process and respect for it in the future. Such proceedings

would further the overriding objective in Part 1 of the Civil Procedure Rules:

(1) Where a party alleges that a statement of truth or a disclosure statement is false the party must refer that allegation to the court dealing with the claim in which the statement of truth or disclosure statement has been made.

(2) The court may –

(a) exercise any of its powers under the rules;

(b) initiate steps to consider if there is a contempt of court and, where there is, to punish it;

(Practice Direction RSC 52 and CCR 29 makes provision where committal to prison is a possibility if contempt is proved)

(c) direct the party making the allegation to refer the matter to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

15 Rule 31.23 deals with false disclosure statements. It provides:

‘(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false disclosure statement, without an honest belief in its truth.

(2) Proceedings under this rule may be brought only –

(a) by the Attorney General; or

(b) with the permission of the court.’

16 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.’***

17 At paragraph 114 of their Defence, the D’s state that they have so far spent

£350,000 defending themselves against C’s allegations regarding the fabrication

of evidence by the D's.¹³ Presumably this would require them to examine the covert recordings and transcripts and other documentary evidence¹⁴. The D's existing particulars do not suffice to prove the truth of the 'sting' of the words complained of and the D's ought not to have signed a statement of truth to the effect that the words are substantially true.

18 C submits that it will be necessary to make a decision on the issue of contempt proceedings until the main trial, (at which point she will submit a formal application if required to do so by the Court), as it may unduly disrupt the preparations for the main trial. The D's credibility will also be in issue on the contempt allegation, and there is a potential overlap between this and the trial. As such, the proper time for determination is at trial, when all the relevant issues of fact are before the court and the witness statements can be considered against the totality of the evidence. In her Reply, C set out the reasons for her assertion that proceedings should be brought, in order to warn the D's (at the earliest opportunity), that she considers that they have committed contempt.

Further evidence in support of the need for committal proceedings to be brought: The Disclosure Process, the D's Application for a cost and civil restraint order and the issue of Conspiracy to defame

¹³See para 113 – 114 of the Defence, [C1/8/110].

¹⁴Prior to this hearing the D's have had ample opportunity to do so. For example for the hearing which took place at the High Court on 25 March 2013, in her High Court witness statement for this hearing dated 13 March 2013, C set out numerous examples of the false statements that were made against her, and highlighted the specific parts of the covert recordings and transcripts which disproved them, [C5/55/326.1564 - 326.1568]. This also proved that the D's knew that the statements were false at the time they made them. At the very least, the D's would have had to examine these parts of the recordings. C highlighted the same parts of the recordings and transcripts in her e-mail to the Tribunal on 26 March 2013, (which the D's refer to in their Defence, at [C1/8/132/110]).

19 The material shows that the D's have knowingly submitted false evidence to the Court, (the details of which are set out in C's statements of case and her witness statements and skeleton arguments for this hearing), with the intent to mislead the Court by using fraudulent evidence and/or evidence unlawfully obtained against the European Convention to unlawfully make an application for a cost order and civil restraint order against C. On this basis they are committing fraud. Denning LJ in a famous dictum in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, 712 stated:

"No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever..."

The D's conduct also constitutes a serious breach of the Barristers/Solicitors conduct rules. It is an obstruction of justice. Contempt of court was committed in the D's Pleadings / Statements of Case, (which by reference, incorporated other documents) and their disclosure statements (see CPR Part 31.23).

20 Hiding behind a solicitor is no defence. A Barrister/Solicitor must respect and uphold the authority of the Court. He must not be a knowing party to an abuse of process or a deceit of the Court. He must never suppress or distort the truth; he is prohibited from lying for the client or knowingly allowing his client to take the witness stand to lie. He has a primary duty to preserve the integrity of the adversarial system by preventing the Court from being misled by the presentation of false or perjured evidence. The D's and their legal representatives have wilfully

corrupted and conspired to disrupt the just disposal of proceedings; thus
conspiring to destroy the public trust and also C.

21 *Lying to* and misleading is also contempt of court. The D's continue to conspire by, inter alia, violations of relevant laws, intimidating C, (who is also a witness) and openly lying to the Court about the case with the objective of obstructing justice. The Court should not shut its eyes to this. The facts and circumstances are such that it would compromise the integrity of the judicial process; dishonour the administration of justice, if the application were to be entertained based upon the D's false evidence. In such a case the D's application should be rejected on the ground that there would otherwise be an abuse of the processes of the Court.

22 The D's evidence consists of evidence obtained in violation of C's human rights guaranteed by the European Convention of Human Rights. In breach of C's right to respect for private life under article 8 ECHR and/or in violation of the prohibition on torture, inhuman or degrading treatment or punishment guaranteed by article 3 ECHR. Freedom of expression is not freedom to state matters which the speaker knows to be false and by which she intends to injure another person. That has always been the common law, and it is expressed in Art 10(2) ("the rights of others"). The degrading treatment that C has and continues to receive arouses feelings of fear, anguish and inferiority and it humiliates and debases her. This treatment is designed to break her physically and psychologically. Since this degrading treatment violates C's human dignity there is an overlap between Article 3 and Article 8 (the right to respect for private and family life).

