Neutral Citation Number: [2020] EWHC 1741 (QB)

Case No: QB-2020-000089

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/07/2020

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

- -

Between :

YVONNE AMEYAW	**Claimant**
- and -	
(1) CHRISTINA MCGOLDRICK	**Defendants**
(2) LOUISE COYNE	
(3) PRICEWATERHOUSECOOPERS SERVICES LIMITED	

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The Claimant appeared in person
Rupert Paines (instructed by **Fladgate LLP**) for the **Defendants**

Hearing date: 1 July 2020

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Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Covid-19 Protocol: This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2 July 2020 at 10:00

Mrs Justice Steyn :

A. Introduction

1. The Defendants' application dated 30 March 2020 for the determination of certain preliminary issues and to strike out and/or obtain summary judgment in their favour, was listed for a hearing on 1 July 2020.

2. At the hearing on 1 July 2020, I made the following orders:

   i) The Claimant's application for her interim injunction application dated 30 June 2020 to be heard at the hearing on 1 July 2020 is refused;

   ii) The Claimant's application for parts of the Defendants' hearing bundle to be struck out and ruled inadmissible is refused;

   iii) The Claimant's application for her McKenzie friend, Mr Ogilvy, to be permitted to make oral submissions on her behalf is refused; and

   iv) The hearing of the Defendant's application dated 30 March 2020 is adjourned to 10.30am on Friday 3 July 2020.

3. I gave brief reasons orally for each of these decisions. This judgment explains my reasons in more detail and in writing, as requested by the Claimant.

B. The procedural history

4. The claim was issued, together with Particulars of Claim on 9 January 2020. The precise scope of the claim may be a matter for argument at the hearing on 3 July 2020, but it is clear that the causes of action include claims for libel, malicious falsehood, breach of confidence and misuse of private information. The Defence, on behalf of all the Defendants, was filed on 10 February 2020. Directions questionnaires were filed on 20 March 2020. The Claimant has not filed a Reply.

5. On 30 March 2020, the Defendants filed an application seeking:

   i) the determination of preliminary issues on (a) the meaning of certain statements of which the Claimant complains; (b) whether those statements are defamatory of the Claimant at common law or under s.1 of the Defamation Act 2013; and whether the statements complained of are statements of fact or opinion;

   ii) an order striking out the Claimant's claim pursuant to CPR 3.4(2)(a) and/or (b); and

   iii) an order for summary judgment under CPR part 24 and/or s.8 Defamation Act 1996 against the Claimant on the whole of her claim, because she has no real prospect of succeeding on the claim or issue and there is no other compelling reason why the claim or issue should be disposed of at a trial.

6. The Defendants' application notice drew the Claimant's attention to the provisions of Part 24 of the CPR and the Practice Direction supplementing that Part and informed her that:

> "Under rule 24.5(1), if the respondent wishes to rely on written evidence at the hearing, she must –
>
> (a) file the written evidence; and
>
> (b) serve copies on every other party to the application at least 7 days before the summary judgment hearing."

7. The Claimant did not file evidence in response to the Defendants' application.

8. On Monday 15 June 2020, the Court sent a notice which stated:

> "The Application hearing for the above case has been placed in the warned list for the week commencing 29th June 2020 before a Judge."

9. The notice asked the parties to liaise with a view to agreeing their dates in this period and to provide such dates to the Queen's Bench listing office. I have only seen the copy of this notice that was sent directly to the Defendant. However, it is apparent from the Claimant's response at 18.46 on 15 June 2020, as well as from subsequent emails on 16 June 2020, that the Defendants' solicitor emailed a copy of this notice to the Claimant on 15 June 2020.

10. The Claimant wrote to the Court on 17 June 2020. She objected to the application being set down for a hearing, contending that she had not had proper notice. She said that she intended to make interim applications and it "would amount to a breach of natural justice if the Claimant were unreasonably denied the right to pursue applications for anonymity and to amend her claims before any other application is heard". She also stated, without providing any further details, that she considered that there were good reasons why a hearing should not be held remotely but should proceed in person in a court room.

11. On Monday 22 June 2020, the Court sent a further notice which stated:

> "The Strike Out Application has now been listed on the 1st July 2020 for 3 hours – fixed. This is listed before a High Court Judge in the Media and Communications List."

12. The hearing bundle only includes the copy of this notice that was sent directly to the Defendants. However, in case the Claimant had not received the notice directly from the Court, the Defendants' solicitor sent a copy by email to the Claimant on 22 June 2020 at 16.06 which she received, as is clear from her response at 17.18 the same day.

13. On 22 June 2020, the Claimant wrote to the Court asking for her letter of 17 June to be placed before the Judge in charge of the Media and Communications List.

