

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

Claim Form issued 19 December 2012

Re-amended Particulars of Claim by Order of Master Leslie dated 31 July 2013

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

RE-AMENDED PARTICULARS OF CLAIM

The Parties

The Claimant

- 1 The Claimant's name is Ayodele Adele Vaughan of CENSORED. She is CENSORED years old and was born on CENSORED in the United Kingdom. The Claimant was suspended from work on full pay by the first Defendant on 10 August 2011, this lasted 7 months. She alleges that she was unfairly dismissed by the first Defendant in April 2012.

- 2 The Claimant worked in the London Borough of Lewisham's Children and Young People directorate, which is headed up by Frankie Sulke. The Claimant's main role was to provide independent and unbiased information, advice guidance and intensive support to young people on personal, health, financial and emotional issues. The Claimant also supported young people seeking jobs, training and educational opportunities. The Claimant worked with parents, carers, families, voluntary, statutory and community agencies and commercial bodies to help the young people that she worked with to overcome barriers to learning and employment.

The Defendants'

- 3 (1) The first Defendant is the London Borough of Lewisham, which is responsible for the conduct of its agents/employees/public officers, including the second, third, fourth, fifth, sixth and seventh Defendants'. The London Borough of Lewisham's head office based in Catford in South East London. The London Borough of Lewisham is a 4 star authority. It is the largest employer in the borough with more than 8500 staff and it serves 248,000 people. The current Chief Executive is Barry Quirk. This first, second, third, fourth, fifth, sixth and seventh Defendants' are entrusted to work with the most vulnerable groups of children and young people in the borough.
- 4 (2) The second Defendant is Ralph Wilkinson, and at all times and for all purposes material to this proceeding, the second Defendant was a public officer and the head of Public Services at the London Borough of Lewisham. The second Defendant acted on behalf of the first Defendant within the course of his employment as a public officer at the London Borough of Lewisham. He was responsible for conducting the first Defendants' SOSR ('some other substantial reason') and grievance hearings and deciding on the outcomes. The second Defendant worked closely with the third Defendant and directed and exercised authority over the third, fourth, fifth, sixth and seventh Defendants'.
- 5 (3) The third Defendant is Christine Grice, and at all times and for all purposes material to this proceeding, was a public officer and the head of Access and Support at the London Borough of Lewisham. The third Defendant acted on behalf of the first Defendant within the course of her employment as a public officer at the London Borough of Lewisham. She suspended the Claimant from duty and was responsible for conducting the SOSR investigation, she was the investigating officer and presented the first Defendant's case against the Claimant at the SOSR and grievance hearings, and recommended the Claimant's dismissal. The third Defendant worked closely with the fourth, fifth, sixth and seventh Defendants' and directed and exercised authority over them.
[The 3rd Defendant left the employment of the 1st Defendant on or around Brown, 26 July 2012.](#)
[The Claimant relies on an e-mail sent by 1st Defendant to all staff on 26 July 2012 14:35.](#)

- 6 (4) The fourth Defendant is Elaine Smith, and at all times and for all purposes material to this proceeding, the fourth Defendant was a public officer and the Positive Activities Team Manager and the joint interim head of the Youth Support Services with the seventh Defendant at the London Borough of Lewisham. The fourth Defendant acted on behalf of the first Defendant within the course of her employment as a public officer at the London Borough of Lewisham. She was the fifth Defendants' (Valerie Gonsalves manager) and also the Claimant's line manager. The fourth Defendant worked closely with the third and fifth Defendants' and directed and exercised authority over the fifth Defendant.
- 7 (5) The fifth Defendant is Valerie Gonsalves, and at all times and for all purposes material to this proceeding, the fifth Defendant was a public officer and the Key work Team Manager at the London Borough of Lewisham. The fifth Defendant acted on behalf of the first Defendant within the course of her employment as a public officer at the London Borough of Lewisham. She was the Claimant's line manager before the fourth Defendant took over the Claimant's line management.
- 8 (6) The sixth Defendant is Elaine Hattam, and at all times and for all purposes material to this proceeding, the sixth Defendant was a public officer and a Human Resources officer at the London Borough of Lewisham. The sixth Defendant acted on behalf of the first Defendant within the course of her employment as a public officer at the London Borough of Lewisham. She was present and provided advice to Ralph Wilkinson during the SOSR and grievance hearings/process.
- 9 (7) The seventh Defendant is Kate Parsley, and at all times and for all purposes material to this proceeding, the seventh Defendant was a public officer and the head of the Teenage Pregnancy team at the London Borough of Lewisham and the joint interim head of the Youth Support Services with the fourth Defendant. The seventh Defendant acted on behalf of the first Defendant within the course of her employment as a public officer at the London Borough of Lewisham. She worked closely with the third, fourth and fifth Defendants' and directed and exercised authority over the fifth Defendant.
- 10 The former 8th Defendant (Dr Williams) was granted summary judgment against the Claimant in April 2013.

11 The Claimant relies upon the following:

11.1 The issue of the Defendants' malice in respect of the matters complained of in the main action, including:

- a) the circumstances surrounding her transfer of employment and liability for her three employment claims to the first Defendant on 1 April 2011; and
- b) the circumstances surrounding further legal proceedings brought against the first, second, third, fourth, fifth and sixth Defendants' following her transfer of employment to the first Defendant on 1 April 2011; and
- c) the circumstances surrounding the first and third Defendants' OH referral to the eighth Defendant (Dr Williams) in November 2011, her complaint/grievance regarding the eighth Defendant and further legal proceedings brought in relation to this; and
- d) documentary evidence exchanged between parties and her notifications to the Defendants' of the said falsities, in her spoken words, correspondences to the Defendants' and her SOSR bundle, (the contents of which was sent to the first Defendants' Chief Executive Barry Quirk and the Executive Director Frankie Sulke, before the SOSR hearing took place) and which caused them to know that each of the matters complained about were false and/or not to be believed and that each was true and/or to recklessly not care whether each was true or false; and
- e) the first defendants notes, including short-hand notes, (taken during investigations interviews with her and the SOSR/grievance hearings); and
- f) the Claimant's repeated offers to provide the first and eighth Defendants' with copies of covert recordings: Since October 2012 the Claimant has made numerous attempts to provide the first Defendants' with copies of all her covert recordings which further prove that the defamatory statements were actuated by malice, spite, ill-will and vindictiveness against her, but the Defendants' have flatly refused to take receipt of the said evidence, even after having received one of the recordings, (which the Claimant had sent to the first Defendant without obtaining permission) and which clearly shows malice and premeditation, and after also having received excerpts of the transcripts of some of the covert recordings, (which are damning). The eighth Defendant has also failed to take receipt of the covert recordings on more than one occasion. The Claimant contends that this conduct as an admission by the Defendants' of malice; and
- g) the Claimant's requests for the first Defendant to investigate her concerns regarding its continued failure to use the public funds entrusted to or handled by it in a responsible and lawful manner and the related misconduct by its senior managers, which left the Claimant

- exposed to defamation, disability discrimination, PIDA detriment and unfair dismissal by those managers; and
- h) Covert recordings and transcripts dated between April 2011 and March 2012; and
 - i) Equality form questionnaires and response; and
 - j) Employment Tribunal pleadings; and
 - k) Medical evidence; and
 - l) Pre-action correspondence; and
 - m) Other documentary evidence, including correspondence with insurance companies and Unison; and
 - n) Witness testimony, (oral and written)
 - o) Employment Tribunal evidence disclosed between the 1st Defendant and the Claimant during the disclosure process, (as set out in the parties draft Employment Tribunal bundle indexes) and e-mails exchanged after the exchange of the bundle indexes, regarding the disclosure of Tribunal evidence.

Defamation

- 12 The Claimant tried to ensure as far as practicable that her particulars of claim were concise; however, this was extremely difficult due to the fact that the threads containing the words complained of are themselves long and complex. Any delay in the Claimant issuing proceedings can be attributed to the fact that she is disabled and has been suffering from serious debilitating mental health condition since 2009. The Claimant has been dealing with concurrent proceedings in the Employment Tribunal, Employment Appeal Tribunal and the Senior Cost Office since the beginning of this year, (which are still on-going), whilst having been signed off sick by her GP with depression since April 2012 and on two sets of prescription medication, including anti-depressants. The Claimant had been unrepresented throughout this entire time and continues to endure a real disadvantage as a litigant in person. The Claimant also ensured that she adhered to pre-action protocol, which took around one month to complete.
- 13 The third Defendant (Christine Grice) was the senior officer who suspended the Claimant, investigated her, presented management's SOSR case against the Claimant and recommended her dismissal. The second Defendant (Ralph Wilkinson) was the hearing officer who took the decision to dismiss the Claimant and wrote the dismissal letter. He received procedural advice from the sixth Defendant (Elaine Hattam). Parties ought reasonably to have foreseen the republications. All of the Defendants would have had the opportunity to review and approve their defamatory statements before they were published and re-published. The relevant Defendants'

also signed their SOSR witness statements.

- 14 The Defendants' are the authors and/or publishers and/or the editors of the defamatory statements. ~~The eighth Defendant published the words complained of to Rita Lee and caused and/or permitted and/or contributed to the publication of the defamatory statements to Susan Funnel, Jocelyn Heyford and Unison.~~ The ~~remaining~~ Defendants' caused and/or permitted and/or contributed to the publication of the defamatory statements to Susan Funnel, Jocelyn Heyford and Unison. ~~Although the first and eighth, but the first~~ Defendants' ~~have~~ has overall responsibility for the publications. A party can be liable for a republication of the words by him if he intended or authorised the republication. A party is also liable for the repeated words which had originally been uttered by him if he intended or authorised the repeated utterance. Any repetition of the defamation is actionable against any other person responsible for repeating the defamation, publishing it, or putting it in circulation.
- 15 The publishers failed to take reasonable care in relation to the publications, and due to the evidence in their possession, they did know or ought to have known that what they did caused or contributed to the publication of defamatory statements. The Defendants' made the statements complained of knowing them to be untrue or with a reckless indifference as to whether they were true or false and did so not in furtherance of a duty or legitimate interest. The publishers knew of circumstances by virtue of which they might be understood to be defamatory of the Claimant and the words were clearly defamatory on the face of them. In particular the publishers were the providers of access to the publications, by means of which the statements were transmitted, or made available and they had effective control.
- 16 In determining whether a person took reasonable care, or had reason to believe that what he did caused or contributed to the publication of a defamatory statement, regard must be had to (i) the extent of his responsibility for the content of the statement or the decision to publish it, (ii) the nature or the circumstances of the publication, and (iii) the previous conduct or character of the author, editor or publisher.
- 17 Even if any of the Defendants' were to claim that they were not the author, editor or publisher of a statement, the Defendant would not be able to rely on such a defence because they were aware that the statement would be relied upon in managements' case against the Claimant in relation to the SOSR process/hearing, (which could result in the Claimant's dismissal), they failed to take reasonable care in relation to its publication and they knew that what they did caused and/or permitted and/or contributed to the publication of a defamatory statement. The second, third, fourth, fifth, sixth and seventh Defendants' all referred to the publications during the SOSR and

grievance hearings, thus clearly confirming the thrust of the publications and in particular the defamatory statements.