23 It is not uncommon where ill-treatment fails to meet the level of severity demanded by Article 3 that a violation of Article 8 may have occurred as Article 8 protects a person's physical integrity as an aspect of private life; this has also been recognised by the European Court of Human Rights in *E. S. and Others v. Slovakia* [2009] (application no. 8227/04).

24 In *Motor Insurance Bureau v Shikell* [2011] EWHC 527(QB) Moses LJ in Smith stated:

'Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.'

Also see *Malgar Ltd v R.E. Leach (Engineering) Ltd* [2000] FSR 393 at [23], *Kabushiki Kaisha Sony Computer Entertainment Inc v Ball* [2004] EWHC 1984 (Ch), *Montgomery v Bruce* [2011] EWHC 875 (QB), *Nield v Loveday* [2011] EWHC 2324 (Admin) and *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin).

25 The D's deplorable conduct is both habitual and persistent and the material presented in support of their application demonstrates the need for protection, in particular of me as a vulnerable disabled Claimant and the Court staff and the judiciary, from abuse of the process. The wrongdoing has, and will interfere with the course of justice. The Court of Appeal decision in *Arrow Nominees v Blackledge* [2000] 2 BCLC 167 is the first to consider in any detail the proper response to the dishonest conduct of litigation. The Court of Appeal stated at [54]:

"Where a litigant's conduct puts the fairness of the trial in jeopardy, where it is such that any judgment in favour of the litigant would have to be regarded as

unsafe, or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory and to prevent the court from doing justice the court is entitled—indeed, I would hold bound—to refuse to allow that litigant to take further part in the proceedings and (where appropriate) to determine the proceedings against him."

26 In addition to the above, the D's failed to comply with Judge Moloney's order (sealed on 28 May 2013) and sent C their disclosure statement, list and additional documents late. C received them on 9 September 2013. C e-mailed the Court in the evening, on 6 September 2013, (copying in the D1) to complain. D1 responded by e-mail the same evening, advising C that they put the documentation in that evening's post [C5/60/326.1790]. On 15 September 2013 at 2.38, C e-mailed D1 regarding its disclosure statement and set out further facts and matters in support of the issue of the D's contempt. C stated in her e-mail that D1 had tampered with evidence and that this constituted the publication of matters calculated to prejudice a fair trial [C5/60/326.1792]¹⁵.

27 C followed up her e-mail with a letter sent by 'signed for' post, on 20 September 2013, setting out the information again [C5/60/326.1793 - 326.1794]¹⁶. The D's failed to respond to this letter and did not deny her allegation. D1 included and omitted documents, (as part of a list, which their disclosure statement asserted they were relying on¹⁷). They D's falsely asserted that the list set out the documents that had been disclosed between parties during the tribunal disclosure

¹⁵C contacted D1 about this issue again via letter on 20 September 2013, (sent by signed for post), [C5/60/326.1793 – 326.1794 & 326.1795]- C's letter & receipt for signed for post. She never received any response from the Defendants in relation to this matter.

¹⁶Also see C's receipt for 'signed for' post [C5/60/326.1795].

¹⁷ I did not/do not agree to this list and I dispute the accuracy of it.

process¹⁸. The full details of the falsity of the D's assertion are set out at paragraphs 56 - 57 of C's eighth witness statement [C1/7]. D1's sent C a disclosure cover letter [C5/59/326.1788 - 326.1789], disclosure statements [C5/58/326.1725 - 326.1727]- (*D2 – D7's disclosure statements*), the D's consolidated disclosure tribunal bundle index [C5/59/326.1749 - 326.1784] and D's additional list of document [C5/59/326.1785 - 326.1787]. C believes that these pieces of evidence prove that the D's submitted a false disclosure statement verified by a statement of truth.

Conspiracy to defame

28 The defamation of C's character and the ruining of her reputation, (including the ongoing smear campaign against her by the D's) and the D's corrupt tactics, has been well-organised and well-funded, (the D's continue to use public funds in circumstances said to be criminal), with the express aim of causing maximum damage to C. It is clear that the D's conspired to defame and destroy C's reputation and that the conspiracy is ongoing and will only be concluded when the criminal purpose is achieved or the conspiratorial agreement is brought to an end. The D's accept that C pleadings contain a conspiracy claim/element¹⁹. There are four elements to conspiracy: a) a combination or agreement between two or more individuals; b) an intent to injure; c) pursuant to which combination or agreement, and with that intention, certain acts were carried out and d) resulting loss and damage to the Claimant.

¹⁸In relation to the hearing which was due to be held in October 2013 between C and the D's, (this hearing had been separated off by the Tribunal from the hearing which was to take place in September 2013, which involved Babcock/CEL and Lewisham in claim number 230025411.

¹⁹See para 36 of the D's in-house Solicitor's witness statement dated 15 October 2013, (*'The Claimant is preoccupied with the belief that her covert recordings will prove the alleged conspiracy against her'*) and paras 79 & 210 of the D's Defence [C1/8/127 & 150].

