Case Number: 3202262/2018

RM

EMPLOYMENT TRIBUNALS

Claimant: **Miss Helen Clifford**

Respondents: **(1) McMillan Williams Solicitors Ltd**
(2) Mr Dominic Harrison

Heard at: **East London Hearing Centre**

On: **15th August 2019**

Before: **Employment Judge Barrowclough**

Representation

Claimant: In person
Respondents: Ms Betsan Criddle (Counsel)

RESERVED JUDGMENT

1. **The Claimant's applications for (a) specific disclosure, together with costs; (b) to strike out the Respondents' response or alternatively to order a deposit; (c) for witness orders in relation to the five individuals named in her application dated 8 July 2019; and (d) to join Business Growth Fund Ltd as an additional respondent in these proceedings, are all dismissed.**

2. **The Respondents' application to amend their ET3 Response by deleting the last sentence in paragraph 9 of their grounds of resistance, and the Claimant's application to amend her ET1 Claim Form by deleting the last sentence in paragraph 19 of her particulars of claim, are both granted.**

3. **The Claimant is ordered to provide the Respondents with copies of all the items in her list of documents which have been requested by them no later than 29 August 2019.**

REASONS

1 By her claim, received by the Tribunal on 31 October 2018, the Claimant, Miss

Helen Clifford, raised a number of complaints against McMillan Williams Solicitors Ltd, her former employers and the First Respondent in these proceedings, and against Mr Dominic Harrison, its Chief Executive and the Second Respondent. Those complaints include (a) constructive unfair dismissal, (b) being subjected to a detriment for having made protected disclosures, (c) harassment related to sex, and (d) victimisation. The Respondents accept that the Claimant was employed by the First Respondent as head of personal injury at its London Bridge office from 26 May 2015 until her resignation on 28 September 2018, but dispute and resist all her complaints. There was a preliminary hearing of the Claimant's claim before Employment Judge Warren on 24 January 2019, when the Claimant was represented by Mr Andrew Hogarth QC, who I was told is assisting her on a pro bono basis, and the Respondents by Ms Newton of counsel. A List of Issues to be determined at the Full Merits Hearing, which was fixed to take place between 7 to 10 and 14 to 16 January 2020 with a time estimate of 7 days, was then agreed by the parties, and the Tribunal made case management orders and directions in preparation for that hearing, as more particularly specified in the resulting Order.

2 There are a number of applications and issues before the Tribunal for determination, which can be identified as follows:

2.1 The Claimant's application for specific disclosure, together with costs, dated 8 June 2019;

2.2 The Claimant's application dated 30 June 2019 that the Respondents' Response be struck out or deposit orders made, on the basis that it has no or alternatively little reasonable prospects of success;

2.3 The Claimant's application for a number of witness orders, made on 8 July 2019;

2.4 The Respondents' application to amend their ET3 response, notified to the Claimant on 7 August 2019;

2.5 Finally, in the case management agenda for this hearing the Claimant raised the possibility of (a) adding a new respondent to her claim, and/or (b) amending her ET1 claim form; and the Respondents wished to vary the directions timetable established at the preliminary hearing on 24 January 2019, particularly in relation to inspection of documents disclosed in the Claimant's List, as well as concerning agreement of a trial bundle and exchange of witness statements.

3 I heard submissions on 15 August 2019 from the Claimant herself, Mr Hogarth QC then being unavailable, and from Ms Criddle on behalf of both Respondents; and I was provided with an agreed hearing bundle (Ex R-1). At the conclusion of the hearing, and due to the lack of available time, I reserved my judgment.