- 18 The Claimant had made the Defendants aware during the SOSR process that the statements were false and had provided documentary evidence to support this. The Defendants' have taken no steps whatsoever to retract the defamatory statements published and uttered, despite the Claimant's numerous requests for them to do so. Instead they have proceeded to reinforce the defamatory statements by providing her with false information in relation to them and flatly denying that they have defamed her/continued to defame her. **On 7 December 2012**, the first Defendant disclosed further defamatory statements written and spoken by the fourth Defendant.
- 19 The Claimant contends that the Defendants' have published/uttered and/or caused and/or permitted to be uttered and/or published and/or been party to or procured the distribution and publication within the jurisdiction of this Honourable Court, in the following ways:
- a) Via the first Defendants' SOSR hearings- which was attended by an individual from the outside agency Brook Street recruitment agency' (Susan Funnell);
 - b) Via the first Defendants' grievance hearing- which was attended by an individual from the outside agency REED employment agency' (Jocelyn Heyford);
 - c) Via the publishing's, re-publishing of libelous statements and repeated utterances of slanderous statements during the SOSR/grievance hearings and in the first Defendants' SOSR/Grievance hearing bundles- which were uttered in front of/disclosed to individuals from outside agencies- (Susan Funnell on or around 27th and 28th February 2012 and 6 March 2012 and Jocelyn Heyford on or around 22 March 2012) and Unison on or around 14 April 2012;
 - d) Via the publishing of Christine Grice's libelous and slanderous statements in her SOSR presentation/report- which was read out in front of and/or a copy given to individuals from outside agencies (Susan Funnell on or around 27th February 2012 and Jocelyn Heyford on or around 22 March 2012);

Libel

20 In their natural and ordinary meaning (including the entirety of the publication as context) (as interpreted by the Defamation Act 1952 and/or 1996) the following words within the items were false and were

- (1) Defamatory of the Claimant, and
- (2) Meant understood to mean that the Claimant was 'obstructive' and/or 'intimidating' and/or 'dishonest' and/or 'incompetent' and/or 'lazy' and/or 'unruly'

The complaints also include their implied meanings.

- 20.1 **On 10 August 2011 at 10.18:** Elaine Smith's e-mail, stating: *'I did not instruct her not to work from home'* (**published in the first Defendants' SOSR/grievance bundle and first disclosed to the Claimant on or around 22 February 2012- also disclosed to Susan Funnell, Jocelyn Heyford and Unison**); and
- 20.2 **On 30 August 2011** at 2pm, signed on 7 January 2012; 10 October 2011 at 12noon, signed 2 February 2012; 11 October 2011 at 10am, signed on 10 February 2012, 10 November 2011 at 10 am, signed on 10 February 2012 and 17 November 2011 at 9.30am, signed on- **The Investigatory interview minutes/notes with managers: witness statements (published in the first Defendants' SOSR bundle and first disclosed to the Claimant on or around 13 February 2012- also disclosed to Susan Funnell, Jocelyn Heyford and Unison)**, stating:
- a) Elaine Smith- 11 Oct 2011: *'At the start of the second week she said that she would welcome face to face meetings, but soon after she e-mailed me to say that she would prefer written communication between us. It made it difficult to implement the risk assessments' recommendations'*
 - b) Elaine Smith- 10 Nov 2011, in relation to a question from Christine Grice asking whether the Claimant saw young people face to face: *'She did not see any'....'She had no face-to-face meetings in 4 months'*
 - c) Elaine Smith- 10 Nov 2011: *'She would not give us her job description'*
 - d) Elaine Smith- 10 Nov 2011: *'It was difficult getting her to do the job'*
 - e) Elaine Smith- 10 Nov 2011: *'The fact that she went through 3 managers in the time with us is indicative of the problem. She has a unilateral problem with managers'*
 - f) Valerie Gonsalves- 10 Oct 2011: *'She was specifically against regular face to face meetings, preferring instead written dialogue or to discuss issues by telephone'*
 - g) Valerie Gonsalves- 17 Nov 2011- in response to Christine Grice's question: *'Did she say you were not capable?': 'Yes. On one occasion, while doing the workstation assessment actually...'*
 - h) Christine Grice- 17 Nov 2011- in relation to the Claimant's e-mail to Valerie Gonsalves dated 15 April 2011: *'She has told me that she meant meeting 'face to face' only to receive work instructions'*
 - i) Valerie Gonsalves- 17 Nov 2011- in response to Christine Grice's question: *'Did she avoid meeting face to face?': 'Yes'*
 - j) Valerie Gonsalves- 17 Oct 2011: *'As soon as Lillian started speaking AV went into attack mode'.*
 - k) Valerie Gonsalves- 17 Nov 2011- in response to Christine Grice's question- *'How about AV's behaviour in team meetings?': 'She would sit back in her chair busy taking notes. She would not be involved in discussions'*

- l) Valerie Gonsalves- 17 Nov 2011- in response to Christine Grice's question about the Claimant's work output: '*She wouldn't meet face-to-face with any young person.....very poor work output*'
- m) Valerie Gonsalves- 17 Nov 2011: '*I think she avoided doing all work*'
- n) Valerie Gonsalves- 17 Nov 2011: '*There is no evidence of the work she was doing*'
- o) Valerie Gonsalves- 17 Nov 2011- in response to Christine Grice's question- '*Did AV have any face to face meetings with young people?*': '*No*'
- p) Valerie Gonsalves- 17 Nov 2011- 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*'
- q) Valerie Gonsalves- 17 Nov 2011: '*AV said that I was not capable as a manager*'

These witness statements' were repeated and published in the first Defendants' SOSR/grievance bundle for use in the SOSR/grievance hearings. The bundle was used by the Defendants' during the SOSR and Grievance hearings, (which was attended by individuals from an external company- 'note takers' from Brook Street Agency) and a copy of the e-mail and SOSR/grievance bundle was given to those individuals and Unison; and

20.3 **On 17 October 2011:** Christine Grice's letter to the Claimant (**re- published in the first Defendants' SOSR/grievance bundle on or around 13 February 2012- also disclosed to Susan Funnell, Jocelyn Heyford and Unison**), stating: '*I also refute the following statement which you state I made: your employment from LBL is unsustainable*'. The Claimant has a covert recording of Christine Grice making the statement. **This letter was re-published in the first Defendants' SOSR/grievance bundle for use in the SOSR/grievance hearings. The bundle was used by the Defendants' during the SOSR and Grievance hearings, (which was attended by individuals from an external company- 'note takers' from Brook Street Agency) and a copy of the letter and SOSR/grievance bundle was given to those individuals and Unison; and**

20.4 **On 25 October, 1 November and 4 November 2011- (published and disclosed to the Claimant for the first time on or around 19 January 2012 and re-published in the first Defendants' SOSR/grievance bundle on or around 13 February 2012- also disclosed to Susan Funnell, Jocelyn Heyford and Unison):** The Claimant was interviewed 3 times. Notes to those interviews were also produced by Defendants' and the Claimant also has covert recordings/transcripts. Third parties attended the investigation interviews (2 Unison reps):

- a) Christine Grice- 25 October 2011, taken from covert recording/transcript: '*When Elaine was your manager you refused to discuss what could be put in place as a reasonable adjustment for you because you also considered that she was also not qualified*'

- 20.5 **Sent to the Claimant in November 2011-** Christine Grice's OH referral form to an independent OH consultant (**re-published in the first Defendants' in the first Defendants' SOSR/grievance bundle on or around 13 February 2012- also disclosed to Susan Funnell, Jocelyn Heyford and Unison**):
- a) *'Adele' response is that she suffers from a mental impairment. She has not provided any further information with regard to a formal diagnosis*
 - b) *'She has previously stated that she has receive cognitive behaviour therapy and that she has been given two prescriptions for medication but has not provided any further details than this*
This referral form was published in the first Defendants' SOSR/grievance bundle. The bundle was used by the Defendants' during the SOSR and Grievance hearings, (which was attended by individuals from an external company- 'note takers' from Brook Street Agency) and copies of the referral form and SOSR/grievance bundles were given to those individuals and Unison.
- 20.6 **On ~~or around~~ 2 January 2012 at 13.27- Dr Williams', (formerly the eighth Defendants'), e-mail published by him an e-mail to Rita Lee (the first Defendants' HR officer, (which was disclosed to the Claimant, by the first and third Defendants Susan Funnell, Jocelyn Heyford and Unison for the first time and published in the first Defendants' SOSR/grievance bundle on or around 27 February 2012-~~also disclosed to Susan Funnell, Jocelyn Heyford and Unison.~~ He made the following statements:**
- a) *'Her response was to ask why I needed to ask each question'*
 - b) *'She refused to give any details about her original absence'*
 - c) *'She nevertheless refused to provide any details of her original absence'*
The words complained of were dismissed by the Court as being libelous in April 2013; however, the Claimant still maintains that the words she complained of are false.
- 20.7 **On 27 February 2011- (Disclosed to the Claimant by the third and first Defendant for the first time and published and included in the first Defendant in the SOSR/grievance bundle on or around 27 February 2012)-** Christine Grice's SOSR presentation/report:
- a) *'In particular it has been difficult for managers and occupational health professionals to obtain information from Adele'*
 - b) *'That Adele herself has stated that she has no trust and confidence in the Council or her managers'*
 - c) *'Despite the fact that I had asked her not to, Adele continued to copy her e-mails to Frankie and Barry'*
 - d) *'Adele was not willing to attend any investigations and have her allegations investigated and put to scrutiny where appropriate'*

- e) Reference to Nick French: 'Adele had already been in dispute with him over some instructions which he had given the team in relation to service users'
- f) Reference to the Claimant's communication with Kath Nicholson dated 6 May 2011: 'Adele did not set out the specifics of her whistleblowing complaint'
- g) 'A culture developed where managers felt powerless and fearful of dealing with Adele'
- h) 'I have heard that she would not engage in dialogue but was over focused upon writing detailed notes. I saw this behaviour in my interviews with Adele'
- i) 'Adele remained unwilling to discuss suggested reasonable adjustments at the meeting on the 5th July 2011'
- j) 'Valerie had carried out a workstation assessment in April but Adele refused to sign the paper work'
- k) '...Adele's demands for management to make adjustments but failing to say what they are'
- l) 'As referred to earlier in my presentation when I reviewed the existing OH information and the information gathered in my investigation I became aware of the lack of detail in the Occupational Health information provided to the Council. This appeared to be due to Adele's lack of engagement and disclosure to either her managers or occupational health'.

This presentation/report was read out aloud by Christine Grice and published and included in the first Defendants' SOSR/grievance bundle for use in the SOSR/grievance bundle. The bundle was used by the Defendants' during the SOSR and Grievance hearings, (which was attended by individuals from an external company- 'note takers' from Brook Street Agency) and copies of the presentation/report and SOSR/grievance bundle were given to those individuals and Unison.

Slander

21 In their natural and ordinary meaning (including the entirety of the speech/transmission/broadcast as context) (as interpreted by the Defamation Act 1952 and/or 1996) the following words within the items were false and were

- (1) Defamatory of the Claimant, and
- (2) Meant understood to mean that the Claimant was 'obstructive' and/or 'intimidating' and/or 'dishonest' and/or 'incompetent' and/or 'lazy' and/or 'unruly'

The complaints also include their implied meanings.