29 C relies on 2 types of conspiracy:

- a) Unlawful means conspiracy: a conspiracy in which the participants combine to perform acts which are themselves unlawful (under either criminal or civil law); and/or
- b) Lawful means conspiracy: a combination to perform acts which, although not themselves per se unlawful, are done with the sole or predominant purpose of injuring the Claimant

30 The conspiracy also involved / involves the abuse of power and improper, dishonest and oppressive motive by the D's, (i.e. conspiracy to commit misconduct in public office²⁰) and the breach of C's human rights. C has pleaded the following [C1/9/186/67]: ***'...the Defendants' are corrupt and malicious. These practices have been aimed squarely at the Claimant in order to public defame her, cause her professional damage and severely injure her health.'***

31 In *R v Llewellyn-Jones* [1968] 1 Q.B.429 Lord Parker CJ set out a variety of activities, each of which was capable of being reflected by the offence of misconduct in public office; these include oppression, extortion, corruption, partiality and fraud. Corruption is not limited to cases involving attempted financial gain. Any wilful abuse of a public position for private or political advantage (whether for the accused or another) may properly be regarded as 'corruption' (see, *Porter v Magill* [2002] 2 AC 357, 478 & 503-506), which is undoubtedly sufficient to constitute misconduct in public office.

²⁰See *Regina v Bowden* [1995] All E.R 505 Court of Appeal (Criminal Division), which held that the common law offence of misconduct in public office also applies to local authority employees. Also see para 11.1g of C' re-amended PoC [C1/9] & paras 95, 108, 113, 115, 120 and 278 of C's Reply [C1/10].

32 The D' misconduct caused and continues to cause 'harm' to C, i.e. other injury upon a person- *oppression* and damage to her reputation, and a loss to D1, (the local authority), particularly in circumstances where D1 is using tax payers money to represent it's former employee (D3), who left more than 14 months ago.²¹ In **R v Bembridge** [1783] 3 Doug KB 32, it was held at [57], ***'those who hold public office carry out their duties for the benefit of the public as a whole and, if they abuse their office, there is a breach of the public's trust'***. In **Attorney General's Reference No 3 of 2003** [2004] EWCA 868, at [58], it was held that the likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected:

'It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer'.

33 The D's predominant purpose was not the lawful protection or promotion of any lawful interest of the combiners, as the D's employed illegal means. Where unlawful means are employed by conspirators to achieve their objective and their objective involves causing harm to the victim, the intent to cause that harm does not have to be the predominant purpose of the conspiracy. Lord Bridge in **Lonhro plc v Fayed** [1992] 1 AC 448 stated the following at [A7.465H & 466A]:

'Where conspirators act with the predominant purpose of injuring the plaintiff and in fact inflict damage on him, but do nothing which would have been actionable if done by an individual acting alone, it is the fact of their concerted action for that illegitimate purpose that the law, however anomalous it may now

²¹D3 should have funded her own solicitors/counsel. C believes that it is may be an illegal (ultra vires) use of tax payers money for D1 to continue defend this action on D3's behalf, after she ceased to be an employee.

seem, finds a sufficient ground to condemn their action as illegal and tortious. But when conspirators intentionally injure the plaintiff and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests; it is sufficient to make their action tortious that the means used were unlawful.'

- 34 It is not necessary to show that there was anything in the nature of an express agreement, whether formal or informal. The court looks at the overt acts of the conspiracy and infers from those acts that there was agreement to further the common object of the combination. It is sufficient that two or more persons combine with the necessary intention or that they deliberately co-operate, albeit tacitly, to achieve a common end, see *R v Siracusa* [1990] 90 Cr. App. R. 340.
- 35 Neither is it necessary that all those involved should have joined the conspiracy at the same time; but all those said to be parties to the conspiracy should be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they are acting in concert. The question in relation to any particular scheme or enterprise in which only one or some of the alleged conspirators can be shown to have directly participated is whether that enterprise fell within the overall scope of their common design, see Moore-Bick J in *Kuwait Oil Tanker Co SAK v Al Bader (no.3)* [2000] 2 All E.R. (Comm) 271 and *R v Simmonds* [1969] 1 QB 685 at [A4.696D-G & 697A]. Where unlawful means are employed by conspirators to achieve their objective and their objective involves causing harm to the victim, the intent to cause that harm does not have to be the predominant purpose of the conspiracy.

36 Further, and in the alternative, and in support of C's lawful means conspiracy contention, it is submitted that it is clear that the conspirators had the sole or predominant intention of injuring C, see *Lonrho v Fayed* [1992] 1 A.C. 448 [A7.467B-E], per Lord Bridge and the House of Lords decision in *Revenue and Customs Commissioners v Total Network SL* [2008] 1 A.C. 1174, [A25.41 & 56]. As it was put by per Lord Simon LC in *Crofter Hand Woven Harris Tweed Co Ltd v Veitch* [1942] A.C. 435, [A2.445]: '*If that predominant purpose is to damage another person and damage results, that is tortious conspiracy.*'

37 The mental element of intention to injure the claimant will be satisfied where the Defendant intends to injure the claimant. In *Lonrho v Fayed (No 5)* [1993] 1 W.L.R. 1489, the Court of Appeal held that, in a lawful means conspiracy case, the plaintiffs would have to sue in defamation in order to claim damages for injury to reputation or feelings. As a direct and proximate result of the conspiracy to defame between the D's and the actions and statements made by the D's in furtherance of the conspiracy, C has suffered damages. C relies on the above facts and matters in support of her plea of malice and as further evidence in support of the need for committal proceedings to be brought or for the Court to involve alternative penalty.

