EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105711/16 Held in Aberdeen on 12 February 2019

Employment Judge: Mr N M Hosie

A	Claimant In Person
B	Respondent Represented by: Ms A Stobart - Counsel

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that: -

(1) the application for an "Anonymity Order" is granted;

(2) the claimant will be identified as "A", the respondent as "B" and the applicant for the Order as "C";

(3) the Order will be permanent; and

(4) the claim is struck out in terms of Rules 37(1)(b), (c) and (e) in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Introduction

1. This case has a history. The claim form was submitted by the claimant's then solicitor on 15 December 2016. The claim comprised complaints that the claimant had been unfairly dismissed from her post as a Speciality Doctor in Elderly Rehabilitation on 17 August 2016 and that she had been the victim of sex and religious discrimination. It was averred in the claim form that, *"the claimant is a devout Hindu of South Indian origin. The claimant was placed on suspension on 27 May 2015 until her dismissal on 17 August 2016".*

2. The claim is denied in its entirety by the respondent. It admits the dismissal but claims that the reason was conduct, gross misconduct, and that it was fair. In the alternative, the respondent's position is that, the claimant was dismissed for the potentially fair reason of some other substantial reason, on the basis that the working relationship between the claimant and C (the second respondent at one time), *"was such that they could not continue to be employed by the same employer".*

3. There were numerous procedures after the claim was raised, including a number of Preliminary Hearings for case management purposes with the respondent's solicitor seeking clarification of the claim and the claimant making many requests for additional information, documents and raising matters not within the Tribunal's jurisdiction.

4. Matters then came to a head when a Preliminary Hearing was held on 14 November 2018 to consider an application by the respondent's solicitor to strike-out the claim in terms of Rule 37 of the Rules of Procedure, on account of the manner in which the claimant had been conducting the proceedings.

5. EJ Hendry refused to strike-out the claim. His Judgment and Reasons ("the Judgment") is referred to for its terms. It was registered and copied to the

respondent's solicitor on 10 December 2018. It was also copied, on the same day, to the solicitor in London who had been instructed by the claimant. This was an error on the part of the Tribunal as on 21 November 2018 the solicitor concerned had intimated to the Tribunal that he was no longer acting for the claimant and, as it transpired, a copy was not sent to the claimant by the Tribunal until 21 January 2019. The claimant advised that she received it on 23 January and by implication had no knowledge of the exact terms of the Orders until that date.

6. In the meantime, EJ Hendry had directed that a Preliminary Hearing be fixed to finalise the pleadings, fix dates for a Final Hearing and to address any other outstanding matters. This included an application by the claimant to amend her pleadings. Her application, which runs to 88 pages, is referred to for its terms. It was lodged in August 2018 but EJ Hendry had decided that it would be best addressed after he had determined the strike-out application.

Further strike-out application

7. On 16 January 2019, the respondent's solicitor, Mr Gunn, wrote to the Tribunal to apply again for an Order striking-out the claim. His e-mail was copied to the claimant and was in the following terms: -

*"**Application for order striking out the claim***

We now wish to apply for an Order under Rule 37 striking out the claim on the following grounds:

(i) that the manner in which the proceedings been (sic) conducted by the Claimant have continued to be scandalous, unreasonable and vexatious and that the Claimant's conduct amounts to a deliberate disregard of the required procedural steps; and/or

(ii) that the Claimant has failed to comply with an Order of the Tribunal.

The relevant background and specific grounds for this application are as follows:

In our previous application for the claim to be struck out, made prior to the Preliminary Hearing in November 2018, we highlighted the Claimant's

unreasonable conduct in attempting to contact witnesses by sending requests to members of staff of the Respondent and asking them to forward requests on, or provide contact details for other witnesses. The issue of the Claimant contacting potential witnesses and the impact this was having on his witnesses was discussed during the Preliminary Hearing.

The Tribunal issued a Judgment on 10 December 2018 following the Preliminary Hearing which took place on 14 November 2018. Referring to the Claimant's unreasonable behaviour, including the contact with witnesses, the Judgment states at paragraph 54: "It must be clear to the Claimant that no further behaviour of this sort will be tolerated". The Judge then goes on at paragraph 55 to make three Orders relating to how the Claimant must conduct the proceedings. The Orders are highlighted by using bold font. The third of these Orders states:

"3. The Claimant shall not except with the sanction of the Tribunal contact or attempt to contact any witnesses until a Witness List is agreed."

Further contact with witnesses

The Claimant has previously produced a list of the witnesses she considers relevant to the proceedings but no list of witnesses has been agreed to date. The Claimant's list of more than 150 individuals includes C. The Claimant considers she is married to C and is in a continuing relationship with him. C does not consider that he is married to the Claimant and does not consider himself to be in a relationship with her. C is legally married to a Katherine C.

We have been advised by C that the Claimant contacted him by e-mail twice over the weekend. Copies of these e-mails are attached. The first e-mail advises C that the claim is going to be heard in public and advising that the Claimant will be writing to him again at some point for documents. The second e-mail, sent the next day, advises C that the Claimant had added his wife to her list of witnesses and asking C to let him wife know this. This e-mail continues that Mrs C should contact the Claimant directly as "this is a legal trial". The Claimant then states that he will let C know if she decides to call C's sister and/or mother as a witness too.

C has informed us that while the e-mails are superficially polite he considers them, specifically the e-mail asking him to inform his wife that the Claimant intends to call her as a witness and the threat to call his sister and mother too, as a thinly veiled attempt at intimidation and a further example of the Claimant continuing to harass him.

It is also noted that these e-mails continue the pattern of conduct by the Claimant whereby she contacts an individual to pass on information that a further individual is to be called as a witness. As was submitted at the previous Preliminary Hearing, such conduct is knowingly done to maximise the embarrassment and intimidation of the witnesses involved.

Breach of Tribunal Orders

It is submitted that the Claimant has contacted a witness. It is also submitted that a Witness List has not been agreed. Accordingly, unless the Tribunal has sanctioned the Claimant to repeatedly contact C both to advise him of the Tribunal's Judgment following the Preliminary Hearing and requiring him to pass messages on to his wife for the Claimant, the Claimant is in breach of Order 3 of the Orders issued at paragraph 55 of the Note of the last Preliminary Hearing.

It is not known to the Respondent whether the Tribunal has sanctioned any contact by the Claimant with C but even if such sanction has been given then it is submitted that the manner in which the Claimant has corresponded with this witness is designed to intimidate and threaten. Accordingly, it is yet another example of scandalous, unreasonable and vexatious conduct on the part of the Claimant.

As has been noted repeatedly before, the Claimant is a highly intelligent Senior Doctor. It is submitted that her conduct does not relate to confusion over a complex point of law or procedures. Instead, she has continued to try and intimidate the witnesses by contacting them in breach of the Tribunal's Orders. Again, in light of the most recent Preliminary Hearing and the Tribunal's subsequent Judgment, it is not credible for her to claim that she does not understand or appreciate the impact of her actions. Instead, it is submitted that her conduct amounts to a continuing, deliberate and persistent disregard for the appropriate manner to conduct this litigation and the Tribunal's authority. It is further noted that the Tribunal has already twice found the Claimant to have acted unreasonably in relation to the manner in which she is conducting the proceedings and as a result, the Claimant's claim should be struck out.

This request for a striking out order is in furtherance of the overriding objective. In the circumstances outlined above, the order requested deals with the case fairly and justly, it is proportionate to the complexity and importance of the issues and will save the expense.

In accordance with Rules 30(2) and 92, we have sent a copy of this application to the Claimant and hereby notify her that any objections to the application should be sent to the Tribunal (with a copy to us) as soon as possible."