4 In the position statement that the Claimant helpfully prepared for this hearing, she says that it is possible to encapsulate all her complaints against both Respondents in a single allegation, namely that *'the First Respondent firm permitted sexual misconduct and harassment and plain ordinary bullying to become endemic in their firm. The Claimant, a*

senior employee, attempted to prevent this from happening by raising the issue in a proper form, but when she did so she was herself subjected to bullying, harassment and, to prevent her raising these issues at a partners' meeting, suspended. She resigned in disgust at the Respondents' behaviour, but following her resignation the Respondents continued their attempts to intimidate her by making reports to the Solicitors Regulation Authority and the Information Commissioner. The Second Respondent was instrumental in permitting this state of affairs'.

5 In relation to the Claimant's applications, those for specific disclosure, together with the costs related thereto, are set out in her letter to the Tribunal dated 8 June 2019 (appendix 5 in the bundle). The disclosure requested is there summarised as being *'disclosures of grievances, court proceedings, settlement agreements and non-disclosure agreements which have come into existence since the Second Respondent became CEO on 3 January 2018. I am aware that the first four senior people to leave* (the First Respondent) *after that date were Colum Smith, Suzanna Joslova, Dionne Allen and Shurouk Al-Sabbagh'.* It is said that Mr Smith was the First Respondent's former CEO, who resigned as a director on 25 May 2018; Ms Joslova undertook various roles at different times; Ms Allen was director of regulation, people and standards and a Board member; and Ms Al-Sabbagh was a deputy head of legal services. The documents the Claimant seeks are enumerated at items 19 to 24 of the Schedule to the Respondents' solicitors letter of 5 July 2019 in appendix 5 of the bundle: apart from those summarised above, they include those relating to any proceedings or disciplinary proceeding issued against either Respondent since the Second Respondent's appointment, and a copy of the First Respondent's standard non-disclosure agreement ('NDA'). Finally, the Claimant raised item 15 in that Schedule (internal communications relating to allegations of bullying of Ms Megan Attree), albeit the Respondents have stated that all such documents which are relevant to the issues in the Claimant's claim have already been disclosed. In respect of the documents at items 19 to 24, the Respondents have refused to provide disclosure because they say that they are not relevant to the issues in these proceedings, whilst confirming that no disciplinary proceedings have in fact been issued against either Respondent in the period identified.

6 The Claimant's application to strike out the Respondents' Response, on the grounds that it is scandalous or vexatious and has no reasonable prospect of success, or alternatively for a deposit order, is set out in her email of 30 June 2019, at appendix 7. It arises from what the Claimant asserts was the Respondents' delay in complying with its disclosure obligations, both in belatedly serving a List of Documents, and in refusing to disclose the documentation the subject of this application. The application is resisted by the Respondents on the basis that they served their List on 28 May 2019, with further disclosure by way of an amended List thereafter, as set out in their solicitors' letter to the Tribunal dated 5 July 2019; and for the same reasons as the specific disclosure application is disputed.

7 The Claimant's third application was made by email on 8 July 2019 (appendix 6), and is for witness orders in respect of Messrs Mike McGrath and Gary Wainwright, both senior employees of the First Respondent who were (it is said) involved in the bullying and sexual misconduct and harassment which the Claimant alleges, and Mesdames Allen, Joslova and Al-Sabbagh. The Claimant asserts that Ms Allen was bullied out of her position with the First Respondent, paid £150,000 *'to silence her'* and that she signed a NDA; that the Respondents conduct towards Ms Allen was very similar to their treatment

of herself; and that both Ms Joslova and Ms Al-Sabbagh may have filed grievances. The Respondents dispute the relevance of all five individuals to the issues in the Claimant's claim.

8 As noted, the Respondents applied on 7 August 2019 to amend the grounds of resistance in their ET3 Response. In particular, the application was to delete the final sentence of paragraph 9, which reads: '*However, Ms Knight continued the investigation, and the Partner's employment was terminated as a result of his conduct'.* During the course of her submissions, the Claimant confirmed that she did not object to or oppose that application, and accordingly I will allow it.