21.1 **On 27 February 2012: statements made by the third Defendant (Christine Grice) during the SOSR hearing, which was attended by an individual from the outside agency Brook Street recruitment agency' (Susan Funnell). The statements were published by Susan Funnell on or around 27 & 28 February 2012 or 6 March 2012 and re-published**

by the first Defendant on or around 5 April 2012 and will be admitted as evidence for employment tribunal proceedings in October 2013. They are also in electronic format;

- a) *'In particular it has been difficult for managers and occupational health professionals to obtain information from Adele'*
- b) *'That Adele herself has stated that she has no trust and confidence in the Council or her managers'*
- c) *'Despite the fact that I had asked her not to, Adele continued to copy her e-mails to Frankie and Barry'*
- d) *'Adele was not willing to attend any investigations and have her allegations investigated and put to scrutiny where appropriate'*
- e) Reference to Nick French: *'Adele had already been in dispute with him over some instructions which he had given the team in relation to service users'*
- f) Reference to the Claimant's communication with Kath Nicholson dated 6 May 2011: *'Adele did not set out the specifics of her whistleblowing complaint'*
- g) *'A culture developed where managers felt powerless and fearful of dealing with Adele'*
- h) *'I have heard that she would not engage in dialogue but was over focused upon writing detailed notes. I saw this behaviour in my interviews with Adele'*
- i) *'Adele remained unwilling to discuss suggested reasonable adjustments at the meeting on the 5th July 2011'*
- j) *'Valerie had carried out a workstation assessment in April but Adele refused to sign the paper work'*
- k) *'Adele's request for reasonable adjustments have been excessive and lacked precision'*
- l) *'...Adele's demands for management to make adjustments but failing to say what they are'*
- m) *'As referred to earlier in my presentation when I reviewed the existing OH information and the information gathered in my investigation I became aware of the lack of detail in the Occupational Health information provided to the Council. This appeared to be due to Adele's lack of engagement and disclosure to either her managers or occupational health'.*

This presentation/report was read out aloud by Christine Grice and published by the defendant for use in the SOSR/grievance bundle. The bundle was used by the Defendants' during the SOSR and Grievance hearings, (which was attended by individuals from an external company- 'note takers' from Brook Street Agency) and copies of the presentation/report and SOSR/grievance bundle were given to those individuals.

- 21.2 **On 27 & 28 February 2012 and 6 March 2012 during the SOSR hearings, which was attended by an individual from the outside agency Brook Street recruitment agency' (Susan Funnell). The statements were published by Susan Funnell on or around 27 & 28 February 2012 or 6 March 2012 and re-published by the first Defendant**

on or around 5 April 2012 and will be admitted as evidence for employment tribunal proceedings in October 2013. They are also in electronic format:

- a) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'I think I made that absolutely clear in my presentation. That I would have normally expected your managers to have set targets with you and to review those targets, but as I said very clearly, they were afraid. That there was a culture of fear and they were afraid of managing you.'*
- b) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'There was two things. There was confusion between a workstation risk assessment and a stress risk assessment and as I said in my presentation, I think some of the confusion was deliberate on your part. The workstation risk assessment, Valerie attempted (I'm sure I said this in my presentation), Valerie did a workstation risk assessment in April, you refused to sign it....Now from the original occupational health referral, and the letter from doctor Giagounidis, we were being advised to follow the stress risk assessment provided by your previous employer. Now the key part to that is regular face to face meetings. So there is absolutely no reason why there should be any delay in the implementation because all you needed to do was to meet with your managers but you refused to do that.'*
- c) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'The letter from that consultant was that we were to follow the risk assessment from your previous employer and a key feature to that is regular face to face meetings, and I spent sometime going through how you avoided face to face meetings. How you confounded and confused your managers between the stress risk assessment and the workstation risk assessment. I've been through it.'*
- d) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'...I employed an external consultant who couldn't get into the baseline. He contacted Kate Parsley to say that he couldn't get in, when he eventually did get into contact with you, you said it wasn't necessary because you said that your manager had done the risk assessment. And I then had to instruct you to be available to meet the consultant and Linda.'*
- e) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'I was very clear in my presentation that the only delay was caused by yourself*
- f) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'You refused to sign the workstation risk assessment that Valerie did.'*
- g) Christine Grice- 27 February 2012, taken from covert recording/transcript: *'And there was this confusion where the consultant couldn't get into baseline and then when eventually they made contact with Adele, she said she didn't know why he was there because her manager Valerie had done a workstation risk assessment. And so I then instructed Adele to be there and somebody called Belinda Whippy who did the risk assessment.'*

- h) 28th February 2012- Statements made by Christine Grice and Elaine Hattam, taken from covert recording/transcript: 'AV: Erm...She said that this was her investigation report so I believe that what I stated in that email is correct. 'RW: Well...it isn't her investigation report...it is her script that's used for her presentation. CG: That's what I said. EH: She actually said that she didn't do a report.'
- i) Elaine Smith- 28 February 2012, taken from covert recording/transcript: 'Erm...We had to spend a lot of time responding to her emails, we had to spend a lot of time trying to understand exactly what we needed to do to provide support for Adele. She wasn't very forthcoming in explaining what exactly it was that she needed'.
- j) Elaine Smith- 28 February 2012, taken from covert recording/transcript: 'Well she would often not respond to questions, if she did respond, she would be monosyllabic, she wouldn't really engage with any of the conversations that we were trying to have with her'
- k) Elaine Smith- 28 February 2012, taken from covert recording/transcript- in response to Christine Grice's question about a team meeting on 8 July 2011: 'I think some managers were. Erm...I understand from Valerie and Kate, there was a team meeting which I didn't attend...erm...where Adele was quite rude, she was dominating the meeting'
- l) Elaine Smith- 28 February 2012, taken from covert recording/transcript- in response to Christine Grice's question about a supervision meeting the Claimant attended with Elaine Smith: '...she wouldn't really expand on her responses to any of the questions I was giving her. If we asked her for additional information then she could often be obstructive in providing that information.'
- m) Elaine Smith- 28 February 2012, taken from covert recording/transcript: 'erm she would raise issues and not necessarily be solution focused in how these were going to be addressed'
- n) Elaine Smith- 28 February 2012, taken from covert recording/transcript: 'I believe you were saying that generally you preferred written communication and you did not want to meet with management on your own. I believe there is an email....I believe that there is emails where you were saying you preferred written communication because it gave you time to actually formulate your responses. I believe there is an email.'
- o) Elaine Smith- 28 February 2012, taken from covert recording/transcript: 'Your risk assessment actually says that you prefer face to face discussions and meetings and you said that you feel more comfortable with email communications a couple of months down the line into your employment with us. So there were some contradictory statements made by you in terms of implementing your risk assessment.'
- p) Elaine Smith- 28 February 2012, taken from covert recording/transcript- in response to Ralph Wilkinson's question about whether Valerie Gonsalve had regular face to face one to ones with the Claimant: 'With Adele yes.....yeah'

- q) Kate Parsely- 28 February 2012, taken from covert recording/transcript- in response to Christine Grice's question about the risk assessment that was conducted by Belinda Whipey with the Claimant: ...'And she told me that Adele had told her that she didn't need the assessment done'
- r) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript- in response to Christine Grice's question 'you did a workstation risk assessment for Adele which she refused to sign, is that correct?': 'Yep'
- s) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript: 'I turned up at baseline and she was there with another one of my team members in the hub. And erm...When I walked in I said I'm here to do the assessment, I showed her the paper work and she kind of looked at it and she was like, what's this? I said well I'm here to do a risk assessment...but she actually asked me if I was qualified and if I'd been trained to do it and I said well I've been on the intranet and I've read up exactly what needs to be done, this is the paper work that we're using and this is what needs to be done. And she did say to me at that point, well we can do it, but she wasn't gonna sign it.'
- t) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript- in response to Christine Grice's question about a team meeting on 8 July 2011: 'And obviously we didn't brief Lillian in advance that there might be an issue with members of the team not wanting to accept what she had to say, but erm as soon as Lillian started her presentation Adele kind of jumped all over it.'
- u) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript- in response to the Claimant's question, 'Would you agree that you failed to hold regular supervisions with me and management also failed to hold regular team meetings?': 'No'
- v) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript- in response to the Claimant's question, 'Management meetings were regularly cancelled weren't they?': 'No'
- w) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript- in response to the Claimant's question regarding the Claimant raising a health and safety issue at the team meeting on 8 July 2011: 'Can we be really clear here...I didn't take issue, your colleagues took issue and they shouted you down...I was sitting in the meeting.'
- x) Valerie Gonsalves- 28 February 2012, taken from covert recording/transcript- in response to the Claimant's question, 'You have stated that during a workstation assessment which you undertook, that I stated...to your face that you were not capable. Do you still stand by that?': 'Yes I do'
- y) Christine Grice- 6 March 2012, taken from covert recording/transcript: 'I think that you've heard from your managers, say that you were reluctant to meet with them to discuss reasonable adjustments'

21.3 On 22 March 2012: taken from covert recording/transcripts and also see the first Defendants' SOSR/Grievance Hearing notes- Christine Grice's statements made during the grievance hearing- which was attended by an individual from the outside agency REED Employment Agency' (Jocelyn Heyford). The statements were published by Jocelyn Heyford on or around 22 March 2012 and re-published by the first Defendant on or around 5 April 2012 and will be admitted as evidence for employment tribunal proceedings in October 2013. They are also in electronic format:

- a) *'Like other previous instances, Adele has chosen to make further unsubstantiated allegations...*
- b) *'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'.*
- c) *'There has been no evidence put forward by Adele that she recognises the effect her behaviour has had upon her managers, that she is willing to take steps to resolve and repair the harmful and caustic relationships that have developed*
- d) *'In addition, Adele has raised a number of serious complaints against her managers, yet she has refused to participate in any process seeking to investigate and resolve these issues'.*
- e) *'...she is unwilling to participate in any process which seeks to resolve her complaints'*
- f) *'Adele has raised that Cathy Robinson made a complaint about Valerie. In my presentation, and confirmed by Valerie's testimony, both Cathy and Valerie agreed to mediation to resolve any tensions between them. There was no formal complaint'.*
- g) *'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'.*
- h) *'Adele has not provided sufficient disclosure to her managers or occupational health to enable managers to understand her condition and to decide what level of reasonable adjustment may be made.'*
- i) *'Adele did not explain why she required adjustments such as not working at the People's Day'*
- j) *'She also stated to Dr Williams that she simply required the Council to "make the adjustments required by law" but did not engage with the Council to identify what she wanted or needed'.*
- k) *'I also ask you to consider how Adele has responded to warnings, in particular, when I warned her, I actually instructed her, that sending emails to BQ and FS was not appropriate. Adele continued to send these emails and in this hearing denied that the warning even took place, despite the clear documentary evidence that it did'.*
- l) *'In terms of specific warnings about her behaviour:*
 - *Chris Threlfall warned her in April about making allegations without evidence*
 - *You have heard from Valerie that she was too fearful and bullied to raise matters of behavior with Adele;*

- *I warned Adele of her behaviour when I met with her in June;*
- *Her new line manager Elaine warned her in June and August*

22 Contrary to the foregoing false and defamatory words, implications and innuendoes, to date, no objective evidence to substantiate / corroborate the allegations against the Claimant has been put forward by the Defendants'. The case that was put forward against the Claimant during the SOSR process was false and unreliable. There were discrepancies, inconsistencies and inaccuracies. When the Claimant asked questions during the SOSR process she was either confronted with confusion / amnesia or evasive, equivocal and obstructive answers. The other statements made by Defendants during the SOSR process even disproved and contradicted their defamatory statements. 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 which led to her dismissal.