8. The strike-out application was opposed by the claimant. EJ Hendry directed that it should also be dealt with at the Preliminary Hearing, which was fixed for 12 February 2019.

Rule 50 application

9. In the meantime, C had taken his own legal advice and on 25 January 2019 his solicitor sent an e-mail to the Tribunal in the following terms: -

"We write in relation to the above case which is due to be called for a Preliminary Hearing on Tuesday 12 February. We have been instructed on behalf of C, who is not a party to the action albeit he was previously identified as the second Respondent. Our client is also not be confused with the claimant as designed above. He remains however a material witness with significant interest in the proceedings.

We write to notify our interest in this matter and to formally request the permission of the Tribunal to appear on behalf of our client at the Preliminary Hearing which is set down for 12 February 2019. We are seeking to attend on behalf of our client to seek an order from the Tribunal under Rule 50 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") in respect of privacy and restrictions on disclosure.

It is submitted that, unlike the previous version of the Rules, the right to make an application under Rule 50 is not limited to the parties and that any person with an interest in the proceedings may make an application. It is submitted that given the nature and the content of the claim and its potential impact on him both personally and professionally our client clearly has a significant interest in the proceedings which give rise to the right to make an application on his behalf under Rule 50.

We would confirm that we have discussed our proposed involvement with the representative of the Respondent, Mr Gunn, whom we understand has no objection to our appearing on behalf of C in circumstances where he is instructed to act only on behalf of the Respondent and not our client. Mr Gunn has also kindly provided us with copies of relevant papers including a copy of an e-mail to the Tribunal from the claimant dated 23 January 2019 which pertains specifically to the issue of the proper identification of the parties and our client in particular and which includes assertions (which are strongly objected to by our client, that the claimant is entitled to identify herself and be identified in the proceedings as "Dr C". For the avoidance of doubt our client's position is that the Claimant is not entitled to be so identified in circumstances where she is not legally married to our client.

While, if required by the Tribunal, we would be happy to provide specification of the order sought under Rule 50 and provide written representations in support we would be grateful if the Tribunal might confirm, in the first instance, whether it is minded to permit us to attend the Preliminary Hearing on behalf of our client.

We look forward to hearing from the Tribunal as soon as practicable. We confirm we have copied this letter to both the Respondent's representative

and to the Claimant for their information and in order that they may provide any comments."

10. I decided that this issue should also be dealt with at the Preliminary Hearing and that C's solicitor would be permitted to appear.

11. C's solicitor then asked that his application be dealt with at the start of the Hearing, primarily to save expense, which he submitted was in accordance with the "overriding objective" in the Rules of Procedure. The respondent's solicitor did not object. However, in a 7-page e-mail dated 8 February 2019 at 11:22 the claimant did object to C's solicitor being heard first. The following is an excerpt: -

"I find the correspondence from Mr Daniel Gunn distressing.

My husband C is involved in committing Sexual offences towards me which B and their legal representatives who conducted the process had repeatedly said both in writing and in the audio recordings that it is not B's business. Mr Gunn had said to the Tribunal that the audio recording evidence had been destroyed. Mr Gunn himself and the management are involved in Sexual harassment.

I had paid unimaginable amount of money to my representatives since 2015 because of Mr Daniel Gunn's employment advice and his work on this case for B to conduct this whole process against me since 2015. Mr Gunn is worried about C's expenses just for a few hours of work to pay for Mr Gilligan (C's solicitor). I had been paying money to my representatives since 2015 because of B and their legal representative's advice which resulted in this process.

I would want my ET1 claim, my request for Judgement document amendments to be considered first in the Preliminary hearing as they are a Priority especially since the Judgement document had not been given to me for 42 days despite several requests and it is nearly 2 months as per the Judge's signature on the Judgement document.

It will be completely unfair and biased to allow Mr Eric Gilligan's application on 12/01/2019 which is not a priority as I had been waiting for a Judge to hear my ET1 Claim since the last 2 years after I was made to write it again as per Judge's instructions and Respondent's wishes.

It would be fair and just to postpone Mr Gilligan's application to the next hearing to the end of the process and that would help the case aswell as we

would have heard the case by then and discussed the documents and if Mr Gilligan would come at the end of this process we will have a chance to request him any information and documents which is not clear and he would be able to provide any information and documents that require for the final hearing as he is C's legal representative……."

12. I decided to refuse the claimant's request to hear the Rule 50 application at the Preliminary Hearing after the other issues had been considered. On 8 February, the Tribunal sent an e-mail to the claimant, on my instructions, copied to the respondent's solicitor and C's solicitor, to advise that, in all the circumstances, and having regard to the "overriding objective" in the Rules of Procedure, the application for a so-called "Anonymity Order" would be considered first.

13. In the lead up to the Preliminary Hearing, the claimant asked that "C" be required to give evidence as she wished to *"examine him under oath".* However, I advised that no evidence would be heard at the Preliminary Hearing, as I would consider the issues on the basis of submissions only.

Postponement application

14. The Preliminary Hearing was scheduled to start at 10am on 12 February 2019. On 11 February 2019 the claimant sent an e-mail to the Tribunal at 12:04 in the following terms: - *"I apologise, I would not be able to attend the Preliminary Hearing tomorrow as I am very unwell with, Fever, Tonsillitis and severe Sore Throat. I apologise for the inconvenience."*

15. Subsequently, the claimant confirmed that this was a postponement request. The postponement was opposed by both the respondent's solicitor and C's solicitor.

16. I decided to refuse the application. On 11 February at 16:46pm the Tribunal sent an e-mail to the claimant in the following terms: -

"I acknowledge receipt of your e-mail of today sent at 15:58 which I referred to Employment Judge Hosie.

He notes that you have applied for a postponement of tomorrow's hearing. However, the respondent's Counsel and solicitor are travelling from afar and are already on their way to Aberdeen. While you are unwell, unable to attend and have no prior experience of Tribunal proceedings in all the circumstances in view of the lateness of your application, Employment Judge Hosie is not prepared to postpone the hearing at least at this stage.

*He will convene the Hearing as scheduled and consider whether he can address and determine **fairly** any of the issues, in your absence, having regard to the "overriding objective" in the Rules of Procedure.*

Accordingly, your postponement request is refused, at this time.

In the meantime, in accordance with "Presidential Guidance", you will be required to submit to the Tribunal a "soul and conscience" letter/certificate from a Doctor confirming (i) the nature of your health condition and (ii) that the Doctor considers that in his or her professional opinion you are unfit to attend the Hearing and the basis for this conclusion. The medical evidence should also indicate when it is expected that you will be fit to attend."

17. The claimant responded by e-mail at 19:26pm as follows: -

"I do understand that the application for postponement was applied late as I had informed earlier being a Doctor I am used to NHS system of working.

I had taken advice in this matter and had been advised to attend the PH if it was not postponed, therefore I will attend the scheduled hearing tomorrow morning."

Preliminary Hearing

The case came before, therefore, me by way of a Preliminary Hearing on 12 February 2019 to consider three issues: -

(i) the "anonymisation application" by C's solicitor;

(ii) the respondent's application to strike-out the claim; and

(iii) the claimant's application to amend.

18. The claimant was in attendance. She was not represented. The respondent was represented by Counsel, Ms A Stobart, instructed by Mr D Gunn, Solicitor. Mr E Gilligan, Solicitor also appeared on behalf of C.

Anonymisation application

19. As directed, I heard submissions first from C's solicitor. He spoke to "Written Outline Submissions" which are referred to for their terms.