9 The Claimant raised two additional matters in the case management agenda form that she completed for this hearing (appendix 4). First, that consideration should be given to joining *'BGF'* as Third Respondent. Upon enquiry, I was told by the Claimant that Business Growth Fund Limited (or 'BGF') had at some unspecified point purchased part of the First Respondent's business, that Messrs Smith and McMillan had sold part of their equity shares to BGF, and that BGF had nominated three members of the First Respondent's board, including the Second Respondent as chief executive and Mr Mike McGrath. That suggestion was resisted by the Respondents, and I set out hereafter the parties' submissions and my conclusions. Secondly, the Claimant wished to amend paragraph 19 of the particulars of claim in her ET1 to delete the final sentence, which reads: *'This form of blatant ambulance chasing amounts to unprofessional practice'.* The Respondents have no objection, so that amendment is also allowed.

10 The final issue raised concerns the Claimant's refusal to date to give inspection/provide copies of the documents disclosed in her List, in accordance with the case management order made on 24 January 2019, which has had a consequential impact on the timetable for agreeing and completing a trial bundle for the full merits hearing in January next year. I understand that that material was listed by the Claimant in generalised categories or classes, rather than as individual documents; and the Claimant indicated that she believes that the Respondents already have copies of those listed at items 1 to 4 in her List. In respect of those in the remaining items (5 to 10), the Claimant confirmed that she is now prepared to provide copies to the Respondents, and agreed to do so by 29 August, fourteen days after this hearing, in any event: and I so ordered. That should enable the parties to agree a trial bundle in good time and without further recourse to the Tribunal, subject only to the Claimant's specific disclosure application, to which I now turn.

11 In her submissions, the Claimant expanded on her complaints, as summarised in the 'single allegation' set out at paragraph 4 above. The Claimant said that she had been a partner in hellthe First Respondent and head of their personal injury department. The Second Respondent had joined the business in June 2017, and become CEO on 3 January 2018. From about that time, when BGF acquired a share in the business, there had been a marked change in the prevailing culture. Previously there had been a high degree of diversity within the First Respondent; thereafter it became an 'old boys club', run by predominantly white, middle aged and middle class men, who had all been to the same schools or universities, and who were determined to remove those in the business who didn't fit, in what they called *'Project Snowflake'.* The Claimant said that she had already been the subject of bullying, and that when the Second Respondent was appointed she asked him to ensure that that would cease and that working conditions should improve;

but in fact they got worse. The Claimant had fought against the new and threatening culture within the firm, both on her own behalf and for other more junior members of staff. One of them was Katie Butler, who had been a victim of sexual harassment, which she had recorded, having previously been bullied whilst in a different department. She had approached the Claimant for help, rather than HR, and the Claimant had supported her: that had counted as a 'black mark' against her. Ms Butler wasn't offered a position with the First Respondent, and wasn't kept on, but hadn't issued proceedings against the First Respondent; whilst the individual who had harassed her had been dismissed for poor work, rather than for sexual misconduct. The Claimant found it heart-breaking that she should have had to be fighting against her own firm, rather than on its behalf; and that had had a profound effect on her health, including suicidal thoughts.

12 The Claimant alleged that other employees of the First Respondent had been treated in the same or a similar way to Ms Butler, and submitted that there was a pattern of behaviour within the First Respondent which was both relevant and central to her case. It was for that reason that she was seeking disclosure of grievances submitted, proceedings issued against, and settlements reached with the First Respondent since the Second Respondent's appointment. The Respondents had already provided further disclosure over and above their original List of Documents: initially an additional 333 documents, with a further 18 on 7 August. That would not have happened in the absence of her application, the Claimant suggested. Additionally, the defence raised by the Respondents had been that of relevance, rather than that no such documents existed. An inference could therefore be drawn that there were such documents, and any grievance or disciplinary proceedings were highly likely to generate paperwork in any event.