23 The documentary evidence, covert recordings and transcripts disprove the statements made by the Defendants' which are set out in paragraphs 20.1 – 21.3L and also evidence that the statements were actuated by malice.

Whether imputations of 'obstructive' 'intimidating' 'dishonest', 'incompetent', 'unruly' and 'lazy' are fact or comment

24 From the natural and ordinary meaning of the statements complained of and other things taken as a whole, the implications and innuendoes are clear, to the effect that the Claimant is '*obstructive*' '*intimidating*' '*dishonest*', '*incompetent*', '*unruly*', and '*lazy*'. The Defendants deliberately intended to represent this, in the clear knowledge that the statements were false and of the severe consequences for the Claimant of their actions. It is also contended that the words 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, hence her subsequent dismissal. In such a case the imputations, innuendoes and damage is therefore presumed and need not be proved.

25 After losing her job the Claimant tried to get her insurance company to payout on her loan protection policy, however, it refused to do so after reading the first and second Defendants' dismissal letter, which it demanded that she provide to prove the loss of her employment. The insurance company even concluded that the Claimant was guilty of misconduct, even though she had not been dismissed for this and the dismissal letter did not mention the word misconduct. It

concluded that the first Defendant was the innocent party, that the Claimant had prevented it from running its service and that she was responsible for the loss of her employment and therefore not entitled to a payout for the loss of employment. The Claimant believes that she was treated less favourably, avoided and shunned by the insurance company. She was also completely humiliated by it.

- 26 The Claimant's believes that her own union (Unison) has also shunned and avoided her by refusing her request for support and advice with her Employment Tribunal and Defamation cases, even though: **a)** it has evidence in its possession which the Claimant believes proves her cases and **b)** two of its representatives had made statements during the first Defendants' SOSR investigations, (that were captured in the covert recordings) and which the Claimant believes support her cases. These examples clearly show that other right-thinking members of society will likely have the same low opinion of the Claimant.
- 27 Should the Defendants' attempt to rely on a defence of 'honest comment', it is submitted that this would not be sustainable for a variety of reasons. Primarily, the words are simply not comment at all and are factual in character. Thus they would only be susceptible to a plea of justification. The defence only arises where the ordinary reader or viewer will recognise the statement as an opinion. The first Defendant is a public authority and as such has a duty not to act contrary to the HRA. The publications were an interference with the Claimants' Article 8 rights, which include a right to reputation, and therefore its actions have to be justified (as required by Article 8(2)). Secondly there would, in any event, be no "facts truly stated" on which any such comment could be based.
- 28 The Defendants' remarks are factual assertions rather than the mere expression of opinion. The defamatory 'stings' complained of arise indirectly, being derived from inferences that supposedly the hypothetical reasonable listener/reader would have drawn from the statements that were made about the Claimant. It is submitted that what was said and published amounted to imputation of fact because the statements were not put forward as expressions of opinion. The Court is entitled to hold that the Defendant's remarks are factual statements rather than mere expressions. They were not recognizable as 'comment'. The statements are not ones which different conclusions on opinions are possible. The case turns on the words published and said. This is not a comment case at all.
- 29 This is a serious defamation claim. The slanderous and libellous words deliberately and specifically target the Claimant either by her full name (Ayodele Adele Vaughan), title, first initial and surname (Ms A Vaughan), title and surname (Ms Vaughan), middle name (Adele), middle

name and surname (Adele Vaughan) or initials (AV), making her easily identifiable to an ordinary listener to the words spoken and reader of the publications since her name is stated and she was present when some of the slanderous words were uttered against her. The words complained of can be understood to refer to the Claimant by reasonable people who know her.

30 ~~The seriousness of a publication complained of depends on a number of factors. One is the meaning. Another is the extent of publication, that is, the number of persons to whom the publication has been communicated. Another is the risk of republications and repeated slanderous utterances, (particularly at the Employment Tribunal hearing which is due to be heard over the course of a twenty day period in October 2013), where several of the Defendants will be called as witnesses and because the case is high profile, (involving a local authority, covert recordings, human rights breaches, multi discrimination, unfair dismissal and allegations of local government corruption), it is likely to be reported nationally. Another is the injury to the feelings of a 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. 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. The Claimant believe that the allegations will not have been kept confidential by the Defendants', particularly in light of the comments made by the 1st Defendants' former head of service and Consultant (Nick French, whom it reputedly paid £650), during a meeting for all full-time workers in the department on ~~10 March~~ 7 April 2011- Nick French described the working environment as a pit of malicious rumours that was in serious jeopardy of ruining individuals' personal and family lives and career prospects. The Claimant relies on the minutes to this meeting as evidence of risk of further spread of the defamatory statements. There is also issue of injury to the feelings of a Claimant'. 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). The loss of the opportunity to obtain a permanent injunction will have severe consequences for the Claimant, who is entitled to vindicate her reputation and a failure to provide a remedy would be contrary to Article 8.~~

31 A public authority has no convention rights. The only convention right engaged in this action is the Claimants' to her reputation, thus in this case, no focus on striking if the balance arises. It is submitted that the interference with the Claimants' Article 8 right cannot be justified under Article 8.2. It cannot be said to be necessary for 'the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, because the motivation of the Defendants' on interfering with the Claimants' Article 8 right was to secure her dismissal.

The spoken words/publications by the Defendants' were not in the circumstances proportionate to the legitimate aim which they are claiming.

32 In an effort by the Defendants' to secure the Claimant's dismissal she was wrongly branded, discriminated against, falsely accused, publicly humiliated and publicly defamed. The defamatory meanings are clear. At the heart of the Claimant's complaints are clear alleged factual statements, which were made by the Defendants' in unambiguous terms. Such statements required verification before publication and/or saying them publicly.

Particulars of Malice

33 The Defendants' contributed to and/or made and/or caused and/or permitted each of the falsities complained about to be said and published maliciously. It is the Claimant's contention that the Defendants' wrote and said the words actuated by malice, spite, ill-will and vindictiveness against the Claimant. The compelling countervailing consideration relied upon in the context of defamation is a Claimant's right to the protection of his reputation which, in Strasbourg jurisprudence, has been treated since 2003 as an aspect of the convention right protected by Article 8.

34 It is submitted that the actions of the Defendants' constitute a serious interference with the Claimant's private life as to undermine her personal integrity and reputation. The statements made by the Defendants' are verifiable and deliberate lies, and the Defendants' were well aware at the time that there was simply no evidence to support them. It is therefore proportionate to demand that their truth of fact be proved.

35 It is more than coincidence that the decision to suspend the Claimant from duty, conduct an SOSR hearing, make the defamatory statements and dismiss the Claimant, was made after:

- a) the Claimant had brought legal proceedings which had transferred to the first Defendant at the same time that her employment transferred to it (1 April 2011); and
- b) the Claimant had made requests for 'reasonable adjustments'; and
- c) the Claimant had alleged that the Defendants' had contravened the Equality Act 2010, PIDA 1998 and Human Rights Act 1998;
- d) the Claimant had made protected disclosures; and
- e) the Claimant had alleged that the first, second, third, fourth, fifth, sixth and seventh Defendants' had breached the first Defendants' own code of conduct and/or detailed allegations against the Defendants' had that would amount to a contravention of it;

- f) the first, second, third, fourth, fifth, sixth and seventh Defendants' had reason to believe or suspect that the Claimant had or intended to bring further legal proceedings (as a result of it's receipt of her 'Equality form questionnaire', (the day before the decision was taken to suspend her from work); and
- g) the Claimant had lodged complaints/grievances against the third Defendant (Christine Grice), the fourth Defendant (Elaine Smith) and the fifth Defendant (Valerie Gonsalves) and issued legal proceedings against them; and
- h) the Claimant had lodged a complaint/grievance against ~~the eight Defendant~~ (Dr Williams) regarding his conduct during her OH consultation with him in November 2011, filed a complaint with the GMC and issued further legal proceedings against the first and third Defendant in relation to this; and
- i) the Claimant had brought further legal proceedings against the first, second, third, fourth, fifth and sixth Defendants'; and

36 Against the background of the events detailed in this claim, the mindset and attitude of the Defendants is clear. The third Defendant (Christine Grice) played a key role in co-ordinating the defamation. The other Defendants' were an integral part in a process that involved making the malicious, spiteful, damaging, hurtful and unfounded defamatory statements against the Claimant with a view to bullying her out of the council, destroying her reputation and career and causing severe damage to her health. Since the Claimant's transfer to the Council and throughout her employment with it, the sixth Defendant, (Elaine Hattam), suppressed evidence of her and the first Defendants' knowledge about the Claimant's disability.

37 The Claimant believes that the Defendants' manipulated and engineered the situation leading to the Claimant's suspension and subsequent dismissal, and the second, third, fourth, fifth, sixth and seventh Defendants' and individuals more senior to them ignored indications that the allegations against the Claimant were un-provable. The Defendants' abused the SOSR/grievance process for the purpose of relaying untrue defamatory statements which were motivated by malice.

38 The Claimant believes that the Defendants' adopted a monstrous strategy against her with such enthusiasm knowing precisely why it was that the strategy had been put in place. This is, in her view, probable therefore that the Defendants' were influenced by issues relating to her disability, protected disclosures and the fact that she had lodged complaints/grievances, had brought legal proceedings against the Defendants' and given evidence against them.

39 The third Defendant (Christine Grice) knew that it was not appropriate for her to be carrying out the investigation because of the fact that the Claimant had previously made complaints about her

and had started legal proceedings against her. The third Defendant wanted to make sure that she could continue in the role of investigating officer and present the case against her at the SOSR hearing, no doubt to make sure that she was able to defame the Claimant and secure her dismissal. She was not going to be diverted from her and the other Defendants' predetermined plan and the first and second Defendants' were not going to do anything to prevent this. The first Defendant effectively permitted the investigator of the allegations against the Claimant (the third Defendant) and the hearing officer (the second Defendant) to also become witnesses and prosecutors.