20. Rule 50, in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"), is in the following terms: -

"50 Privacy and restrictions on disclosure

(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings as far as it considers necessary in the interests of justice or in order to protect the Convention Rights of any person or in the circumstances identified in Section 10A of the Employment Tribunals Act.

(2) In considering whether to make an order under this rule, the Tribunal shall give full weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include –

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;
(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;
(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;
(d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.

(4) Any party, or other person with a legitimate interest who has not had a reasonable opportunity to make representations before an order under this rule is made may apply to the Tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

(5) Where an order is made under paragraph (3)(d) above –

(a) it shall specify the person whose identity is protected; and may specify particular matters of which publications prohibited as likely to lead to that person's identification;
(b) it shall specify the duration of the order;
(c) the Tribunal shall ensure that a notice of the fact that such an order has been made in relation to those proceedings is displayed on the notice board of the Tribunal with any list of the proceedings taking place before the Tribunal, and on the door of the room which the proceedings affected by the order are taking place; and
(d) the Tribunal may order that it applies also to any other proceedings being heard as part of the same hearing.

(6) "Convention Rights" has the meaning given to it in section 1 of the Human Rights Act 1998."

21. I was satisfied that C had a *"legitimate interest"* and that I could consider his application for anonymity. That was not disputed.

22. The respondent's Counsel did not oppose the application.

23. Although I had understood the claimant intended to oppose the application, when I invited her to respond to the submissions by the respondent's solicitor, she advised that she did not oppose anonymisation, although she did object to the Order being permanent on the basis that that would, *"not be in the public interest".* I am bound to say that this came as something of a surprise to me, as in her e-mail of 30 January 2019 at 12:00 she said, *"I have a right to remain anonymous for life".*

24. In any event, I was satisfied that the submissions by C's solicitor were well-founded. I was satisfied that it was "in the interests of justice" to issue an Anonymity Order. I was of the view that, despite the claimant's objection, in

all the circumstances it was in the interests of justice that the Order be made permanent. An Employment Tribunal has the power to order that the identity of individuals raised in proceedings be permanently anonymised in any Judgment. This power has been expressly embodied in Rule 50(3)(b).

25. In arriving at my decision, I had regard to the relevant case law referred to by the respondent's solicitor:

EF v. AB [2015] IRLR 619
Vicent del Campo v. Spain (Application No. 25527/13) 2018 ECHR 909, ECtHR.

26. I also had regard to **F v. G [2012] ICR 246** in which Mr Justice Underhill set out a suggested procedure in cases where Restricted Reporting Orders or Anonymity Orders are sought and **BBC v. Roden UKEAT/0385/14/DA**.

27. The claim in this case involves serious allegations of sexual and professional misconduct on the part of C. I carried out the so-called "balancing exercise", bearing in mind the principle of open justice. I decided that anonymisation was required, to protect the Article 8 rights to a private and family life under the European Convention on Human Rights. In arriving at that view, I balanced the various competing interests that arise, in particular Article 6: civil rights to be determined at a fair and public hearing; and the Article 10 right of freedom of expression, as I was required to do.

Anonymisation Order

28. Accordingly, I order that: -

(1) the identities of the claimant, the respondent and the applicant for anonymity should not be disclosed to the public and that they should be referred to as "A", "B" and "C" respectively; and

(2) the Order will be permanent.

Respondent's application to strike-out the claim

Respondent's submissions

29. The respondent's Counsel referred to the striking-out provisions in Rule 37 of the Rules of Procedure and submitted that the claim should be struck-out under sub-sections (b) and (e).

30. Counsel also referred to the Orders which EJ Hendry had issued at para. 55 of his Judgment and Reasons which was registered on 10 December 2018 ("the Orders"): -

"1. The claimant shall immediately desist from repeating the allegations previously made by her in her e-mail correspondence against SS, C and Mr Gunn, whether in future correspondence or otherwise, except where it is necessary and relevant to advance the issues in her claims for unfair dismissal and discrimination and she had beforehand obtained the express permission of the Tribunal to do so.

2. The claimant shall correspond professionally and politely with Mr Gunn or any other representative of the respondents.

3. The claimant shall not except with the sanction of the Tribunal contact or attempt to contact any witnesses until a Witness List is agreed."

31. Counsel submitted that the claimant had failed to comply with these Orders and that the claim should also be struck out under sub-section (c).

32. She referred me to an e-mail which the claimant had sent to C on 13 January 2019 at 16:29, in the following terms: -

"Dear C, how are you. I have added Kathy (C's wife) *as a witness in this case. Please let her know. I request to please not to write on her behalf. I would appreciate if she writes to me directly as this is a Legal trial. I will let you know if I will add your sister and your mother as well as you had referred all of them throughout the process in B.*

Kind Regards."

33. Counsel explained that C is a, *"key witness",* but his wife is not a witness. It was submitted that the purpose of this e-mail was, *"intimidation".* She submitted that this was, *"a clear threat to break-up C's marriage".*

34. The claimant had also sent an e-mail to C the day before, on 12 January at 23:35 in the following terms: -

"How are you. Just wanted to let you know that the Preliminary hearing against B is scheduled for 12 February 2019 at 10am in the Employment Tribunal, Aberdeen. The Judge had advised that the witnesses could attend the hearing.

The final trial dates which were set earlier will not be the same as before as there had been some delay due to the delaying tactics by NHS Grampian management. On 14 November 2018 there was a preliminary hearing to set the dates for final trial but the Counsel representing NHS Grampian made an application to struck off (sic) my case from the court and made arguments that my case must be struck off from the court. NHS Grampian's Counsel had been Unsuccessful and the case is going ahead. Not only that the Judge decided that the Preliminary Hearing must be held in Public against NHS Grampian's request for private hearings.

I will write to you soon as I want documents from you. The Judge had advised me that all the documents that I wished to produce in the form of disclosure documents must be made in few copies and submit (sic) *to the Tribunal on the day of the Preliminary Hearing. I will write to you the list of all the documents/e-mails which I will need from you for the Preliminary Hearing to allow a fair legal trial.*

Good Night C

Kind Regards."

35. While Counsel advised that she was not in a position to challenge the claimant's contention that she did not receive a copy of EJ Hendry's Judgment until after this, on 23 January, she submitted that these e-mails in themselves, constituted an, *"abuse of process".*

36. Counsel submitted that due to the claimant's conduct it was not possible now to have a fair trial, primarily because of the intimidation of C, an essential witness for the respondent and the claimant threatening to involve his wife.

As a consequence, C had now instructed his own solicitor, advised the respondent that he was not prepared to give evidence at any Hearing, and had refused to provide the respondent's solicitor with his availability for a Final Hearing.

37. Also, SS who would be required to give evidence at any Final Hearing, in respect of remedy at the very least, had provided a written statement for the previous Preliminary Hearing, and had also advised that she does not want to appear as a witness at any Hearing due to the claimant's intimidation which has caused her stress.

38. Counsel also maintained that previously the claimant had gone to Gibraltar to *"doorstep"* C's mother and sister.

39. So far as EJ Hendry's Order that: - *"The claimant shall correspond professionally and politely with Mr Gunn or any other representatives of the respondents",* was concerned, Counsel drew to my attention that, prior to the previous Preliminary Hearing, the claimant sent an e-mail on 2 November 2018 at 12.23 to the respondent's solicitor in which she said this, amongst other things: -

"To the SEXUAL HARASSER AND BULLY AND STALKER,

I am writing to you here as a victim of abuse by you.