13 The First Respondent's former chief executive Mr Smith, with whom the Claimant is in touch and who she will be calling as a witness at the full merits hearing, had heard a grievance brought by Ms Dionne Allen, a black woman who had been on the First Respondent's board. Ms Allen had circulated copies of her grievance, alleging bullying, harassment and racism, to each board member in January 2018, at the time when the Second Respondent took over as chief executive, before herself resigning from the First Respondent at the end of that month. Mr McGrath had prepared a NDA in relation to that grievance. Ms Allen had raised a further grievance against Mr McGrath, who had allegedly assaulted both her and Mr Smith; a copy of that grievance had been emailed to Mr Smith (who had presented his own grievance) during the process of his standing down and leaving the First Respondent. Mr Smith had been subjected to 28 allegations of misconduct, all of which had subsequently been withdrawn, and for which he had received apologies and compensation. No witness order was sought in relation to Mr Smith, who had not signed any NDA and who is a willing witness. The Claimant believed, from what Mr Smith had told her, that both Ms Joslova and Ms Al-Sabbagh had presented grievances alleging bullying; it was not known whether either had signed NDAs. Finally, civil proceedings had been issued against the First Respondent by both Mr Smith and Mr McMillan.

14 With respect to item 15 in the schedule annexed to the Respondents' solicitors' letter of 5 July (internal communications within the First Respondent relating to allegations of bullying of Ms Attree), the Claimant indicated that she intends to call Ms Attree as a willing witness at trial, and accepted that there had been at least some disclosure by the Respondents relating to her: those documents were sufficient for the Claimant's purpose

of seeking to establish a pattern of behaviour by the Respondents, and no further disclosure was required by the Claimant.

15 Turning to the witness orders which the Claimant seeks, the Claimant said that she had not approached or spoken directly to any of the five individuals identified. She had been informed by Mr Smith that Ms Allen, Ms Al-Sabbagh and Ms Joslova would all like to come and give evidence, but that they were frightened to do so, given the Respondents' past conduct towards them. The Claimant accepted that there was a degree of overlap between her specific disclosure and witness order applications, in that she was seeking to prove what the prevailing state of affairs was at the First Respondent's business, both before and after her resignation. Mr Wainwright, who the Claimant alleges was ordered to cover up the Respondents' treatment of Ms Butler, was no longer employed by the First Respondent, and she did not know whether Mr Smith had approached or was in contact with him.

16 The Claimant acknowledged that no draft amended particulars of claim had been prepared, by which it was sought to add BGF as a respondent in these proceedings; but nonetheless invited the Tribunal to join them. Her reasons for doing so, she said, were because they were more than ordinary investors, and had provided much needed financial muscle to the First Respondent. The Claimant was concerned that in the event that her claim is successful, the Respondents might be unable to meet any compensation which the Tribunal ordered to be paid to her. Additionally, it was only after BGF had acquired a significant stake in the First Respondent that the change in culture, together with sustained bullying and harassment, had arisen.

17 Finally and in relation to the suggested strike out of the Respondents' ET3 or alternatively a deposit order, the Claimant invited the Tribunal to adjourn her application, with liberty to restore after the specific disclosure which she seeks had been provided by the Respondents, together with the issue of costs involved, since she had had to spend a considerable amount of time on these matters herself. As already noted, the Claimant confirmed that Mr Hogarth is assisting her on a pro bono basis.

18 In reply, Ms Criddle relied upon and spoke to her skeleton argument, a copy of which is included at the start of the bundle with which I was provided. I summarise Ms Criddle's written submissions as follows. Concerning the Claimant's specific disclosure application, the Respondents primary submission is that none of the documents sought by her are relevant to the agreed issues which the Tribunal will have to determine at the full merits hearing. It is only documents that are relevant to the issues in the case which were ordered to be disclosed at the preliminary hearing on 24 January 2019; and an order for specific disclosure should only be made where the documents sought are of such relevance that disclosure is necessary for the fair disposal of the proceedings (**Canadian Imperial Bank of Commerce v Beck [2009] IRLR 740 CA**). The documents identified by the Claimant at items 19 to 24 in the schedule at appendix 5 relate to grievances, proceedings and settlement agreements involving people other than the Claimant who are or were employed by the First Respondent, and do not concern her. The only issues relating to other people's complaints or grievances which concern the Claimant and which are relevant are those at paragraphs 2.1 and 2.2 of the List (the Claimant's report to Dionne Knight that Mr Wainwright and Ms Nirali Patel were having an affair and had been caught *in flagrante* whilst at work, and the Claimant's complaint to Ms Knight that Ms Butler was being sexually harassed by Mr Matthew Barry). The Tribunal would have to