- 40 In light of the above and the fact that the third Defendant only interviewed managers, (two of which the Claimant had previously made complaints about and brought legal proceedings against), there is clear evidence of malice. The second and third Defendant relied on the fourth, fifth, sixth and seventh ~~and eighth~~ Defendants' unsubstantiated defamatory statements during the SOSR process and the first and second Defendant relied on the third, fourth, fifth, sixth and seventh ~~and eighth~~ Defendants' unsubstantiated defamatory statements as grounds for the Claimants' dismissal. The question is to what extent can the Defendants' impute knowledge of these factors from surrounding circumstances?
- 41 It is clear that the Defendants' went too far during the SOSR process and that there was no occasion to endorse, in any degree at all, the allegations made against the Claimant, which the Defendants' failed to verify. 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 herein ('the defamatory meanings), were true and with reckless disregard for the truth or falsity of the defamatory meanings.
- 42 The Defendants' deliberately framed and expressed the words complained about so that their tone and language conveyed an even more harmful and sinister impression. They did this using emotive, extravagant, sensational and inflammatory language. This was designed to utterly destroy the Claimants' credibility and reputation, cause the maximum amount of hurt, embarrassment, annoyance and emotional and mental distress.
- 43 It is submitted that the Defendants' were not defending themselves at all. They were complicit in a plot to fabricate the allegations. The first Defendants' SOSR process went into entirely irrelevant or extraneous material, for example the Claimant's alleged general lack disclosure of medical information, lack of cooperation in relation to the OH process and the allegations of poor work

output, which had not been put to the Claimant during the investigation process.

44 The first, second, third, fourth, fifth, sixth and seventh Defendants' knew that what they wrote and or said were false and they didn't care whether it was true or false. The Claimants' case is that the all the Defendants' had in their possession material, which they knew to be wholly implausible and false and that those making the defamatory allegations knew them to be untrue. The malice relied on is this and the state of mind of those involved in making the defamatory allegations. They made the whole thing up and tried to conceal their own misconduct, discriminatory actions and systemic issues, which was an improper motive and therefore malice.

45 **On 17 February 2012** the Claimant was advised by the second Defendant that it would employ the services of an external company to take minutes at her SOSR and grievance hearing. The Claimant was shocked, upset and completely outraged by this. She considered such a decision to be a breach of her confidentiality/privacy. The first and second Defendants' did not even seek her consent. The Claimant therefore objected to this, but the first and second Defendants' forced the use of two independent note takers from an external agency upon the Claimant. The Defendants did not have a duty or interest to make the statements to external note-takers.

45.1 The Claimant submits that the 1st Defendant failed to observe the requirement of confidentiality, which included the Claimants rights under the Data Protection Act 1998. It unlawfully and unfairly disclosed the Claimants sensitive data to at least 4 members of the public over the course of 5 separate occasions and against the Claimants wishes. The data included the Claimants medical information/history, details of her physical and mental health and her name, address and copies of her signature. The processing must meet some form or necessity. The Claimants covert recordings and transcripts prove that the Defendants were aware that there was no evidence to support the false statements made by them/the data disclosed, therefore there was no conceivable duty or interest on the part of the 1st Defendants to publish, communicate/voice publicly the defamatory allegations.

45.2 In order to be justified under Article 8(2) the publication must be necessary for a legitimate aim and proportionate to that aim. This approach is consistent with the duties imposed on public authorities by the Data Protection Act 1998 (the DPA). In breach of the First Data Protection Principle the 1st Defendant did not process the Claimants personal and sensitive personal data fairly and lawfully. It was processed in a grossly unfair and unlawful way, in particular by, publishing highly offensive defamatory allegations about the Claimant. None of the conditions in Schedule 2 of the DPA is met by the 1st Defendant in respect of the processing of this data. In breach of the Fourth Data Protection Principle the personal and

sensitive personal data about the Claimant processed by the 1st Defendant and published/uttered by the Defendants are false and accordingly wholly inaccurate. In breach of the Sixth Data Protection Principle the 1st D did (and does) not process personal and sensitive data of the Claimant in accordance with her rights, which included her consent not being sought or given, not being given the right of reply before the statements were published and the opportunity to correct any data that may have been recorded about her, the failure to keep her data secure and the failure to observe her right of access.

45.3 The 1st and 2nd Defendants claimed that the use of the third-party note-takers was to ensure that the notes taken were accurate. The Claimant specifically relies on the 1st Defendants e-mail to her on 14 December 2012 at 15.00 (pre-action correspondence), which confirmed that Susan Funnell did not take verbatim notes and was not required to do so. The Claimant also relies on the 1st Defendants e-mail to her dated 11 March 2013 at 16.32, which attached a signed witness statement from Susan Funnell dated 6 March 2013, in which she confirms that was present during the part of the SOSR hearing where Elaine Smith gave her grievance presentation and her half a page notes for the grievance part of the SOSR hearing, (which were not verbatim). The 1st Defendant took more a year to send the Claimant her data that she requested in March 2012 and which should have been sent to her as part of the 1st Defendants SOSR notes/minutes that was sent to her on 5 April 2012. This was a breach of the Claimants right of access under the Data Protection Act 1998.

45.4 The 1st Defendant 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, therefore it loses any defence of qualified privilege. There has been a serious contravention of section 4(4) of the Act by the 1st Defendant, (the data controller). The Contravention is of the kind that caused substantial damage and distress. The 1st Defendant has previously been issued with a monetary penalty notice for £70,000 on 12 December 2012 by the ICO, because its 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 after this breach the 1st Defendant set about breaching the Claimants data protection rights.

45.5 The facts upon which the Defendants rely upon are contested and by virtue of the documentary and audio evidence, clearly untrue. Since the evidence is in dispute, the covert recordings and transcripts are of major significance. The Claimant believes that the Defendants will knowingly give what they know to be false witness statements, and lie on the witness stand if the covert recordings and transcripts are not admitted into evidence. The

recordings and transcripts are essential in order to enable the Court to make findings of fact. The covert recordings and transcripts relate directly to the words complained of and a number of issues which are pleaded, including malice. The material facts that the Claimant relies on as evidence of malice are those set out in the 31 Covert recordings contained on a USB stick and the following related transcripts:

- a) Feedback from Jackie Lynham (Unison rep) to Claimant re her meeting with 3rd Defendant over the Claimants suspension
- b) Claimants call to Jackie Lynham re 3rd Defendants request to meet about suspension
- c) Claimants call to individual 4th Defendant re team meeting or 1-2-1 meeting (undated)
- d) Claimants meeting with Chris Threlfall (Senior Manager) on 26 April 2011
- e) Claimants risk assessment meeting with 5th Defendant on 17 May 2011
- f) Team meeting on 8 June 2011
- g) Team meeting with 5th Defendant & Nicolette Lawrence & Keyworkers, part 1 on 21 June 2011
- h) Team meeting with 5th Defendant & Nicolette Lawrence & Keyworkers, part 2 on 21 June 2011
- i) Claimants 1st telephone conversation with 4th Defendant on 29 June 2011
- j) Claimants 2nd conversation with 4th Defendant on 29 June 2011
- k) Claimants 3rd conversation with 4th Defendant on 29 June 2011
- l) Claimants telephone conversation with individual Respondent Christine Grice on 29 June 2011
- m) Claimants meeting with 3rd and 4th Defendants on 30 June 2011
- n) Claimants risk assessment with Belinda Whippey on 1 July 2011 (specifically relates to the defamatory statement made by Kate Parsley).
- o) Claimants induction meeting with 4th Defendant on 5 July 2011
- p) Team meeting on 13 July 2011
- q) Claimants supervision meeting with 4th Defendant on 20 July 2011
- r) Claimants call to 4th Defendant on 9 August 2011 at 2.30pm
- s) Claimants meeting with 4th Defendant on 10 August 2011 at 9.30pm
- t) Claimants suspension meeting with 3rd Defendant on 10 August 2011
- u) Claimants investigation interview on 25 October 2011
- v) Claimants investigation interview on 1 November 2011
- w) Claimants investigation interview on 4 November 2011
- x) Call from Jackie Lynham to Claimant on 8 December 2011
- y) SOSR hearing with Claimant and 2nd, 3rd & 6th Defendants morning on 27 February 2012
- z) SOSR hearing with Claimant and 2nd, 3rd & 6th Defendants after lunch on 27 February 2012

- aa) SOSR hearing with Claimant and 2nd, 3rd, 4th, 6th & 7th Defendants, part 1 morning on 28 February 2012
- bb) SOSR hearing with Claimant and 2nd, 3rd, 5th & 6th Defendants after lunch, part 2 on 28 February 2012
- cc) SOSR hearing with Claimant and 2nd, 3rd & 6th Defendants, part 1 on 6 March 2012
- dd) SOSR hearing with Claimant and 2nd, 3rd & 6th Defendants, part 2 before lunch on 6 March 2012
- ee) SOSR hearing with Claimant and 2nd, 3rd & 6th Defendants after lunch on 6 March 2012

46 It is clear that the use of independent note takers served absolutely no beneficial purpose at all, as the minutes that Susan Funnell (from Brook Street Agency) took were inaccurate and not a true reflection of what took place. If you compare the transcripts/covert recording to her alleged short-hand notes and the first Defendant's final notes, it is clear that Susan Funnell omitted crucial statements that the Claimant and other attendees had made, inserted her own sentences and words, (to include statements that the Claimant did not make) and she also included personal comments, i.e. her opinion on an individuals feeling and actions, which clearly is not a requirement when you are simply hired to take minutes. Jocelyn Heyford's notes were also incomplete. Susan Funnell's and Jocelyn Heyford's notes aided the Defendant in their efforts to discriminate, paint a false picture of the Claimant and to defame and unfairly dismiss her. The Defendants' had the chance to review the notes before they were published and sent out; but they admitted that they did not. This is therefore further evidence of malice.

47 ~~The eighth Defendant (Dr Williams), who is based in Kent, made defamatory statements regarding the Claimant's alleged refusal to provide him with any information about her original absence during her previous employment. The imputations are that the Claimant had not provided him with any information at all regarding this issue and that she is therefore dishonest, uncooperative and obstructive. These imputations clearly compounded the issues that the eighth Defendant already knew that the Claimant was being investigated for and those falsely claimed by the third Defendant in the OH referral. It is important to note that the first and third Defendants' had not specified that they required any information regarding her original absence in the OH referral. The data that was unlawfully disclosed was presented to the third-parties as statements of fact and not opinion. The data protection contravention resulted in substantial distress and harm to the Claimant and is also interfering with the administration of justice (as the 1st Defendant is using this false information/data as a defence). In response to the Claimant's complaint about Susan Funnell to Brook Street, (which included her grossly inaccurate note-taking), it simply dismissed the Claimant's complaint out of hand, without even undertaking any sort of~~

investigation. It accepted no responsibility.