*The Defence should be dismissed pursuant to CPR 3.4 and/or the inherent jurisdiction of the Court*²²

38 C has pleaded that the words complained of are [C1/9/159 &163/20&21]:

²²See paras 8 – 10.2, 251 – 252 &276 of C's Reply [C1/10].

'meant understood to mean that the Claimant was 'obstructive' and/or 'intimidating' and/or 'dishonest' and/or 'incompetent' and/or 'lazy' and/or 'unruly'.

39 C has pleaded that the words complained of [C1/9/169/24]:

'..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...'²³

40 The D's have not pleaded that the above 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. The dismissal was a by-product of the defamation. C has pleaded that the damages for loss of reputation would be made even if they had not been accompanied by dismissal, (in the form of actionable defamation²⁴). The dismissal does not form part of the publications complained of.²⁵

41 The D's attempt to justify a number of allegations which are not even complained of in these proceedings. As a matter of law and proportionality, C disputes the D's entitlement to do so. The D's 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.²⁶ The words complained

²³In this meaning, C 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 D's when the defamatory statements were made. C's Claim form and PoC was issued after her dismissal, which is the only reason why there are references to it.

²⁴At para 82 of C's re-amended PoC, [C1/9].

²⁵C therefore contends that the findings of D2 are not evidence upon which the D's can rely in support of their Defence of justification.

²⁶This follows the rules laid down in *Prior v Wilson* (1856) 1 C.B (NS) 95 that where a statement contains an innuendo the words must be justified both in terms of the meaning of the innuendo and as later held in *Watkin v Hall* (1868) LR 3 QB 396 in terms of their ordinary and natural meaning.

of are not capable of giving rise to the alternative meanings or any innuendos, implications or imputations defamatory of C²⁷. In particular, the D's pleaded meanings cannot justify the following words complained of in their ordinary and natural meaning, (these are just examples, which, had they been true statements, the issues would have been dealt with through its capability procedure):

'She wouldn't meet face-to-face with any young person.....very poor work output'²⁸

'I think she avoided doing all work'²⁹

'There is no evidence of the work she was doing'³⁰

'Did AV have any face to face meetings with young people?': 'No'³¹

'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.'³²

42 Distinct meanings are what should be pleaded. Given the fact that the meanings merely describe the alleged effect of the C's alleged unspecified behaviour, there is nothing inherently defamatory in it, and so the D's meanings are hopeless and not properly arguable. C contends that the D's will not be able to justify the truth of the words complained of and they will be unable to establish at trial the facts stated in the words complained of and the facts set out in the Defence.

43 C draws the Court's attention to 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

²⁷See paras 160 – 181.3 of C's Reply, [C1/10].

²⁸At 20.2l of C's re-amended PoC, [C1/9].

²⁹At para 20.2m of C's re-amended PoC, [C1/9].

³⁰At para 20.2n of C's re-amended PoC, [C1/9].

³¹At para 20.2n of C's re-amended PoC, [C1/9].

³²At para 20.13g of C's re-amended PoC, [C1/9].

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. The D's have failed to meet the requirements, particularly in light of C's pleadings contained in at paragraph 118 of her Reply, [C1/10].

44 It follows that, if the D's 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 D's 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 C 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.

45 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 D's 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 D's cannot do this and that they will also not be able to show that they were protected by privilege.

46 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 D's

did not reasonably believe in C's guilt, therefore the words complained cannot be proven to be substantially true. It is clear that the D's 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 of³³.

47 The evidence relied on by the D's has no probative value whatsoever in supporting their Defence. No particulars are provided by the D's which could enable the Court to assess their Defence.³⁴ None of the particulars of justification refer to the dozens of serious allegations made about C. This ignores the burden on the D's 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 C. It would not be right to permit the D's to contend that the words complained of are justified on grounds which do not emerge clearly from their particulars. The D's must state clearly what their case is so the relevant issues are properly delineated in advance of trial and so the C has a proper opportunity to know exactly what the D's are really seeking to justify and/or to find facts or draw adverse inferences from.³⁵

48 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. So far as inferences are concerned, they need

³³See para 245 of C's reply [C1/10], where she has pleaded this word for word.

³⁴The Defence of justification is that the words complained of were true in substance and in fact. Where the D's alleged C was guilty of the specific allegations complained of, (in their natural and ordinary meaning), which C says are disproved by the facts and matters relied on by both her and the D's, she is entitled to such specificity as the D's can provide- See para 246 of C's reply, where she has pleaded this word for word.