determine whether those concerns amounted to protected disclosures or acts; and whether the First Respondent's dealings with those concerns formed part of a repudiatory breach, in response to which the Claimant resigned, and/or amounted to harassment of the Claimant related to sex. Any other concerns raised by others in which the Claimant played no part were not relevant, and any documents relating thereto were not disclosable. Finally, in light of the above, there was no basis for a costs order against the Respondents.

19 In her oral submissions, Ms Criddle pointed out that, in contrast to the individuals that the Claimant had raised and relied on in her application for specific disclosure, it was the Claimant's case that she had been treated badly because she had raised issues and made complaints about the treatment of others. Thus, in the absence of any such complaint, ill-treatment of others was irrelevant. Secondly, the Claimant had stated that she had not made this application at an earlier stage because she was not then aware of the existence of the documents she now seeks. That was hardly consistent with the Claimant's resigning because of complaints she had raised about the Respondents treatment of others. Ms Criddle reminded the Tribunal that this was an ET claim, not a public enquiry, and it was only where disclosure was necessary that it should be ordered. The Claimant had first requested sight of the documents at items 19 to 24 on 30 May 2019, after the Respondents had served their list of documents. Whilst it was correct to say that further disclosure had taken place on 5 July, when 333 additional documents had been disclosed, as well as on 7 August, a large number of those additional documents had been essentially the same data letter being sent to different clients. The Respondents had replied on 6 June, telling the Claimant that they were considering her request for further disclosure; but she had gone ahead and issued this application two days later and without waiting for a substantive response. Finally and in relation to Ms Attree, disclosure had already been provided concerning her allegation of bullying, and how that complaint had been dealt with by the First Respondent. The fact that she had since left the First Respondent's employment was irrelevant to and could shed no light on the agreed issues to be determined by the Tribunal in due course.

20 In relation to the witness orders sought, the Tribunal must be satisfied that the proposed witness can give evidence which is relevant to the issues in dispute, and that it is necessary to make such an order (**Dada v Metal Box Co Ltd [1974] ICR 559 NIRC**). Additionally, a proposed witness should always be asked by the party concerned to attend the hearing in order to give evidence before an application was made for an order.

21 Ms Criddle submitted that for the same reasons as are set out above concerning the Claimant's specific disclosure application, the evidence which the identified witnesses could or might give would not be relevant to the agreed issues in this case. Additionally, none of the proposed witnesses had been approached by the Claimant, there was no direct evidence that Mr Smith had done so on her behalf, or of why it was necessary to make witness orders.

22 Ms Criddle strongly opposed the Claimant's suggestion that her application for striking out the Respondents' ET3, or alternatively making a deposit order, be adjourned. The application essentially arose from the specific disclosure application, and both should be dealt with at the same time. If no such disclosure was ordered, then the strike out application must fail, particularly since the Respondents were not guilty of any undue delay in dealing with disclosure issues, and that application had in fact been issued

intemperately. There was no good reason to adjourn the application; and if the Claimant thought it appropriate to issue a further such application at a later date, then she could do so then.

23 Ms Criddle submitted that there was no proper basis for joining BGF as a further respondent. Rule 34 required that there be issues between it and the Claimant which it was in the interests of justice to have determined in these proceedings; and no such issues had been identified or included in the agreed List. BGF was simply an investor in the First Respondent, not the Claimant's employer; and no allegations of harassment or victimisation or similar had been raised against it. The Claimant couldn't properly seek to add BGF to her claim as some form of insurance policy, in case she were to win and the Respondents be unable to satisfy any Tribunal award.