- 48 ~~The eighth Defendant had knowledge of the Claimants' Employment Tribunal claims against the Defendants' and Marina Waters (another independent OH consultant based in Kent), prior to the OH consultation with the Claimant and had persistently focused on this during the OH consultation, (against the Claimant's wishes) and in the clear knowledge that it was inappropriate of him to do so and that it was upsetting the Claimant. The eighth Defendants' line of questioning regarding this was deliberately aggressive, repetitive and insensitive. The statement issued by Brook Street indicates that it was Susan Funnell and not Brook Street who processed the data. Susan Funnell and the other third-party note-taker, (Jocelyn Heyford) are not data controllers. The Claimant relies on the e-mail response from its Legal Director Ron Napper dated 11 July 2012 as evidence that there was no appropriate agreement in place before any data was transferred to the note-takers, and Susan Funnell's statement does not suggest that there was. In any event, (and most importantly), the Data Protection Act does not permit the processing of data without consent where this is no legitimate activity and which is to the detriment of an individual, in this case, the Claimant.~~
- 49 ~~The eighth Defendant then went on to make the defamatory statements about the Claimant after she brought legal proceedings in relation to his conduct and in response to the Claimant's complaint/grievance to the first Defendant about his conduct during the OH consultation. The Claimant also believes that the eighth Defendant was induced by the first and third Defendants' to unlawfully discriminate against her. It is also important to highlight the fact that the process followed by the 1st Defendant cannot fairly be described as contractual, as the Claimant's contract of employment did not include consent to an SOSR procedure. The Claimant had not consented, (via her contract of employment- which she relies on as evidence), for the 1st Defendant to use the external note-takers, or to publish the words complained of. In addition to this, the Defendants' admitted in their Employment Tribunal defence dated 24 July 2013 (which she relies on as evidence), that it did not even invoke the disciplinary procedure.~~
- 50 ~~The first and third Defendants' were insistent that the Claimant have a consultation with the eighth Defendant and had put pressure on the Claimant to travel to Kent to see the eighth Defendant, rather than an OH consultant based in London, even though the Claimant neither live nor worked in Kent, so much so that they arranged for the eighth Defendant to travel to London to meet with the Claimant. The Claimant's previous employer had given her a choice of three OH consultants to choose from in order to make it an inclusive process and reassure her of the OH consultant's impartiality. This is something that the first and third Defendant clearly avoided doing, which is very telling and in the Claimant's view, is evidence supporting her allegations regarding the OH~~

referral, discrimination and defamation. The Claimant had not accepted any SOSR code as part of her contract of employment and the Defendants' did not even have a formal SOSR code. Consent to an SOSR code was not written into the Claimant's contract of employment. Consent is also not taken to include a disciplinary code which is not properly applied (and when the publication of allegations subsequently turns out to be false). In any event, the Court of Appeal has said that it is only the republication which is covered by the employee's consent.

51 ~~The Claimant believes that the eighth Defendant was also an acquaintance of Marina Waters, who the Claimant had brought legal proceedings against two months earlier. During the OH consultation the Claimant mentioned her OH consultation with Marina Waters and the eighth Defendant indicated that he believed that other OH consultants; (including Marina Water's) had indicated that the Claimant had been difficult during her consultations with them and had refused to answer questions. There was no evidence to that effect that had been put forward by the other Defendants' or Marina Waters' herself. Therefore, the eighth Defendant must have been acquainted with Marina Waters, who must have given him this false information when she introduced him to the first and third Defendants' and recommended that they engage his services. On 10 August 2011 the 3rd Defendant, on behalf of the 1st Defendant, suspended the Claimant from duty. 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's employee file was not produced as evidence during the SOSR hearing illustrating any warning(s). This amounted to a fundamental breach of contract. The Claimant also relies on the 1st Defendant's disciplinary policy as evidence in relation to her plea of malice, and which clearly wasn't implemented/followed.~~

52 ~~The OH consultation lasted over 3 hours, even though the Claimant had been informed that it would last about an hour. The eighth Defendant advised the Claimant that the OH consultation took this length of time because of the fact that she had provided him extensive medical information that he would have to read. The first and third Defendant had failed to provide the eighth Defendant with any background medical information and the eighth Defendant had failed to ask them for it, although he accepted that it was usual practice for this to happen. The failure to properly apply the disciplinary code and carry out a proper investigation to identify the false allegations, was be a breach of the Claimant's contract of employment and the Claimant relies on as evidence in relation to her plea of malice. By its conduct the Defendants' has shown an arrogant disregard for its own contractual obligations, its own policies and procedures and the~~

values of accuracy and truth in the inquiry process. An employer cannot have a licence to publish false allegations willy-nilly.

- 53 ~~The eighth Defendant insisted that he did not have enough medical information, even though the Claimant provided him with 19 separate pieces of medical documentation (which he did not refute he received), which included previous OH reports, fit notes and assessments. This information included details of her original absence during her previous employment, i.e. the Dr Daley's and Dr Mason's OH reports, the Claimant's 5 page chronology of events. The Claimant also relies on the 1st Defendants' breaches of the grievance code as evidence of malice. This is set out in her Employment Tribunal pleadings. The 2nd defendant heard the Claimant's grievances on his own, when the 1st Defendant grievance procedure required it to convene a panel, (in line with its own policy), because the Claimant's allegations constituted alleged breaches of the Equal opportunities policy. The 1st defendant dealt with the Claimants' previous grievances in the same way, i.e. the 3rd Defendant dealt with one without a panel and Ian Smith dealt with the appeal without a panel. The Claimant relies on the 1st Defendants' grievance policy and her correspondence with its HR officer (Rita Lee) on 10 April 2012 at 17.58 and 12.30 as evidence demonstrating malice.~~
- 54 ~~The first Defendants' OH consultant (Dr Giagounidis) stated that Dr Mason's OH report summarized very well the issues that could affect the Claimant and how one can ensure that workplace circumstance do not impact unduly on the Claimant's health, especially her psychological health. Dr Giagounidis also made reference to the risk assessment that the Claimant's previous employer had undertaken, (and which the eighth Defendant was provided with a copy of). The eighth Defendant had asserted that he was unable to provide the first Defendant with this information due to the fact that he allegedly did not have enough medical information and the Claimant had failed to provide him with the details of her original absence etc. This is clearly false and the eighth Defendant made these statements even though he had reviewed medical information during the consultation which proved the opposite. The Claimant specifically relies on the 1st Defendants' e-mail to her on 11 March 2013, attaching the 4th Defendant's grievance presentation, (which the Claimant relies on and which contains further excessive, false/inaccurate and defamatory statements made by during a grievance hearing that the 1st Defendant had agreed that she did not have to attend). The note-taker failed to take notes whilst the 4th Defendant gave the 14 page grievance presentation and once the presentation was concluded and the 2nd and 4th Defendant began discussing it, she failed to take verbatim notes, despite setting out in her Tribunal witness statement dated 6 March 2013 (which the Claimant relies on), all her qualifications, which includes a Doris Teague qualification in shorthand (120 words per minute), the Royal Society of Arts qualification in shorthand at 80 words per minute and~~

the Pitman Examinations Institute shorthand qualification at 90 words per minute.

- 55 ~~The Claimant believes that she had also been misled by the first and third Defendants' about the nature and purpose of the referral. She believes that the re-referral was not a genuine attempt to support her, (hence the lack of medical information provided by them) and the nature of the content of the OH referral, which focused on management/operational issues which was not relevant to practitioner who would and should only be concerned with enabling the first Defendant to support an employee, by providing an independent report from an 'occupational perspective'. It was not necessary for the OH referral to contain such material, as is evidenced by the first Defendants' OH consultants' comments relating to the first Defendants' initial referral in May 2014. The 1st Defendant stated in its e-mail to the Claimant on 14 December 2012 at 15.00, (which the Claimant relies on), that it wanted to avoid the need for Susan Funnell to take verbatim notes. The 1st Defendants' SOSR minutes contained the 3rd Defendants' 34 page presentation and notes, (which were taken by Susan Funnell), so there was no conceivable reason why the 1st Defendant chose not to require Susan Funnell to take any notes during the 4th Defendants' 14 page presentation. The Claimant relies on this as evidence of malice and proof that the Defendants' use of the note-takers was not in pursuit of a legitimate aim.~~
- 56 ~~It is obvious that the first and third Defendants' were attempting to taint the mind of the eighth Defendant and that he was only too willing to allow them to do so. The eighth Defendant's OH report is also evidence of malice. The eighth Defendants' behaviour caused the Claimant deep distress, anxiety and worry and his defamatory statements was a significant factor which contributed to and/or caused and/or led to her dismissal. The Claimant had hoped that the OH process would be a supportive one and that the eighth Defendant would not also discriminate against her and fail in his duty of care, but instead she was informed by the eighth Defendant that he was there to 'help the tribunal' and his subsequent defamatory statements resulted in the loss of her job and the further deterioration of her medical condition. The Claimant contends that the content of the eighth Defendant's subsequent OH report is evidence of malice and that he would have been aware of the possible adverse consequences of his OH report and defamatory statements on the outcome of the first Defendants' SOSR/grievance hearing. It was only in March 2013, (a year after the SOSR hearing took place), that the 1st Defendant finally asked Susan Funnell to type up her half a page notes of the grievance part of the SOSR hearing attended by Elaine Smith. The 4th Defendants' grievance presentation was withheld from the Claimant for 8 months following the SOSR hearing and her dismissal and Susan Funnell's notes were withheld from the Claimant for a year. This was in clear breach of the Claimant's right of access under the Data Protection Act 1998.~~

- 57 ~~The first and eighth Defendants' clearly knew that the Claimant was covered by disability legislation and that she had fully cooperated with the OH process, consenting to see three OH consultants and an independent assessor in the space of just 6 months, but the first, second and third Defendants' proceeded assert that she had not cooperated with the OH process and to use the eighth Defendants' OH report and subsequent response to her grievance about him as a basis for the Claimants' dismissal and citing it as a reason to question her disability status. Even though the eighth Defendant had stated at the outset of the OH consultation that the Claimant was disabled, by the end of it he had begun to question her disability status. The Claimant believes that she had also been misled by the 1st and 3rd Defendants' about the nature and purpose of the referral to Dr Williams. She believes that the re-referral was not a genuine attempt to support her, (hence the lack of medical information provided by them to Dr Williams) and the nature of the content of the OH referral, which focused on management/operational issues which was not relevant to practitioner who would and should only be concerned with enabling the first Defendant to support an employee, by providing an independent report from an 'occupational perspective'. It was not necessary for the OH referral to contain such material, as is evidenced by the 1st Defendants' OH consultants' comments relating to the 1st Defendants' initial referral in May 2011.~~
- 58 ~~The eighth Defendant was aware that the Claimant's job was on the line, from the content of the OH referral, which went into excessive detail regarding this issue. He also would have been or should have been aware that his OH report and defamatory statements would be published by the first Defendant for the SOSR/grievance hearings and dismissal letter and referred to and repeated by the first and third Defendants' during the SOSR and grievance hearings, repeated in public (at the ET) and also disseminated to a wider audience because of her ET claims. It is clear from the evidence that the 1st Defendant knew that the Claimant was disabled at the relevant time, as they admitted this in their see own OH referral form dated 16 May 2011. The 1st, 2nd and 3rd Defendants were also aware of the medical evidence/information that the Claimant had disclosed to Occupational Health consultants- this is evidence by the OH consultants own reports and the correspondence (letters/e-mails/documentation) which the Claimant disclosed to the Defendants' during the SOSR process and Employment Tribunal proceedings and disclosure process. The Claimant relies on as evidence in relation to her plea of malice. The 4th Defendant gave details about her knowledge of the Claimant's condition during her interview with the 3rd Defendant for the 1st Defendants' internal investigation. The Defendants' legal representatives also had access to the Claimant's full medical records from September 2011 (due to the previous Tribunal case) and the 1st Defendants' (the investigating officer) had this evidence in their possession from December 2011- before the SOSR hearing.~~

59 ~~The eighth Defendant would have been or should have been aware that his treatment of her, individually and/or combined with the treatment that the other Defendants' had subjected her to, would exacerbate her condition, causing a relapse. The eighth Defendants' actions were actuated by malice, he knew what he wrote was false, he didn't care whether it was true or false and he said it because of a dominant improper motive and not for any proper reason connected with his engagement by the first Defendant to undertake an OH consultation and provide a report based upon the questions posed in the OH referral. The Defendants' would have been aware of the likelihood of the Claimant's impairment continuing or recurring, was extremely high, considering this fact and the overwhelming medical evidence pointing to this from its own Occupational Health Consultant in May 2011, the Claimants' GP letter to the 1st Defendant dated 6 April 2011 and the fact that the 1st Defendant had cited their concerns for the Claimants' health as part of it's reason for suspending her, (in the 3rd Defendants' letter to the Claimant dated 11 August 2011).~~

60 **Between 16 November and 17 December 2012** the Claimant and the Defendant's engaged in pre-action protocol correspondence and other correspondence. The Claimant relies on this in support of her claim and also contends that the first Defendants' correspondence demonstrates that it provided the Claimant with false information in relation to issues relating to the SOSR process during this time, including attempting to cover up procedural breaches. This state of affairs is further evidence of malice and discrimination. The Defendants failed to partake in the proper pre-action conduct in relation to exchanging information before the start of proceedings and refused to accept receipt of her recordings on the basis that the Employment Appeal Tribunal had not ordered disclosure.