³⁵See para 247 of C's reply [C1/10], where she has pleaded this word for word.

to be properly pleaded so that it appears that there is a rational nexus between the facts and the inference to be invited. C reserves the right to plead further should such necessary particulars be given.³⁶

49 There was no basis on which the D's could believe the allegations/words complained of were true. The whole of the facts which will be proved by the productions will mean that the D's will be unable to establish the essential or substantial truth of the 'sting' of the words complained of. The Defence as pleaded is as such incapable of justifying the words complained of and the meanings which the D's seeks to justify, and should be struck out. The facts relied on by the D's is contradicted by the facts and matters relied on by both parties, which indicates that the D's had active knowledge of what C stated had taken place and the truth of it.³⁷

50 The D's alternative meanings do not specifically address the grave allegations made by the D's against C. C 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."

51 The facts are not sufficient to allow the D's 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 facts advanced by C,

³⁶See para 248 of C's reply [C1/10], where she has pleaded this word for word.

³⁷See paras 249 - 250 of C's reply [C1/10], where she has pleaded this word for word.

(which are the true facts); fatally undermine the D's case. The material facts pleaded by the D's do not in fact or in law afford a foundation for the plea of justification and qualified privilege. The D's 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.

52 The D's are not permitted to plead justification and assert that a meaning is true in substance and in fact, without specifying any particular imputations.³⁸ The D's alternative meanings do not impute C's pleaded meanings that the allegations/words complained of convey. Even if the D's alternative meanings did say something about C 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 C complains. C's complaint *is not* that D2 had recommended her 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.

53 Further to this, D2, D4, D5 and D6 had not made any recommendation that C should be dismissed. The first publication complained of, (D1's SOSR bundle), also made no reference to it and did not end with a cross reference to this general charge set out in the Defence and/or the other publication complained of (D3's SOSR written presentation/report), which D1/D3 ambushed C with on the first

³⁸See *Slim and Others v Daily Telegraph Ltd and Others* [1968] 2 W.L.R. 599 [1968] 2 Q.B. 157 at [169B – C].

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 D's.

54 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 C's dismissal. This above issue is addressed in *Warren v Random House Group Ltd* [2009] QB 600, by Sir Anthony Clarke MR at [para 100], where he confirmed 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.

55 The fact that D3 recommended C'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.

C's application to strike out passages from the Defence

56 The passages which C seeks to strike out from the Defence do not relate to the dozens of serious allegations made about C, (the matters complained of in this

action). The facts relied on do not justify the meaning pleaded. The paragraphs relied on by the D's relate to specific issues involving C's previous employer (Babcock) and its employees. The paragraphs have no probative value whatsoever in supporting their Defence³⁹. C had never been the subject of any disciplinary nor SOSR process during her previous employment with Babcock, nor had any formal complaints been made against her or grievances been raised against her during the course of her previous employment. The evidence is not capable of substantially justifying the sting of the words complained of and it does not relate in any way to the issues between parties.

57 The D's evidence includes numerous documents (totalling hundreds of pages), which is not set out or referred to anywhere in their Defence⁴⁰. This evidence does not relate in any way to the dozens of very serious allegations made about C, which are the matters complained of in this action. The D's inclusion of extensive irrelevant evidence relating to the previous litigated tribunal claims is in direct opposition with its own abuse of process argument. The extensive irrelevant evidence that the D's rely on was submitted for the full merits hearing which took place in January/February 2012. The Tribunal litigated the issues relating to this evidence and the case was dismissed. The D's are clearly attempting to re-litigate the issues by introducing this irrelevant evidence⁴¹.

³⁹Nor is it capable of bearing the meanings pleaded by the D's. In addition the paragraphs cannot substantially justify the sting of the words complained of and they do not relate in any way to the issues between parties

⁴⁰Documents relating to specific issues, involving her previous employer and its employees.

⁴¹At para 7 of the Defence the D's even specifically rely on the Employment Rights Act [C1/8/111/7].

- 58 The D's have also included evidence relating to the former website www.school-info4u.com. C has set out further information relating to this issue at paragraph 11 of her seventh witness statement [C1/6] and paragraphs 63 - 65 of her eighth witness statement [C1/7]. The D's pleadings and reliance on this evidence are designed to obscure and distract from the real issues and to try to mitigate the damages that C is entitled to. Mitigation of damages is not being considered at this stage. Therefore it is not evidence which can found an application to strike out.
- 59 A judge should only strike out proffered evidence if it is quite plain that, no matter how the proceedings may look at trial, the evidence will never appear to be either relevant or, if relevant, will never be sufficiently helpful to make it right to allow the party in question to adduce it – see *Wilkinson v West Coast Capital* [2005] EWHC 1606 (Ch), July 22, 2005, unrep (Mann J), [A19. 6].
- 60 C has pleaded that the matters set out at paragraphs 96 – 110 of the Defence were not the matters before the D's when they published/made the statements complained of and the D's cannot plead matters arising after publication as supposed grounds.⁴² The D's particulars of justification have the effect of transferring the burden onto C of making a positive case to disprove, this is of course impermissible, see *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772 [A13.65]. The D'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

⁴²At para 237 of C's Reply, [C1/10].

some second-hand report or assertion of them, see *Shah v Standard Chartered*

Bank [1999] QB 241 at 263.