You are involved in sexually harassing me on multiple occasions both directly and indirectly including Bullying, harassment, Threatening (including in this e-mail), Stalking, Abuse, treating Indians and Hindus as slaves and treating Indians in the degrading manner. You are involved in Torture and violent behaviour towards me including Breach and assault of my human rights. You have encouraged and supported and said all these crimes by more than 80 members involved is legal and lawful. STOP WRITING RUBBISH TO ME YOU SEXUAL ABUSER. STOP WRITING DISGUSTING E-MAILS TO ME YOU ABUSE AND SEXUAL HARASSER. You DISGUSTING PERSON STOP WRITING APPALLING AND DISGUSTING INFORMATION TO ME. DO YOU UNDERSTAND OR DO YOU WANT ME TO START THE MARCHING AND PROTESTS IMMEDIATELY IN PUBLIC IN FRONT OF

YOUR HOUSE, YOU SEXUAL HARASSER AND BULLY AND SHAMELESS MAN……..”

40. Counsel then referred me to an e-mail which the claimant sent to the Tribunal, copied to Mr Gunn, on 28 January 2019 at 09:52, at a time when she was aware of the Order. It was in the following terms: -

“Dear Sirs,

This is Bullying, harassment, Intimidation and coercive behaviour by Mr Daniel Gunn, Counsel Stobart and Respondent. Respondent’s legal representative had been writing repeated correspondence to me for no reason and had been forcing me to take their orders and instructions and are forcing me to follow their orders for to do their work (sic) which Mr Gunn and counsel and the Respondent think are correct. This had happened in twice (sic) on Friday 25th January 2019. This is an unwanted behaviour of Mr Gunn, Counsel Stobart and the Respondent which amounts to Bullying, harassment, Intimidation and Coercive behaviour, this is belittling me.

Last Friday Mr Gunn wrote an e-mail to the Tribunal administrative staff and was instructing me through them to do his work and take instructions from him and from the Respondent and do their work and follow their instructions. He did the same again in the evening on Friday despite writing a response.

This bullying, belittling, humiliation, intimidation, coercive behaviour had been going on since 2 weeks, please see their e-mails where they are making fun of me and belittling and humiliating me.

I already wrote a formal response to the Judge in response to their request. I do not wish to receive any unwanted e-mails from Mr Gunn, Counsel and Respondent in relation to matters which are not my business.”

41. Counsel submitted that this was exactly the type of correspondence which EJ Hendry had ordered should not happen.

42. Further, on 30 January 2019 at 12:00 the claimant sent another e-mail to the Aberdeen Tribunal, copied to the Respondent’s solicitor in the following terms: -

“Subject: Application seeking damages for Defamation, Application to request Court Orders to Mr Daniel Gunn not to contact me unnecessarily for matters which are not my business at all.

This is a formal complaint against Counsel Alice Stobart and Mr Daniel Gunn for Bullying, harassment, Intimidation, Coercive behaviour and giving me instructions to do their work, writing unwanted e-mails without no reason to me instead of writing to the appropriate staff, making false accusations against me regarding the Judgement document and when the complete fault is of the Tribunal staff and repeatedly harassing me to do things and their jobs and forcing me to take their instructions and do their jobs.

This is an application against the Respondent seeking damages for Defamation.

Preliminary hearing scheduled for 12th February 2019 includes addressing this new Application to Strike out my name to be anonymous under Rule 49 and 50 as confirmed in the Preliminary hearing in January 2018 sending me the Judgement document on 10th December 2018 and sending it only to the Respondent despite writing several requests starting from 16th January 2019, the Tribunal staff did not send me the document until 42 days which I received on 23rd January 2019. All this is a part of the first part of the Preliminary hearing which is a part of my request for amendments as I have 42 days time from 23rd January 2019 (date of receiving the Judgment document).

Judge Hendry had said in January 2018 during the Preliminary hearing that As per Rule 49 and 50 my name must be anonymous as I am a victim of Sexual harassment and Sexual assault. Judge Hendry opened a Textbook on Employment law and said both these rules apply to this case and to me. Judgment document had breached such anonymity which is also part of the matter to be addressed on 12th February 2019. I have never waived my anonymity and I have never given any kind of consent to anyone until now either to the Criminal court, Tribunal or the Civil court or to anyone to make my name public as being a victim of sexual harassment and sexual assault. I have a right to remain anonymous for life.

As you are aware I had I (sic) already written to the Judge requesting to issue a formal letter to the previous solicitor to provide a formal letter to the Tribunal no (sic) if they have received the Judgment document and the evidence of receiving that document and the evidence of returning the document back or if they had kept the document with themselves and the evidence of contacting either Tribunal or claimant or respondent to alert in the form of voice messages or an e-mail.

It is the Tribunal staff who had alleged that they had sent it to Mr Tim Johnson and I have not witnessed that either so I do not know if they had sent it or not to Tim Johnson and they might have to provide that evidence as well to the Respondent as they are requesting the evidence. It is definitely not my job to chase where the Tribunal staff have sent the documents.

I have already requested a formal statement from Mrs Rebecca Kinnaird and also the member of the staff who has allegedly sent the Judgment document to Tim Johnson and not to me, as a part of the investigation during the

Preliminary hearing to assist in this investigation when we addressed the application to Strike out, and their statements are extremely important to the Respondent as they are repeatedly writing to provide evidence that it is very important to me as well as I am extremely concerned about the Tribunal staff in handling such sensitive and confidential information and not sending me any Documents despite several requests and not providing the Judge with the crucial documents when requested.

This is Defamation and I request the Judge to consider this as an application against the Respondent and request to seek damages for Defamation and forms part of the response to the Respondent's request for Court order, making an Application of Strike out but making false accusations that defaming me and also for Mr Daniel Gunn contacting me for no reason at all despite writing requests to him not to contact him.

I request the Judge to issue Court orders to Mr Daniel Gunn that he must not contact me at all under any circumstances for reasons which are not my business except which are related to this case as following up the work of the Tribunal staff is not of my business.

Please find the evidence of emails below to support my Application for Defamation and request to issue Court orders to Mr Daniel Gunn not to contact me for matters which are not my business."

43. Counsel submitted that EJ Hendry had ordered the claimant not to continue with this sort of conduct. She had done, and Counsel could see no prospect of it ceasing. She submitted that the claimant had continued to conduct herself in direct contravention of the Orders.

44. There is also the additional concern for the respondent that the case is proving to be very expensive and the costs are disproportionate.

45. Counsel also submitted that at the previous Preliminary Hearing the claimant had described the respondent as *"terrorists"* and made comments such as: *"I will not leave this until everyone goes to jail"*; that SS's PHD was "a fake" and should not have been awarded; that she had sent her allegations to the press; and that she would *"definitely not stop until society is safe".* She also alleged she had sent e-mails to the Prime Minister and the Scottish Government.

46. Counsel submitted that the claimant was engaged in a campaign against various people and that her conduct amounted to an *"abuse of process".*

47. Finally, Counsel submitted that, in isolation, breach of the Orders might be considered trivial, *"were it not for the broader picture".* She submitted that the claimant feels that she is *"immune"* and that, *"every time she has been given another chance by every Judge".*

48. For all these reasons, therefore, Counsel submitted that the claim should be struck out.

Claimant's Submissions

49. The claimant drew to my attention again, that she had not received a copy of EJ Hendry's Judgment until 23 January 2019 and the strike-out application was made by the respondent's solicitor before that, on 16 January.

50. She maintained that she had telephoned the Tribunal and called at the Tribunal office concerning the issuing of the Judgment as she was concerned that she had lost her right of Appeal. She claimed that she felt *"bullied"* by the Tribunal staff.