61 **On 27 December 2012** the Claimant lodged her particulars of claim but was prevented by the Court from serving it on the Defendants'. **On 5 February 2013** the Claimant briefly saw Master Leslie in practice and was accompanied by a friend. Master Leslie advised the Claimant that he would not permit her to serve her claim on the Defendants' because it was too long and advised the Claimant to reduce her particulars of claim. The Claimant did so, (which required her to add some wording to the remaining text), in order to compensate for the substantial text which had to be deleted and to document the directions given by Master Leslie. The essence of the claim however did not change and no new grounds were included. The Claimant sent her shortened document to the Court for approval via e-mail. She had been directed by Master Leslie to not highlight the amended parts, to provide a new signed statement of truth and advised that in the meantime the case would remain stayed. Later that day the Claimant e-mailed the Court to request that Master Leslie's directions be sent to her in the form of an order and for confirmation that her new particulars of claim would not be considered as having been 'lodged out of time'.

62 The Claimant has a right not to be defamed verbally, in writing, or in any other format. The reasons given for the Claimant's suspension and her subsequent dismissal were based on a body of lies, deception, concealment, exaggeration, and manipulation. The findings of the second Defendant, Ralph Wilkinson were simply impossible to sustain even on his own findings. He failed to give reasons for disbelieving the claims and allegations that the Claimant made. There was no proper evidential basis for the decision actually reached. The Claimant believes that the Defendants' will not be able to rely on the defence of qualified privilege because:

- a) the allegations were untrue and the makers of the statement knew them to be untrue (which the recordings prove), the individuals were wilfully and maliciously fabricating/falsifying evidence against her and publicly defaming her in the clear knowledge of the severe consequences for her of their actions, i.e. dismissal/financial loss, exacerbation of the Claimant's health/risk of relapse of her depression, stigma/damage to her reputation, debarment from future employment etc; and
- b) The Defendants' will not be able to show that it has acted compatibly with the Claimant's Article 8 rights- It will fail the test for this as it will clearly be unable to prove that the interference with her Article 8 rights were in pursuit of a legitimate aim; and
- c) The allegations made against the Claimant were not supported by facts which were accurate; and
- d) The damaging comments have now been disseminated to a wider audience, (outside of Lewisham Council), to the Employment Tribunal and other parties, (Marina Waters- an independent OH consultant and her Solicitor- Judith Curran and Barrister- Mr C Khan), and the general public, as this information will no doubt be in the public domain now, spread outside of the work environment by staff, following the Claimant's dismissal.

63 In all the circumstances, the publication of the words complained of was not "proportionate" and was therefore not justified under Article 8(2) for the following reasons:

- a) There was a substantial interference with the Claimant's Article 8 rights. It not only damaged her reputation it also affected the way in which she interacted with others and had an adverse effect on her "psychological integrity"; and
- b) There was no evidence of any the risk to the safety of the generality of Council employees. Even taking the Defendants' evidence at its highest this did not constitute (and was not taken to constitute) a threat which was sufficiently serious or immediate to justify the Defendants' decision to suspend the Claimant under 'immediate protective measures'; and
- c) Therefore it is clear that this situation did not warrant exclusion with immediate effect and exclusion from the Claimant's office (where none of the managers were based). Christine

Grice should have considered whether it would be feasible for both the Claimant and the fourth Defendant (Elaine Smith) to continue at work, (even with restrictions in place), particularly since it was considered appropriate for the fourth Defendant to remain at work, with no restrictions. Other measures short of exclusion would have been more appropriate.

Covert Recordings and Transcripts

64 The covert recordings prove that the statements made by the Defendants' are malicious and false and actuated by malice. They also capture discriminatory conduct. The evidence is relevant and probative and the Claimant refers the Court to Lord Simon of Glaisdale comments in **R v Kilbourne** [1973] AC 729, 756:

“Evidence is relevant if it is logically probative or disprobative of some matter which requires proof ... relevant (i.e. logically probative or disprobative) evidence is evidence which makes the matter which requires proof more or less probable.”

65 The Claimant believes that the Defendants' evidence will have to be treated with great caution. They are prepared to say things which are clearly untrue. The Claimant believes that the Defendants' will knowingly give what they know to be false witness statements, and lie. The Claimant's evidence is therefore critical, as it plainly goes to the issue of the credibility of the Defendants'. Therefore the evidence will have an important influence on the hearing. A person will be in contempt of court if he presents a deliberately false statement of case, witness statement (under CPR part 31). The Claimant will be powerless to prevent this improper, unreasonable and dishonest violation of the court's directions and rules as well as the law, unless her critical evidence is admitted.

66 The Claimant will not be able to prove her pleaded case without the covert recordings and transcripts. It is highly likely therefore, that the Claimant will be found to be not credible and adverse inferences will be made against her and the Court will be free to add weight to the Defendants' fabricated and perjured evidence. The end result being that the Claimant will lose her case and be at risk of costs.

67 In addition, having regard to the nature of the Claimant's overall case as pleaded, the covert recordings/transcripts will be such as to assist her in succeeding in her case. The evidence will go to the issue of the Defendants' credibility and will demonstrate the fact that 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. It would be

prejudicial to the Claimant to exclude the recordings and transcripts. To exclude them exclusion would prejudice her in the proper prosecution of her case.

68 The recordings conclusively prove that the Defendants' could not have held a genuine belief in the statements that they made. That belief could not have been reasonably held by reason of the content of the covert recordings and transcripts. The Claimant was forced to secretly record conversations as a precautionary measure, because she anticipated that she would capture some discriminatory conduct and statements being uttered by individuals, which she reasonably believed they would not do and say if they knew they were being recorded.

69 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 honest comment, justification or qualified privilege etc. What matters is whether those responsible for the alleged defamatory allegations were well aware at the time that there was simply no evidence to support them. The Claimant's covert recordings and transcripts prove that they were aware that there was no evidence to support them.

70 The Defendants' were intent on getting rid of the Claimant and sought to destroy her reputation and future job prospects and cause severe harm to her health. There is no truth whatsoever to the statements made against the Claimant and they were/are a very serious slur upon her reputation and in the highest category of defamations. The words constitute slanders and libels actionable *per se* upon the Claimant. The words are of the utmost gravity. Not only are they grossly defamatory, but they are false and indefensible. It is highly important that the Claimant be allowed to evidence the truth of her account. It is paramount that she is permitted to submit all the covert recordings and transcripts, as the issue is about her reputation and her career.

Human Rights- Applicability of Article 6(1) and 8

71 The allegations are very serious and the Claimant's Article 3, 6 and 8 rights are engaged. As a result, the Claimant is entitled to see to vindicate her reputation and a failure to provide a remedy would be contrary to Article 8, **see *Kyriakides v Cyprus*** [2008]. The Court must ascertain whether Article 6(1) is applicable in the instant case. The previous defamation cases dealt with by the Court under Article 6(1) have all concerned applicants who have sought to protect their own reputation by bringing proceedings before a court. According to established case law, the provision applies to such proceedings, the right to enjoy a good reputation being a "civil right" within the meaning of Article 6(1). [FN52] Article 6 must also apply in relation to a defendant in such proceedings, where the outcome is directly decisive for his or her "civil obligations" *vis-à-vis*

the plaintiff.

- 72 The degrading treatment that the Claimant received aroused feelings of fear, anguish and inferiority and it humiliated and debased her. The treatment was designed to break her physically and psychologically. It is submitted that it is sufficient for her to have felt humiliated, even if the Defendants' did not perceive the treatment as humiliating. There is a positive obligation to require public authorities to take steps to prevent ill-treatment. This requires public officials to act to protect vulnerable people from harm inflicted on them by others.
- 73 Since inhumane or degrading treatment violates human dignity there is sometimes an overlap between Article 3 and Article 8 (the right to respect for private and family life). It is not uncommon where ill-treatment fails to meet the level of severity demanded by Article 3 that a violation of Article 8 may have occurred as Article 8 protects a person's physical integrity as an aspect of private life; this has also been recognised by the European Court of Human Rights in ***E. S. and Others v. Slovakia*** [2009] (application no. 8227/04).
- 74 The Defendants' interference with her Article 8 right was not:
- a) 'in accordance with the law' - there was no clear legal basis for the interference; and
 - b) It was not in pursuit of a legitimate aim - A public authority which intends to interfere with a person's rights under Article 8 must be able to show that what they are doing pursues one of these six legitimate aims. There was no good reason for the interference with the Claimants' Article 8 right and the interference was not proportionate.
- 75 Further or alternatively by reason of the matters aforesaid, the first Defendant is in breach of the Claimants' rights under Article 8 of the European Convention of Human Rights (ECHR), in particular the right to reputation embraced by Article 8. The first Defendant is a public authority within the meaning of the Human Rights Act 1998 and the ECHR. By publishing/uttering and/or causing or permitting to be published/uttered and/or failing to withdraw the allegations complained of, which allegations are false, the first Defendant has acted and is acting incompatibly with the Claimant's rights under Article 8, contrary to Section 6 of the 1998 Act.
- 76 The Claimant is entitled to and will seek at trial a declaration of falsity pursuant to the Human Rights Act in relation to the said allegations; and/or Substantial damages pursuant to the said Human Rights Act. For the avoidance of doubt the Claimant will contend that in all the circumstances, which include the facts and matters set out in this claim, which demonstrated a wilful and flagrant disregard for the Claimant's rights an award of such damages, as are necessary to afford just satisfaction to the Claimant.