61 The D's are not entitled to seek to introduce matters and justify meanings which are not complained of. Such an approach is impermissible as a matter of law and is wholly disproportionate. Accordingly, in C's Reply to the Defence,⁴³ C requested that the Court strike out the paragraphs of the Defence (paragraphs 23 – 26, 28 – 31), which contain the passages of the manner described, as an abuse of process. C has pleaded in her Reply, that in light of the D's particulars of justification, (at paragraphs 182.3a –b, d – g and i), that she will have difficulty in knowing how to even engage with it, as the particulars are so generalised and also reverse the burden of proof onto her, therefore they cannot stand, and accordingly, C requests that they also be struck out: [C1/10/291/236].

62 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, [A1.305]:

"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".

⁴³[C1/10/218/8].

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

C's application for a preliminary hearing

63 C believes that there should be a preliminary hearing in order to consider the issue of the meaning of the words complained, whether or not her art.8 rights were engaged, whether her rights under the Data Protection Act 1998 were breached and whether the D's can rely on justification of the lower meaning for which they contend, (with a sequential trial of the remaining issues).⁴⁴ If both parties know what defamatory meaning the court has found the words complained of to bear, (particularly as the D's are defending the meanings as true), then they will be able to focus their attention upon the appropriate damages, and that will promote settlement. As yet, a date has not been set for the main trial; therefore the court will probably be able to accommodate another hearing before then. In light of the facts and matters set out in this skeleton argument, a ruling on these issues will clearly lead to significant costs savings, (if not the settlement of the action altogether). C relies on *McAlpine v Bercow* [2013] EWHC 981 (QB).⁴⁵

64 C has set out her position in relation to the breach of her Article 8 rights and her rights under the Data Protection Act 1998, in her skeleton argument no.1 (at paragraphs 27 – 33 [C1/1]). In the D's alternative pleaded meanings, there is an absence of a description of the alleged behaviour which C is supposed to have

⁴⁴See C's Application Notice dated 16 October 2012 [C1/3].

⁴⁵Where it was held that a preliminary hearing (where the meaning was in dispute), would furthering the overriding objective [of the Civil Procedure Rules] which requires that the actual meaning of words complained of be determined at as early a stage as possible.

engaged in.⁴⁶ The D's pleaded meanings say nothing about what it is that C allegedly engaged in that right-thinking members of society would not condone. In addition, nobody could reasonably think the worse of C for acting '*in good faith*', which is what one of the D'S meanings accept that she may have been doing.

65 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 D's also accept the possibility that C was acting in good faith in their particulars of justification.⁴⁷ This acceptance by the D's is not in line with the nature of the serious allegations made against her/the words complained of, and the D's Tribunal pleadings, (which they rely on in support of their plea of justification) and which assert that C *did not* act in good faith [C5/53/326.1502]⁴⁸ and [C5/53/326.1460].⁴⁹

66 Nobody could reasonably think the worse of C for acting '*in good faith*' and in circumstances, where the D's had stated that C's alleged conduct/behaviour did not warrant any complaints being made and indeed, no formal complaints had been made about C, she had received no formal warnings. There is no objective and corroborative evidence to suggest that any alleged behaviour displayed by C adversely affected anyone in the team, particularly, the 'non-managers' in her

⁴⁶The meanings say nothing about her character and are incapable of lowering her in the estimation in the mind of a right-thinking person.

⁴⁷At para 182.3i of the Defence, [C1/8/110].

⁴⁸D1's amended tribunal pleadings for claim number 2390531/2011A, at paragraph 19.

⁴⁹D1's amended tribunal pleadings for claim no. 2375023/2011, at para 112.

team. Indeed, D1 and D3 did not even deem it necessary to even interview the other 7 key workers in the team as part of the investigation process.

67 The matters and facts relied on by C shows that the other key workers in her 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 C on those individuals.

68 D1 stated that C's alleged behaviour was not 'blameworthy'. That being said, the D's alternative meaning is not probative or capable of bearing the meanings of the words complained. C's alleged unspecified behaviour cannot therefore be culpable, because by D3's own admission, she was not. How can a party be liable for alleged harm caused to others if that party was *not* blameworthy and acted in good faith? The D's alternative meanings accept the possibility that C'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 D's assert in their particulars). Accordingly, the alternative meanings are flawed.

69 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). Even if the D's pleaded alternative meanings had merit, (which is not admitted), only D3's SOSR presentation/report, made the recommendation that C should be dismissed and by D3's own admission, there was no case against C during the investigatory stage of the SOSR process [C3/36/326.864]⁵⁰. In which case proof of the D's 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].

70 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.⁵¹ C has pleaded in 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....'***: [C1/9/169/22].⁵² C does not complain about

⁵⁰D3 made the following statement, contained in D1's SOSR hearing bundle: ***'Could I just be very clear, there is no case against you. At the moment, the purpose of this meeting is for me to gather evidence of events and circumstances and based on that evidence, to conclusion. So there is absolutely no case against you..'***, at sentences 228 – 231, of C's covert recording of the SOSR investigation interview with C and D3 on 1 November 2011. D3 also made a similar statement during the same interview: ***'...I would remind you that there has been no decision made at this moment in time, that there is a case to answer...'***, at sentences 139 – 140 of C's covert recording of the SOSR investigation interview with C and D3 on 1 November 2011.