51. She denied that she had intimidated witnesses and opposed the claim being struck out on that basis. She drew to my attention that in the strike-out application Mr Gunn had accepted that the e-mail she had sent to C was, *"very polite".*

52. I drew to her attention the terms of her e-mail of 8 February 2019 at 11:22 (referred to above), sent some time after she had received EJ Hendry's Judgment containing his Orders, in which she said this, amongst other things:-

"I find the correspondence from Mr Daniel Gunn distressing.

My husband C is involved in committing Sexual offences to me which B and the legal representatives who conducted the process had repeatedly said both in writing and in the audio recordings that it is not B's business. Mr Gunn

had said to the Tribunal that the audio recording evidence had been destroyed. Mr Gunn himself and the management are involved in Sexual harassment.

I had paid unimaginable amount of money to my representatives since 2015 because of Mr Daniel Gunn's employment advice and his work on this case for B to conduct this whole process against me since 2015. Mr Gunn is worried about C's expenses just for a few hours of work to pay for Mr Gilligan. I had been paying money to my representative since 2015 because of B and their legal representative's advice which resulted in this process……"

53. She maintained that there was a difference between calling someone a *"sexual harasser",* as opposed to maintaining that someone had been *"**involved** in sexual harassment".*

54. She confirmed that her allegation of sexual harassment by Mr Gunn related to the way in which he had questioned her at the Appeal Hearing. She produced a transcript of the Hearing and referred to pages 65-84. She also maintained that the members of the panel at the Hearing were guilty of sexual harassment.

55. She said, *"I wouldn't breach Court Orders to harm my case. That was not my intention at all. It's just circumstances that made me anxious and I panicked."* She maintained that the format of the e-mails which she sent was, *"her way of working at the NHS"* and that she would always write, *"a summary first".*

Discussion and Decision

Relevant Rule of Procedure

56. Rule 37, in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations is in the following terms: -

> ***"37. Striking-Out***
>
> *(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –*
>
> *(a) that it is scandalous or vexatious or has no reasonable prospect of success;*
> *(b) that the manner in which the proceedings are being conducted by or on behalf of the claimant or the respondent, (as the case may be) has been scandalous, unreasonable or vexatious;*
> *(c) for non-compliance with any of the Rules or with an Order of the Tribunal;*
> *(d) that it has not been actively pursued;*
> *(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).*
>
> *(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the parties at a hearing.*
>
> *(3) Where a response has been struck out, the effect shall be as if no response had been presented, as set out in rule 21 above."*

Application for strike-out: Rules 37 (1) (b) and (e)

57. I was requested by the respondent's Counsel to strike-out the claim in terms of Rules 37 (1) (b) and (e), as EJ Hendry had been at the previous Preliminary Hearing. His Judgment, the Reasons for it and the Orders, were pivotal in my decision. As he recorded, the test for strike out is the same for both sub-sections (b) and (e), namely that a fair trial is no longer possible.

58. I also associate myself with EJ Hendry's observations on the relevant case law to which he referred. He said this in the Reasons for his Judgment ("the Reasons"):-

"42. In the case of ***Blockbuster Entertainment Ltd v. James [2006] IRLR 630 CA*** *the Court of Appeal found that for a Tribunal to strike out a claim based on unreasonable conduct (Rule 37(1)(b)) it has to be satisfied that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; in either case striking out must be a proportionate response. At paragraph 21 Lord Justice Sedley giving the leading Judgment records:*

> ***"The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike out power exists. The answer has to take into account the fact – if it is a fact – that the Tribunal is ready to try claims; or – as the case may be – there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exists."***

……..

44. I also had regard to the case of ***Bennett v. Southwark London Borough Council [2002] ICR 881 CA*** *in which the actions of a claimant's lay representative were examined which I believe has some application here particularly the comments of Lord Justice Sedley at paragraphs 33 and 34 in relation to the proportionality of using strike-out.*

> ***"33. There is a further hurdle to be surmounted in any strike-out application, as both Counsel before us agree. It is that if the conduct of a party's case is shown to have been scandalous, it must also be such that striking out is a proportionate response to it. This seems to me, as it seemed to Counsel, to be a commonsense axiom requiring no resort to Article 6 of the European Convention on Human Rights. But – evidently because it was not argued – this requirement was not addressed at all by either the Warren Tribunal or the EAT.***
>
> ***In the present circumstances there is no need to decide the proportionality of striking out as a response to Mr Harry's conduct of the proceedings because for other reasons the decision to strike out cannot stand. But proportionality must be borne carefully in mind in deciding these applications, for***

> ***it is not every instance of misuse of the judicial process, albeit it properly falls within the description scandalous, frivolous or vexatious, which will be sufficient to justify the premature termination of a claim or of the defense to it. Here as elsewhere, firm case management may well afford a better solution……."***

45. It must be said that the lay representative's action in that case took place at a Hearing before the Tribunal causing it to recuse itself or in the Scottish terms decline jurisdiction. The claimant's behaviour here is not directed against the Tribunal but against her former employers and her chosen representatives. We have not yet reached the stage of a final hearing. I would note that the various comments made by the lay representative in the ***Bennett*** *case (scandalous though they were held to be alleging bias by the Tribunal) pales somewhat when contrasted against the comments made by the claimant here.*

46. In the present case I consider it has being clearly demonstrated that there has been scandalous, vexatious and unreasonable conduct on the part of the claimant. The content of her communications, containing personal slurs, threats and intemperate language is ample evidence of this. The issues that remain are whether a fair trial is possible and whether strike out in the whole circumstances is a justified and proportionate response to her behaviour."

59. I was also mindful of the following passage in the Reasons: -

"49. Tribunals require to take great care when considering strike out applications especially in cases involving allegations of discrimination. I also bore in mind the comments made by Lord Hope in ***Anyanwu Ano v. Southbank Students Union & Ano [2001] ICR HL****:*

> **"*I would have been reluctant to strike out these claims, on the view that discrimination issues of a kind which have been raised in this case should as a general rule be decided only after hearing the evidence.*"**

60. Although EJ Hendry decided not to strike out the claim, it is clear that he only did so with considerable hesitation, as he said this in the Reasons:-

"54. The answer if there is one I believe lies in more robust case management. It must be clear to the claimant that no further behaviour of this sort will be tolerated. At an earlier stage it perhaps should have been made clear to the claimant that her approach was completely wrong and the Tribunal expects parties to act with courtesy, not to use inflammatory language and confine themselves to the issues a Tribunal has the power to deal with namely unfair dismissal and discrimination and not wild allegations of medical negligence and terrorism. This could have been buttressed by

formal orders made either at the Tribunal's initiative or at the behest of the respondents. If there had been serious lapses in required standards then the Tribunal could be asked to strike out the proceedings and the claimant would have had ample warning. I therefore, with some misgivings, refuse the strike out request."

61. He then went on to make the Orders, which I have detailed above, and finally he said this:-

"56. I would record that the claimant's behaviour in this case has been quite extraordinary and I have experienced nothing like this in my lengthy experience as an Employment Judge. If I had the power to strike out the proceedings on the basis that the claimant's behaviour was an affront to justice then I would have seriously considered that this would have been the sort of unusual case where such a power might be properly exercised. I do not and I am bound by the Rules I have discussed and I must act accordingly."

62. It was in light of these observations, therefore, that I considered carefully, the claimant's conduct since the previous Preliminary Hearing which EJ Hendry conducted on 14 November 2018. In doing so, I had regard to the submissions which I heard from the respondent's Counsel and from the claimant herself and also the extensive correspondence, mostly in the form of e-mails and mostly initiated by the claimant, in the Tribunal file.