Detriment

- 77 The Defendant's were aware that the Claimant was disabled and vulnerable. They owed a duty of care to the Claimant and were negligent in saying and publishing the statements/causing/permitting the statements to be published/said, as they knew or ought to have known that the utterance and publication of such statements would cause severe harm to the Claimant's already fragile mental health.
- 78 There can be no doubt that the words complained of are seriously damaging to the Claimant's reputation, her relationships with others and the conduct of her normal private life and that, as a result, her Article 8 rights are engaged. The actions of the Defendant's were serious interferences with her Article 8 rights. Beyond affecting her reputation, it also interfered with her relationships with others (particularly how she was treated by the Defendants') and her moral and psychological integrity. The Defendants' actions were calculated to and did cause economic loss to her in the form of the loss of her employment and career. The Claimant contends that at all times material to this action, the Defendants' knew or ought to have known that their unlawful defamatory, disparaging conduct and unlawful interference with the Claimant's Article 3, 6 and 8 rights would likely result in the described injuries and losses to the Claimant.
- 79 The Claimants' personal and professional life has suffered and this must give rise to general, aggravated, ~~special~~ and exemplary damages. The individual and/or cumulative effect of the defamatory statements about the Claimant caused significant damage to her reputation and the repeated and malicious aspect of the statements merit the maximum exemplary, aggravated, ~~special~~ and general damages to the Claimant.
- 80 As a consequence of the Claimant's dismissal she has lost her role and status as a key worker for children and young people and she will never be able to return to work in this role, a profession which she cherished and spent over 12 years building, together with the level of money that she was earning. The Defendants' actions have so 'stigmatised' her that she will find it difficult to find alternative employment, particularly as the way that she has been treated has affected her confidence and self esteem.
- ~~81 The Claimant submits that it would be just and equitable for it to be considered when determining how long it may take her to find another job and how much compensation should be awarded for loss of earnings, particularly in these times of austerity measures and cost cutting. It is submitted~~

~~that the Court is entitled to conclude that she should be compensated for the loss of her earnings for the rest of her working life in 'equivalent or better paid employment'.~~

82 The foreseeability of the republications of the defamation and repeated slander should affect the measure of damages very considerably. The damages for loss of reputation were caused by the erroneous findings made by the hearing officer, and which would also have been made even if they had not been accompanied by dismissal (in the form of actionable defamation). The Defendants' conduct was dishonest and corrupt and this conduct will affect the Claimant in finding alternative employment.

83 The Claimant relies on the following detriments:

- a) Defamation to character and detriment to reputation/future employability; and
- b) Suspension isolated the Claimant from colleagues in and out of work and prevented the Claimant from keeping up-to-date with organizational issues, knowledge and skills and prevented her from gathering evidence to present her case. During her suspension she was unlawfully restricted in her access to her workplace. This could be perceived as unreasonable behaviour and harassment; and
- c) Post-employment: unable to maintain and develop skills / erosion of knowledge, skills and experience; denying her equal right and access to training, development, and career opportunities; and
- d) Severe adverse effect on her on-going Employment Tribunal case: The damage caused by the defamatory statements to date is continuing. The longer this remains to be the case, the greater the adverse effect on her claims, ~~potential for a claim in special damages~~ and the greater the risk that the material will be published elsewhere (in respect of which, the Defendants' should be held responsible); and
- e) Distress, anguish and embarrassment. The Claimant was humiliated in front of her colleagues and made to feel like a 'criminal' in her own place of work. She was demeaned, as her colleagues had witnessed this. The Defendants' actions have had a direct impact on the circumstances and this puts her at a disadvantage; and
- f) Suffered acute stress and depression (the exacerbation of her existing medical condition)- Since the Claimant's dismissal she has been on two sets of medication (including anti-depressants) and been signed off by her GP with depression and received counseling: **see the Claimant's attached medical information (Appendix A-15 pages) including cover page, medical records and GP sick notes, which will be updated when parties exchange evidence.** The Claimant's already fragile mental state was severely exacerbated and this has impacted on her self-esteem/confidence and relationships; and

g) Experiences equated with inhumane and degrading treatment/torture; The way she was treated and continues to be treated are breaching her Article 8 right; and

84 The Defendants' showed contumelious disregard and contempt for the Claimant's feelings and reputation. The Claimant contends that they are therefore jointly liable to an award of aggravated, exemplary and general damages. The Claimant will also be seeking stigma damages (a record of ill health and the fact that the Claimant had to take legal action against her employer- these facts will debar her from gaining further employment). The Defendants' have ended the Claimant's career/caused the Claimant's career to end, (and all prospects of future employment in her chosen career, and even any other, earning the same level of income in her current field, because of the stigma) on findings of SOSR involving malicious defamatory allegations. The Claimant's allegations include being publicly defamed suffering injury to her reputation and stigma. To end the Claimant's professional career/cause the Claimant's professional career to be ended, for conduct that she has clearly not engaged in involved breaches of Article 3, 8 and 10 of the European Convention on Human Rights (ECHR).

85 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: **Broome v Cassell & Co Ltd** [1972] AC 1027, 1125, citing **Ley v Hamilton** 153 LT 384, 386:

"It is impossible to track the scandal, to know what quarters the poison may reach'. So long as its withdrawal is not communicated to all those to whom it has reached it may continue to spread".

86 In its e-mail to the Claimant dated 7 December 2012 the first Defendant indicated that it was unable to trace the third parties whom it employed to take short-hand notes during the hearings (in which I was publicly defamed) in order to obtain copies of their short-hand notes. This factor is highly significant and **Ley v Hamilton** is much more important today than it was in the past, because documents are stored electronically where they may very easily be searched and distributed onwards. Other documents bearing the words complained of, (particularly the statements made by the Defendants' on 27th and 28th February 2012 and 6th and 22nd March 2012) are in electronic form and it can be said that the same risk is also attached.

Loss and Damage

87 The amount of pecuniary loss and damage suffered by the Claimant is incapable of precise quantification by her at this time and she seeks leave from the Court to seek advice regarding this. Such pecuniary loss and damage is continuing, and will continue to accrue and she expects

to recover more than £300,000. The Claimant asks the Court to take account of the defamation's inherent gravity, its having gone uncorrected for an excessive amount of time, the Defendants' attempts to show that the defamatory statements were true, the harm caused to the Claimant's health, the distress occasioned, and the need for vindication.

- 88 The Claimant claims against the Defendants for defamation, intentional infliction of mental suffering and negligence, including:
- 88.1 General damages for the Defendants' tortious conduct for libel and slander, injury to feelings, loss of reputation, intentional infliction of mental suffering (including the exacerbation of the Claimant's medical condition) and negligence/failure of duty of care;
 - 88.2 ~~Special damages:~~ The Claimant has also suffered damages to career prospects (including stigma) and ;
 - 88.3 Aggravated damages: the conduct was oppressive, arbitrary and an unconstitutional action by the agents of government. There was the very worst kind of abuse of executive power by the servants of government. The actions were orchestrated at the very highest level. It extended to the maintenance by the Defendants' of false allegations against the Claimant. The Defendants' acted in a contumelious way and in a way in which there was active and knowing concealment of what had taken place;
 - 88.4 Exemplary damages: the very nature of libel/slander damages, the Defendant's objectionable behaviour, the Defendant's behaviour of which the Claimant trusts that the court will disapprove, the disrespect shown for the Defendant's Human Rights, and the public interest or policy in discouraging such behaviour (Under HRA s.8 the court may grant such relief or remedy within its powers as it considers just and appropriate. Damages may be awarded if the court is satisfied that an award is necessary to afford just satisfaction to the person in whose favour it is made;
 - 88.5 Interest on the above damages at such rate(s) and over such period(s) as the Court thinks fit pursuant to s.35A Senior Courts Act 1981;
 - 88.6 A signed undertaking from the Defendants' that it will not repeat the same or any similar or other words bearing the meanings complained of, similar meanings and the same or similar false statements or make any similar allegations in the future, whether in writing or verbally, which will include ceasing from speaking, publishing and delivering any further words of a defamatory nature concerning me and that are defamatory of the Claimant;
 - 88.7 A complete retraction of all defamatory statements as well as a public apology, which will include an unconditional apology from the Defendants' in writing, addressed to me and signed, (the wording of which the Claimant shall supply to the Defendants' upon receiving their agreement) and that the first Defendant undertakes to publish the apology on its website in a prominent position for a period of no less than 60 days and also to publish and deliver the

apology to the homes of all the individuals that the defamatory words were spoken to/
published to;

88.8 The Defendants' agree to pay the Claimant reasonable costs in dealing with this matter, plus VAT; and

88.9 The Defendants' suspend publication and distribution of copies of the defamatory material forthwith and to restrain from further publishing or causing or authorizing the broadcast and publication of the same or any similar or other words bearing the meanings or similar meanings defamatory of the Claimant and which are complained of in this particulars of claim; and

88.10 An injunction to restrain the Defendants' whether by itself, its directors, servants or agents or otherwise from further publishing or causing or authorizing the publication/utterance of

a) The same or any similar or other false or defamatory words bearing the meanings complained of in these Particulars of Claim or similar meanings defamatory of the Claimant;

b) The same or similar false statements of and concerning the Claimant.

88.11 Such further and other relief as this Honourable Court may deem appropriate and just.

89 For the avoidance of doubt the Claimant contends that in all the circumstances, which include the facts and matters set out in this particulars of claim, which demonstrated a wilful and flagrant disregard for the Claimants' rights an award of such damages [as are] necessary to afford just satisfaction to the Claimant. The Claimant seeks a cost award against the Defendants' on the basis that they have denied the allegations where they ought to have admitted them.

90 The Claimant has an excellent prospect of persuading a trial judge (and jury, if one be appointed), that that the words complained of in libel and slander bear a meaning that is so serious that vindication, if available, will really be necessary for her. This is so particularly given the fact that the Defendants' response to the Claimant's Letter of Claim, cites pleas of justification, honest comment and qualified privilege and there is nothing available, to support this proposition. The Claimant believes that none of the Defendants' evidence discloses any reasonable grounds for defending the claim.

91 In all that time until the Claimant was suspended by the first Defendant, (including the 7 years that she had worked for her previous employer, prior to the transfer of her employment to the first Defendant), she had never had a formal or informal complaint made against her, yet suddenly the first Defendant decided that she was an employee whose alleged conduct required that she be defamed and dismissed. This was a deliberate course of action consistent with a plan to 'get rid'

of her because she dared to tell the truth thereby embarrass management and a medical professional who were involved in lying and cover ups.

92 The Claimant lost her job despite performing well and doing nothing wrong apart from speaking out against discrimination and corruption. The Defendants' acted in this manner in order to punish and vilify the Claimant and to protect themselves and those in senior positions from blame. It was far easier to just 'get rid' of the Claimant, the victim with truth on her side, rather than to confront and deal with the concerns that she had raised. It is the Claimant's hope that she will be able to secure exoneration from all of the defamatory statements and reasons for her unfair dismissal. She wishes to have her reputation restored.

93 The Defendants' decided that they could operate completely outside the bounds that the law has set, without having to pay the penalty for that. Their conduct simply shocks the conscious. The Claimant is unsure if she will ever be able to get back to the person that she used to be, her emotional, physical and psychological cost is immeasurable. She can only hope that she may at least try to get on with her life after a judgment in her favour, knowing that the Defendants' will have been forced to face the consequences of their actions. It is the Claimant's hope that the Court will be able to provide her with some measure of justice.

STATEMENT OF TRUTH

The Claimant believes that the facts stated in these particulars of claim are true.

Signed

Ms Ayodele Adele Vaughan

31 July 2013