⁵¹This includes dishonesty, (in relation to the words complained of), deficiencies with C's 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.

⁵²The inferences, implied meanings, imputations and innuendo's of dishonesty connote a degree of moral failure on the part of C and that she lied in her denials of the D's allegations, which C 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.

D3's assertion that her employment with D1 was unsustainable, she is complaining of this statement in the specific context in which it was made. The words complained of in relation to this: '*I also refute the following statement which you state I made: your employment from LBL is unsustainable*', [C1/9/161/20.3], clearly imputes the plainest allegation of dishonesty, (which is in line with C's pleaded meaning and not the D's- as D3 denied having made the statement).⁵³

71 C has pleaded that the facts giving rise to the inferences, implied meanings, imputations and innuendos are facts that were known to the listeners/readers.⁵⁴ In taking into account the context, including the facts relied on by C; 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.

72 C contends that there is a mismatch between the alternative meanings pleaded by the D's 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 D's, which she contends bear the meanings attributed to them. The alternative meanings relied on by the D's do not bear any defamatory 'stings' and

⁵³The 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.

⁵⁴C 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 D's in their Defence).

it pales into insignificance beside the gravity of the words complained of and the dozens of very specific false allegations made by the D's against C.⁵⁵

73 The D's pleaded meanings do not share a common sting with C's pleaded meanings. There is not a sufficient communality of features between C's and the D's meanings. Even their own and in their context, the D's pleaded meanings do not share a common sting. Only if the several defamatory allegations in their context have a common sting, is the Defendant is entitled to justify this common sting: see *Polly Peck (Holdings) Plc v Trelford* [1986] Q.B. 1000, p.1032D-E, accordingly. The D's pleaded meanings should therefore not be allowed to stand on the authority of *Polly Peck*. The D's are trying to 'squeeze out' meanings which simply aren't there.⁵⁶

74 As the D's 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 C's dozens of very specific complaints. 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*

⁵⁵The 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 C's dozens of very specific complaints

⁵⁶The D's pleaded meanings have no feature at all in the sense that they fail to set out what behaviour C 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.

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.

75 The D's 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. The alternative meanings do not impute anything tangible relating to a sector of C's reputation.⁵⁷ The D's alternative meanings are ambiguous, and/or are not defamatory of C, or are so mild by comparison to the allegations made against her by the D's, that proof of it cannot amount to substantial justification of the words complained of. The alternative meanings relied on by the D's 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 C's personality and professional reputation and abilities and entirely destroyed her reputation for integrity.

76 Since the principal defamatory meaning conveyed by the publications involve sensitive and damaging allegations, allowing a defence of justification based on the D's 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. The meanings sought to be justified cannot be properly argued, because it is not an issue before the Court whether C's dismissal was unfair and/or whether it was 'justified' and/or whether D1 was entitled to dismiss her. C withdrew her claim for special damages in relation to the loss of her

⁵⁷The D's are required to inform C and the Court in their pleadings precisely and clearly what meaning they intended to justify, without circumlocution or obfuscation.

employment/loss of earnings and cannot recover damages in respect of the D's

pleaded meanings; therefore no plea of justification in respect of it can be relevant.⁵⁸

77 Accusations of outright guilt were made against C- the meanings sought to be justified are insufficient to convey the gravity of allegations. The publications complained of, (including C's covert recordings and transcripts) contain C'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 her denials are untrue. The words complained of cast doubt on the truth of C's case that she offered to the D's.

78 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. C 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.'

⁵⁸Also see paras 157 – 158, 198 – 198.1 of C's Reply [C1/10].

79 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 [A23.14].

80 The allegations against C are so grave and assert her guilt; accordingly any particulars of justification advanced in relation to lesser defamatory meanings should be struck out.

Cost management

81 The D's contend that they *should not* have to prepare a cost budget, which is absurd. Costs Management was introduced as an important part of the reforms arising from Lord Justice Jackson's Review of Civil Litigation Costs. Costs Management Orders apply to all multi-track cases commenced on or after 1 April 2013 in the County Court, Chancery Division and Queen's Bench Division. This

case does not meet the criteria for exception from automatic costs management,
i.e:

(a) cases in the Admiralty and Commercial Courts;
(b) such cases in the Chancery Division as the Chancellor of the High Court may direct; and
(c) such cases in the Technology and Construction Court and the Mercantile Courts as the President of the Queen's Bench Division may direct.

82 Costs management orders are made in all cases except where there is good reason not to do so. Even when the exceptions in the rule and the direction apply, the use of costs management should always be considered. There is no good reason why there should be an exception to this rule in this case. The D's have advised the Court that they spent £350,000 defending C's withdrawn Tribunal claims, (despite stating that just 1 in-house lawyer was/is allocated to deal all C's claims). In C's view this demonstrates that the D's are pursuing their defence at disproportionate cost, therefore it is only right that they do so, at least in part, at their own expense.