EJ Hendry's Judgment

63. It was, of course, the claimant's position that she did not receive a copy of the Judgment until 23 January 2019, when the Tribunal sent her a copy by post.

64. The Tribunal had sent a copy of the Judgment on 10 December 2018 to the claimant's previous solicitors in London. This was a mistake, as the solicitors had advised the Tribunal on 22 November that they were no longer acting on behalf of the claimant. When the matter came to light, the Tribunal assumed, wrongly it would appear, that the solicitors would have sent a copy to the claimant.

65. A copy was sent to the claimant by the Tribunal on 21 January by first class post. The claimant called at the Tribunal Office later that day when she was advised that a copy had been sent to her and an apology was given for the Tribunal's error. However, the claimant did not appear to accept that there had been a genuine error and further lengthy correspondence ensued about the matter.

66. The respondent's solicitor, Mr Gunn, was also surprised that the claimant's former solicitors had not sent her a copy of the Judgment and suggested that the claimant ask them to confirm that they had received a copy and they had not forwarded it to her. She was not prepared to do so. She took issue with the suggestion which she alleged was further evidence of *"bullying and harassment"* by Mr Gunn.

67. On 6 February 2019 at 14:18, the Tribunal sent the following e-mail to the claimant:-

"Employment Judge Hendry has asked me to respond to your e-mail dated 2 February 2019. He notes your position appears to be that you only received the Judgment late when it was sent to you by the ET staff. You need to be candid about the matter and there is no reference by you as to whether your solicitors alerted you to the existence of the Judgment or sent you a copy of it. You should clarify this as soon as possible and it would be prudent to seek confirmation from them about what action, if any, they took on receipt of the Judgment.

The Judge notes that you want to have the Judgment reconsidered particularly in relation to the naming of C. That matter may have to be dealt with separately as Judge Hendry may not be available for the Hearing. In any event there will be an application for anonymisation of the papers which impacts on this matter.

The Judge observes that you are perfectly correct that the amendment lodged by you in August 2018 has not been allowed. You may during the Hearing make reference to that document but if a claim is not in the original ET1 then any additional claims made require amendment and this can be opposed by the respondent. The Judge suggests that it may be easier to look at the ET1 and ask what changes you want to make to it (not by way of detail) but by way of additional claims to focus on what the subject matter of any amendment could be. The amendment cannot be allowed in its present state. He observes that you had been told that many of the claims in the document are outwith the jurisdiction of the Tribunal to deal with. For example items vi

(invasion of personal life) to x (encouraging and supporting misconduct) xii (psychological torture) to xviii (perversion of justice). You need to think about what incidents amounted to harassment, or victimisation or whatever having regard to the appropriate statutory test. The Judge expects that the first matter that is likely to be discussed will be C's representative's application, although the order in which matters are addressed will ultimately be a matter for whoever deals with the Hearing. The next issue will probably be the application for strike out if it is still live and then we can turn to the pleadings and finally to the witnesses and other matters."

68. The claimant responded that day by e-mail at 16:17, with a number of attachments. She alleged that the suggestion by the respondent's solicitor that she seek confirmation from her former solicitors was, *"repeated bullying and harassment forcing the claimant to take his (her solicitor's) instructions…."*.

69. She sent further e-mails to the Tribunal later that day at 23:17 and 23:24 continuing to complain about the copy Judgment being sent to her former solicitors and reiterating that C, *"is involved in sexual harassment and sexual assault towards me and the management and Mr Daniel Gunn (the respondent's solicitor) who are involved in Sexual harassment towards me……"*.

70. This issue of when the claimant received a copy of the Judgment was further complicated by the terms of the e-mail which the claimant sent to C on 12 January 2019 at 23:35, which was referred to by the respondent's Counsel in her submission. In that e-mail she states that the application for strike-out, *"had been unsuccessful and the case is going ahead"*, which suggested that she was aware of EJ Hendry's Judgment before 23 January, when she claimed she received a copy for the first time.

71. In any event, for the purpose of the issues with which I was concerned at the Preliminary Hearing, I accepted that the claimant had not received a copy of EJ Hendry's Judgment until 23 January 2019. She was not aware of his Orders, therefore, when she sent the e-mail on 12 January at 23:35 to C in the following terms:-

"How are you. I just wanted to let you know that the Preliminary hearing against NHS Grampian is scheduled for 12 February 2019 at 10am in the Employment Tribunal, Aberdeen. The Judge had advised that the witnesses could attend the hearing.

The final trial dates which were set earlier will not be the same as before as there had been some delay due to the delaying tactics by NHS Grampian management. On 14 November 2018 there was a Preliminary hearing to set the dates for final trial but the Counsel representing NHS Grampian made an application to struck off (sic) my case from the court and made arguments that my case must be struck off from the court. NHS Grampian's Counsel had been Unsuccessful and the case is going ahead. Not only that the Judge had decided that the Preliminary hearing must be held in Public against NHS Grampian's request for private hearings.

I will write to you as soon as I want documents from you. The Judge had advised me that all the documents that I wish to produce in the form of disclosure documents must be made in few copies and submit (sic) to the Tribunal on the day of the Preliminary hearing. I will write to you the list of all the documents/e-mails which I would need from you for the Preliminary hearing to allow a fair legal trial.

Good night C

Kind Regards

A."

72. Nor was she aware of the Orders when she sent an e-mail to C on 13 January 2019 at 16:29 with the subject matter C's wife "as a witness". The e-mail was in the following terms:-

"How are you. I've added Kathy (C's wife) as a witness in this case. Please let her know. I request to please not to write on her behalf and would appreciate if she writes to me directly as this is a Legal trial. I will let you know if I will add your sister and your mother as well as you had referred all of them throughout the process NHS Grampian.
Kind Regards,

A."

73. Although the claimant was unaware of the Orders when she sent these e-mails, she was aware that the respondent's Counsel had expressed concern about her communicating with the respondent's witnesses at the previous Preliminary Hearing and alleged that, *"this was designed to cause upset and*

intimidate"; and she was aware that C is an essential witness for the respondent in this case. His wife is not a witness and cannot give relevant evidence. Despite the letter being couched, on the face of it in polite terms, I accepted the submission by the respondent's Counsel that the letter was designed to be intimidatory. In her submissions, the claimant referred me to the e-mail of 16 January 2019 from the claimant's solicitor in which he applied for strike out. She pointed out that he had described her e-mails of 12 and 13 January to C as "polite", conveniently ignoring the fact that he had actually described them as *"superficially polite"* and had gone on to allege that they were, *"a thinly veiled threat at intimidation and a further example of the Claimant continuing to harass him".*

74. The claimant had written to an essential witness direct, knowing that the respondent had legal representation and advised him that she intended involving his wife and other members of the family at any Hearing as witnesses and requested that his wife deal with her direct.

75. C had previously written to the Tribunal by e-mail on 18 December 2018 to express his concerns that he was "easily identifiable" in EJ Hendry's Judgment which by then was a public document, and to request that the claimant desist from referring to herself as his wife having made it clear previously that, *"she is not my wife and should not be using my name".* He then went on in his e-mail to say this: *"The complainant has made repeated attempts to harass and intimidate me and I regard her mendacious adoption of my name to be further evidence of her harassment of me. Thank you in advance for considering this, especially in light of the Judge's comments about the behaviour of the complainant towards witnesses."*

76. The claimant continued to use C's surname and claim that she was his wife, despite C being married, and to correspond in the same unreasonable and intemperate manner, making very serious allegations indeed, as she had

always done, despite EJ Hendry's warnings. As I recorded above, I was advised by the respondent's Counsel that, as a direct consequence of this continuing *"intimidation",* demonstrated by the e-mail which the claimant sent to C on 13 January, that C had now instructed his own solicitor, was refusing to engage with the respondent's solicitor, as an essential witness would be required to do, and was not prepared to provide details of dates when he would be available to give evidence at any Final Hearing.