24 Finally, Ms Criddle addressed me in relation to the proposed minor amendments to the ET1 & 3 and the inspection and timetabling issues, which have already been dealt with above.

25 Considering first the Claimant's specific disclosure application, I think that the Respondents' approach, as set out in Ms Criddle's written submissions, is correct. In my judgment, it is only documents which directly relate, or are relevant, to one or more of the issues in the agreed List, which I remind myself was agreed by the Claimant with the assistance of leading counsel, that are required to be disclosed or where a specific disclosure order should be made. The documents at items 19 to 24 in the schedule annexed to the respondents' solicitors' letter of 5 July 2019 do not fall into that category, since they do not concern the Claimant and were not raised by her with either Respondent. The concerns that were raised by the Claimant in relation to the Respondents' treatment of other employees were identified in her ET1 and the List of Issues, and the Tribunal will need to determine in due course whether they give rise to valid complaints of constructive unfair dismissal or harassment related to sex, or amount to protected disclosures and/or acts. I do not accept that the documents now sought by the Claimant are necessary for the fair disposal of her claim, since in my view she will not be required to prove the 'pattern of behaviour' or 'change in culture' within the First Respondent which she alleges beyond the specific allegations she makes in relation to Mr Wainwright and Ms Patel and Ms Butler and Mr Barry, as set out at issue 2 in the agreed List. In reaching that conclusion, I bear in mind that, as pleaded in the ET3 and as confirmed by Ms Criddle, the Respondents accept that Ms Butler did indeed complain in July 2017 that she had been subjected to inappropriate behaviour by one of the First Respondent's partners; and also that the Claimant confirmed that she will be calling both Mr Colum Smith and Ms Attree as willing witnesses at trial: their evidence, in so far as relevant and admissible (and I have not seen any witness statement or letter of evidence from either), will no doubt assist the Tribunal in assessing the prevailing state of affairs at the Respondents' business. For these reasons, I refuse the specific disclosure application; and the related application for costs must fail as well.

26 Turning to the application for witness orders, the Claimant accepts that she has not herself approached any of the five individuals identified in her email of 8 July 2019, and there is no material from any of them before the Tribunal indicating either a willingness to give evidence, or what relevant evidence they can give. The Claimant asserts that Mr Smith has spoken to Mesdames Allen, Joslova and Al-Sabbagh, and that all three are prepared to be witnesses on her behalf; but there is nothing from Mr Smith

himself to confirm that, so far as I was told or made aware. Mr McGrath is still, I believe, a senior employee of the First Respondent, and presumably unlikely to be willing to assist the Claimant against his employers; Mr Wainwright has not been approached. In any event, it appears very unlikely that the evidence any of them could give would be relevant to the issues to be determined by the Tribunal, or that it is necessary to make witness orders, based upon their anticipated testimony as set out in the Claimant's application at appendix 6 of the bundle. The application must be dismissed.

27 The Claimant's strike out/deposit order application is self evidently linked to her application for specific disclosure, as is made clear in her application dated 30 June 2019 at appendix 7. I have already refused that application, and I do not accept that the Respondents were guilty of any undue delay in complying with their continuing disclosure obligations, or in responding to the Claimant's correspondence: the chronology outlined above by Ms Criddle does not support any such contention. For the avoidance of doubt, I accept that there are numerous triable issues of fact between the parties that can only be determined at a full merits hearing, and that there is no basis for this application.

28 Finally, I refuse the Claimant's application to join BGF as an additional respondent in these proceedings. There are no issues within the Tribunal's jurisdiction to be determined or resolved between them and the Claimant, and no scope for the sort of financial safety net which the Claimant apparently seeks.

Employment Judge Barrowclough

27 August 2019