83 Examples of this unreasonable conduct are the D's inclusion of a vast amount of irrelevant documents⁵⁹, failing to keep to the directions timetable, (i.e. the unreasonable delayed 'strike-out' and civil restraint applications and the meritless applications themselves) and their refused application for cost in May 2013⁶⁰. D's delayed applications caused great disruption to C as she was in the latter stages of finalising her witness statement and exhibits, which included several bundles of pages which she had referenced in her witness statement for the main trial.⁶¹

⁵⁹The Court of Appeal has said that it would consider imposing sanctions on solicitors who failed to exclude irrelevant documents. The D's should be prepared for their costs to be scrutinised and justified.

⁶⁰See the D's skeleton argument dated 22 May 2013, where they request costs [C5/57/326.1647/11].

⁶¹The D's are aware that C is unrepresented and disabled (suffering from depression), so therefore already faced with a tremendous challenge in accomplishing such a difficult task.

84 In *Smales v Lea and Others* [2011] EWCA Civ 1325, the Court of Appeal again drew attention to CPR 52 Practice Direction emphasising the need to include only those documents specifically required with all extraneous material to be excluded. It is clear that it is the D's actions and not C's, are preventing the issues from being narrowed, which in turn affects costs.⁶² Cost management is crucial in order to ensure that costs do not spiral out of control in this case and therefore further the overriding objective. It will be necessary for the Court to play an active role in the cost management of this case, with the focus on 'reasonableness, when considering the proportionality of costs. This will control the budget in respect of recoverable costs, so the recoverable costs of the winning party can be assessed in accordance with the approved budget.

C's request for a reasonable adjustment

85 C will now have to amend her witness statement and the organisation of her bundles of evidence, (which will cause her great expense). C therefore respectfully requests as a 'reasonable adjustment', that a fair and realistic timetable be adopted. C requests 2 months from when the judgment is handed down for this hearing, or the preliminary hearing, (should one be ordered).⁶³ C submits that it would further the overriding objective for parties to exchange witness statements *before* the Case Management Conference (CMC), in order for parties and the Court to determine what the issues are. This is also in line with the

⁶²The Defence expands these proceedings beyond their proper ambit, by including irrelevant and/or disproportional particulars, which have resulted in a proliferation of issues, and obscuring the issues, rather than providing clarification.

⁶³The D's will clearly be at an advantage over C, because, (notwithstanding their access to limitless resources), they will have been preparing their witness statement to take into account their applications, which they knew that they were going to ambush C with just weeks before witness statements were due to be exchanged.

previous approach adopted by Moloney J, in his order of 23 May 2013, which laid down a timetable for this action to proceed to trial⁶⁴. Should the Court order a preliminary hearing, it is submitted that parties should not be required to exchange witness statements until after the judgment to the preliminary hearing in handed down, and with an adequate timeframe between then and the CMC, (i.e. at least 1 month).

86 It is C's contention that her exhibit (AAV1) will need to be adduced for the main trial as she intends to refer to it in her witness statement for the main trial. C proposes that the rest of her disclosed evidence should be set out in a separate exhibit attached to her witness statement for the main trial. In light of the extensive evidence relied on by both parties, C also proposes that separate bundles be submitted for the witness statements.⁶⁵

87 C respectfully request that the Court make adjustments to accommodate her disability. The granting of this request would reassure C that the Court understands the vital role it plays in ensuring that that a disability does not amount to a handicap to the attainment of justice and it would further the overriding objective in dealing with this matter in the most expeditious, efficient and fair way possible and in a way that enables C to fully participate in the Court process to the best of her ability and without being put at a disadvantage⁶⁶.

⁶⁴Parties had previously been ordered to exchange witness statements some weeks before the CMC which was due to take place on 1 November 2013.

⁶⁵C suggests that these bundles be numbered consecutively throughout at the bottom, on the right hand-side, (instead of in the middle) and that the numbering of the bundles restart at 1.

⁶⁶The Equality Act 2010 places a duty on service providers to take reasonable steps to change any practice, policy or procedure which makes it impossible or unreasonably difficult for disabled persons to make use of a service which they provide to other members of the public.

Relief

88 C therefore seeks:

88.1 That the Defence be struck out and dismissed pursuant to CPR 3.4 and/or the inherent jurisdiction of the Court on the grounds that they:- a) disclose no reasonable grounds for defending the claim and/or b) are an abuse of the process of the Court and otherwise likely to obstruct the just disposal of the proceedings; or in the alternative;

88.2 An order that paragraphs 23 – 26, 28 – 31 and 182.3a –b, d – g and i of the Defence be struck out;

88.3 Determination by judge as to the meaning of the words complained of, whether or not C's art.8 rights were engaged, whether C's rights under the Data Protection Act 1998 were breached, whether the words are actionable as defamatory) and whether the D's can rely on justification of the lower meaning for which they contend?;

88.4 To delay the decision on the issue of committal proceedings, (or other penalty) and any requirement for C to make a formal application in relation to this, until the main trial;

88.5 Any such further or other order that the court considers fit.

Such an approach to relief will ensure fair and just proceedings.

STATEMENT OF TRUTH

The Claimant believes that the facts stated in this skeleton argument are true.

Ayodele Adele Vaughan

14 November 2013