77. In my view, the correspondence clearly demonstrates that the claimant has intimidated C, an essential witness for the respondent, and significantly there is no indication whatsoever that she has taken heed of EJ Hendry's warnings and that she will desist or moderate her conduct in any way.

78. I also had sight of the written statement from SS dated 12 November 2017. While, unlike C, she is not an essential witness, I was advised that she is a potential witness for the respondent in respect of at least the issue of remedy. SS states that she also does not want to appear at any future Hearing as a witness due to *"harassment and intimidation"* by the claimant and a fear that it *"will continue as long as I am involved in the process".*

79. In the Reasons at Para 46, EJ Hendry said this: - *"I consider that it has been clearly demonstrated that there has been scandalous, vexatious and unreasonable conduct on the part of the claimant. The content of her communications, containing personal slurs, threats and intemperate language is ample evidence of this".*

80. That type of conduct has continued after the previous Preliminary Hearing. Nor did the claimant need to be aware of the Orders to know that she had to desist. EJ Hendry said this at Para 54 in the Reasons: - *" It must be clear to the claimant that no further behaviour of this sort will be tolerated".*

81. The *"scandalous, vexatious and unreasonable conduct"* has continued unabated since the previous Preliminary Hearing and witnesses have been

"intimidated and harassed". This renders a fair trial impossible. I have decided, therefore, to strike-out the claim, in terms of sub-sections 37 (1) (b) and (e). In arriving at this decision, I was mindful that the claimant was unrepresented and had no experience of Employment Tribunal proceedings; and that the power to strike-out must be exercised, as EJ Hendry put it, *"carefully and sparingly as its effect is to deprive a litigant of their entitlement to pursue their statutory employment rights".* Nevertheless, I was satisfied that such a course of action fell within the strike-out Rules, that it was in accordance with the "overriding objective" in the Rules; and that it was a justified and proportionate response, in all the circumstances, to her conduct.

82. It is also relevant, in my view, albeit to a lesser extent, that the claimant continues to level the very serious allegation of bullying and sexual harassment against the respondent's solicitor and berate him *ad nauseam*. This allegation, I understand, relates primarily to the manner of his cross-examination of the claimant during the disciplinary proceedings. The claimant produced the transcript of the Appeal Hearing, having written across the front page, *"Sexual harassment by NHSG staff and Mr Daniel Gunn….Document is evidence of Bullying, harassment, Sexual harassment, Racial Discrimination, Religious Discrimination, victimisation, Defamation, Character Assassination".* She referred me to pages 65-84. Having read the entire transcript, I am of the view that this allegation is wholly unfounded. Mr Gunn was simply "doing his job" and testing the claimant's evidence as he was entitled to do. In any event, the claimant was represented at the Hearing and there was a panel of four. No one took issue with Mr Gunn's line or manner of questioning and yet the claimant continues with her allegations. When I referred her to her e-mail of 8 February 2019 at 11:22 at the Preliminary Hearing and in particular the second paragraph where she alleged that, *"Mr Gunn himself and the management are involved in sexual harassment",* she maintained that this was different from an allegation that he was guilty of sexual harassment. In my view, there is no distinction.

83. In her email of 8 February at 11:22, the claimant also accused the Tribunal staff of bias and discrimination. On my instructions, the Tribunal responded by e-mail the same day at 14:37 to advise that the allegation was unfounded and was denied, *"in the strongest possible terms"* and to warn the claimant, once again about her conduct: *" The implications of this continuing course of conduct, will require to be considered by the Tribunal. Meantime, EJ Hosie directs you to desist from making such unfounded allegations. You also complain of delay, but in very large part that is due to the volume of your correspondence, its often accusatory and confrontational nature and the multitude of complaints you have levelled, which in EJ Hosie's experience is unprecedented. As previously advised, you should reflect carefully on the manner in which you are conducting this case".*

84. Such allegations must be distressing to the Tribunal staff who naturally would be intimidated by such allegations. They must now be wary when engaging with the claimant as their duties require. The staff are an essential part of the Tribunal process.

85. The respondent's solicitor also has an essential part to play in the Tribunal process, representing his client's interests. These are additional factors which make a fair trial impossible.

86. For all these reasons, therefore, I arrived at the view that the submissions by the respondent's Counsel were well-founded. I confirm, therefore, that the claim is struck out in terms of Rules 37(1)(b): *"that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;* and 37(1)(e): *that the Tribunal considers that it is no longer possible to have a fair Hearing in respect of the claim or response (or the part to be struck out)."*

Application for strike out: Rule 37 (1) (c)

Failure to comply with Orders of the Tribunal

87. Counsel also submitted that the claim should be struck out on the ground that the claimant had failed to comply with an Order of the Tribunal under Rule 37(1)(c):-

> ***"37 Striking Out***
>
> *(1) At any stage of the proceedings, either on its own initiative or in the application of a party, the Tribunal may strike out all or part of a claim or response on any of the following grounds –*
>
> *……...*
>
> *(c) for non-compliance where any of these Rules or with an order of the Tribunal."*

88. As I recorded above, in the Reasons EJ Hendry made the following Orders at Para 55:-

> ***"1. The claimant shall immediately desist from repeating the allegations previously made by her in e-mail correspondence against SS, C and Mr Gunn, whether in future correspondence or otherwise, except where it is necessary and relevant to advance the issue in her claims for unfair dismissal and discrimination and she had beforehand obtained the express permission of the Tribunal to do so.***
>
> ***2. The claimant shall correspond professionally and politely with Mr Gunn or any other representative of the respondents.***
>
> ***3. The claimant shall not except with the sanction of the Tribunal contact or attempt to contact any witnesses until a Witness List is agreed."***

89. I accepted, of course, that the claimant did not receive the Judgment until 23 January 2019. She could not have been aware of these Orders, therefore, until that date. I only considered, therefore, whether there had been non-compliance after that date.

90. Despite the clear terms of these Orders and EJ Hendry's observations on the claimant's conduct and the warnings he gave about her future conduct, the claimant continued to conduct herself in the same intemperate, confrontational and challenging manner. She continued to repeat the allegations against C, SS and the respondent's solicitor, Mr Gunn; she appeared unwilling to accept that the Tribunal had made a genuine mistake when sending a copy of the Judgment to her former solicitors; she complained about this repeatedly, despite EJ Hendry advising her should she wish to apply for a reconsideration of the Judgment or appeal, account would be taken of the late receipt of the Judgment by her and reassuring her that she would not be prejudiced by an admitted mistake by the Tribunal; she accused the tribunal staff of bias and discrimination.

91. As Counsel drew to my attention, in response to a suggestion by the respondent's solicitor, Mr Gunn, that she could contact her former solicitors to clarify what actions they took on receipt of the copy Judgment she responded to the Tribunal, copied to the respondent's solicitor, by e-mail on 28 January 2019 at 09:52 as follows:-

"This is Bullying, harassment, Intimidation and coercive behaviour by Mr Daniel Gunn, Counsel Stobart and Respondents. The Respondent's legal representatives had been writing repeated correspondence to me for no reason and had been forcing me to take their orders and instructions and are forcing me to follow their orders for to do their work which Mr Gunn and counsel and the Respondent think are correct. This had happened in twice (sic) on Friday 25 January 2019. This is an unwanted behavior of Mr Gunn, Counsel Stobart and the Respondent which amounts to Bullying, harassment, Intimidation and Coercive behaviour, this is belittling me.

Last Friday Mr Gunn wrote an e-mail to the Tribunal administrative staff and was instructing me through them to do his work and take instructions from him and from the Respondent and do their work and follow their instructions. He did the same again in the evening of Friday despite writing a response.

This bullying, belittling, humiliation, intimidation, coercive behaviour had been going on since 2 weeks. Please see their e-mails where they are making fun of me and belittling and humiliating me.

I already wrote a formal response to the Judge in response to the request. I do not wish to receive any unwanted e-mails from Mr Gunn, Counsel and Respondent in relation to matters which are not my business."

92. In my view, the request by Mr Gunn was a perfectly reasonable one. Her response was unwarranted. It was a complete overreaction. Despite the Orders, it was *"impolite"* and *"unprofessional".* It was in the same vein, using the same sort of intemperate language and making wild accusations, as she had done before the previous Preliminary Hearing.

93. In response to the application by C's solicitor for anonymity and to be heard first at the Preliminary Hearing, to save expense, once again a perfectly reasonable request, the claimant submitted a 9-page letter of objection which she attached to her e-mail of 29 January at 15:12. In her letter she repeated her allegations of, *"sexual harassment and sexual assault by C"*; made allegations that the respondent had been guilty of *"manslaughter"* and *"encouraged and supported the sexual misconducts of C and his student SS";* and alleged that the respondent and C's solicitor were colluding and that the application by C's solicitor was, *"a delaying tactic by the respondent to avoid first hand witness statement and first hand information from C and had been set up to jeopardise this case."*

94. On 30 January at 12:00, the claimant sent an e-mail to the Tribunal, copied to the respondent's solicitor. The subject of the e-mail was: *"Application seeking damages for Defamation, Application to request Court Orders to Mr Daniel Gunn not to contact me unnecessarily for matters which are not my business at all".*

95. The first paragraph of her e-mail was in the following terms:-

> *"This is a formal complaint against Counsel Alice Stobart and Mr Daniel Gunn for Bullying, harassment, Intimidation, Coercive behaviour and giving me instructions to do their work, writing unwanted e-mails without no reason to me instead of writing to the appropriate staff, making false accusations against me regarding the Judgment document and when the complete fault is of the Tribunal staff and repeatedly harassing me to do things and their jobs and forcing me to take their instructions and do their jobs.*
>
> *This is an application against the Respondent seeking damages for Defamation."*

96. She then went on in her e-mail to raise yet again the matter of her receiving a copy of the Judgment late and requested a *"formal statement"* from the Tribunal member of staff *"who has allegedly sent the Judgment document to (her solicitor) and not to me….."*. There is a copy of a letter dated 10 December 2018 on file sending a copy of the Judgment to the claimant's former solicitors in London and a copy letter in identical terms, on the same date, to the respondent's solicitor.

97. The Tribunal responded by e-mail on 1 February at 15:29. The following is an excerpt:-

"Judge (Hendry) has seen your e-mail dated 30 January 2019 to Mr Gunn. The Employment Tribunal does not deal with defamation and cannot prevent Mr Gunn writing to you as a solicitor acting for the respondent and there is nothing in any of the correspondence that is untoward or improper that the Judge has seen. If something has escaped the Judge's attention please highlight it to him and he will look at it carefully.

The Judge notes the application made by the respondent for production of any correspondence from your former solicitors about the Judgment. You may be aware that correspondence between a client's solicitor is generally privileged. That is it cannot usually be referred to or its production required. However, they are your former solicitors and it seems appropriate for you to disclose when they wrote to you about the Judgment and if they included a copy as it bears on your state of knowledge of its terms. Are you prepared to disclose this voluntarily to Mr Gunn?"

98. The claimant responded by e-mail on 2 February, but her position remained unclear and that was why on 6 February the Tribunal sent a further e-mail to the claimant at 14:18. The following is an excerpt:-

"Employment Judge Hendry has asked me to respond to your e-mail dated 2 February 2019. He notes that your position appears to be that you only received the Judgment late when it was sent to you by the ET staff. You need to be candid about the matter and there is no reference by you as to whether your solicitors alerted you to the existence of the Judgment or sent you a copy of it. You should clarify this as soon as possible and it would be prudent to seek confirmation from them about what action, if any, they took on receipt of the Judgment….."

99. The claimant responded by e-mail on 6 February at 16:17. She referred to the e-mail of 3 February in which she narrated the circumstances once again but failed to state categorically whether she had received a copy of the Judgment from her solicitors.

100. As I recorded above, on 8 February at 11:22, some weeks after she had received a copy of the Judgment and was aware of the Orders therefore, the claimant sent an e-mail to the Tribunal, copied to C's solicitor and the respondent's solicitor and also "Ashok Puligari", who I understand is one of the claimant's relatives.

101. In that-mail she made the following allegations:- *"My husband C is involved in committing Sexual offences towards me which B and their legal representatives who conducted the process had repeatedly said both in writing and in the audio recordings that it is not B's business. Mr Gunn had said to the Tribunal that the audio recording evidence had been destroyed. Mr Gunn himself and the management are involved in Sexual harassment."*

102. The e-mail was meant to be a response to the application by C's solicitor for anonymisation and to be heard first at the Preliminary Hearing.

103. As I recorded above, she attached to her e-mail a letter dated 28 February in which she alleged that B was guilty of *"fraud and cheating"* and of *"attempted manslaughter".* She also alleged again that B had, *"used C as a scapegoat and made him complain against me despite knowing that he had sexually harassed and sexually assaulted me and that he was having sex with his student SS in his office and in SENATOR business meetings."* She also alleged collusion on the part of the respondent's solicitor and C's solicitor and that they were using, *"delaying tactics".*

104. The terms of the Orders issued by EJ Hendry are in clear, unambiguous terms. Not only that, the Reasons could not have been clearer in warning the claimant that her behaviour was wholly unacceptable and, *"that no further behaviour of this sort will be tolerated."* Despite this, the claimant has not desisted or even moderated her conduct as she was ordered to do. Significantly, there is no indication whatsoever that she would do so in the future should I allow the claim to proceed. In my view, what EJ Hendry said in the Reasons and the Orders were an attempt at, *"robust case management"* but, regrettably it had no effect.

105. The claimant could not have been left in any doubt about what she was being ordered to do, and that she was being warned to moderate her future conduct. She chose to ignore these warnings. She did not, *"desist from repeating the allegations previously made by her in e-mail correspondence".* She repeated the allegations against C, Mr Gunn and SS and also made further allegations of discrimination against the Tribunal staff.

106. She also failed to *"correspond professionally and politely with Mr Gunn".*

107. I had no difficulty arriving at the view, therefore, that she had failed to comply with Orders 1 and 2.

108. Accordingly, the claim is also struck out in terms of Rule 37(1)(e) for non-compliance with Orders of the Tribunal.

Application to amend

109. As the claim has been struck out, it is not necessary for me to determine this issue. Suffice to say, that in general terms, I was satisfied that the submissions by the respondent's Counsel were well-founded. The 88-page amendment includes many complaints which had not been advanced to date despite the fact that the claim form was prepared and submitted by a solicitor

instructed by the claimant at the time (who the claimant blames) and there are also a number of "complaints" not within the Tribunal's jurisdiction.

Employment Judge: NM Hosie
Date of Judgment: 05 March 2019
Entered in register: 06 March 2019
and copied to parties