14. On 26 June 2020 Warby J made a case management order, having considered (amongst other matters) the Claimant's letter of 17 June 2020. Warby J ordered that

the hearing should proceed as a remote hearing. However, his order provided the Claimant with an opportunity to object to the hearing proceeding remotely, or to make representations as to the manner in which the remote hearing should be held. Any such representations were required to be filed by no later than 4pm on Monday 29 June 2020 and any factual propositions were required to be supported by written evidence. Warby J's order also provided an opportunity for the Defendants to respond to any such objections or representations, or evidence, by 2pm on Tuesday 30 June 2020.

15. The Defendants' skeleton argument was filed on 26 June 2020.

16. On Monday 29 June 2020, the Claimant applied for the hearing to proceed in person, rather than remotely. She attached submissions (entitled "statement of case") to her application as well as her own witness statement and brief exhibit.

17. Having received the Claimant's application, I made enquiries (via my clerk) to see whether it was feasible to hold the hearing in a court room, and whether both parties would be content if the hearing were to proceed in a court room. As it was feasible and both parties agreed, I decided to grant the Claimant's application for the hearing to proceed in a court room (with some of the Defendants' representatives attending via video link, as they requested). In respect of the remote hearing issue, my order of 30 March 2020 stated:

> 1. The hearing of the Defendant's application dated 30 March 2020, which has been listed to be heard at 10.30am on Wednesday 1 July 2020, shall proceed as a hearing physically in court, in the Royal Courts of Justice, with the Claimant (and those accompanying her) and the Defendants' barrister and solicitor attending in person.
>
> 2. Paragraph 1 of the order of Warby J of 26 June 2020, which had provided for a remote hearing, is varied accordingly.
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> …
>
> 5. The Court will endeavour to enable the Defendants/those of their representatives not physically attending Court to attend via remote video link. The Court will liaise with the parties regarding the practical arrangements.
>
> *Reasons*
>
> 1. The Claimant has made representations, and submitted evidence, in accordance with paragraph 2 of the order of Warby J of 26 June 2020, objecting to the hearing proceeding remotely. She submits that justice would be best served through a hearing in person. She raises concerns about her ability to engage in a hearing via a video platform from her home, having regard to her lack of suitable seating, inadequate Wi-Fi, lack of experience using Teams, and concerns about the privacy of her home environment.

> 2. Although I consider that a remote hearing could be conducted fairly, particularly if the Court were to set up a practice session (as is usual) to ensure the parties are able to connect to the video platform without any difficulty, and to allow breaks as required by the parties, I am concerned that the Claimant (who is acting in person) perceives that she would be disadvantaged by a remote hearing. The Claimant wishes to attend a hearing physically in court (with two persons accompanying her to provide support). The Defendants have confirmed that they are content for the hearing to be held in court, and for the Defendants' barrister and one representative to attend in person. The Court is able to hold this hearing physically in court, having taken appropriate precautions to prevent the transmission of COVID-19, including ensuring physical distancing in court.
>
> 3. In the circumstances, I consider that it is in the interests of justice for the hearing to proceed in court, rather than remotely.
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> …
>
> 8. The Defendants have asked whether it would be possible for the Defendants' client representatives who are unable to attend the hearing in person to attend via a video link. I consider that it is permissible to hold a hearing physically in court with some participants (i.e. parties or their representatives) attending via a video link: see CPR 32 PD, Annex III. Given the COVID-19 pandemic, it is in the interests of all parties to limit the number of people physically in court. In these circumstances, I consider that the Court should seek to facilitate remote video access for participants. My clerk will liaise with the parties regarding such access. It is important to note that only identified participants (and no person who is not a party or representative of a party) may attend via remote video link.
>
> 9. I also note that the Defendants have confirmed that, if there are practical problems enabling remote access via a video link, they wish the hearing to proceed in person even if such access is not possible."

18. In addition to seeking a hearing physically in court, rather than remotely, the Claimant also applied in her application filed on 29 June 2020 for the following orders:

> "2. The application for an order determining preliminary issues shall be without a hearing. The parties are ordered to file and serve any written submissions no later than 4pm on 6 July 2020;
>
> …

> 4. If the Claimant wishes to pursue an interim application for an injunction against the Defendants, she must do so, on notice, by no later than 4pm on Tuesday 30 June 2020. Any such application shall be prioritised and heard before any outstanding applications."

19. In my order of 30 June 2020, I refused the Claimant's application for an order that the preliminary issues identified in the Defendants' application dated 30 March 2020 be determined without a hearing. My written reasons in respect of this application stated:

> "The Defendants' application of 30 March 2020 includes an application for the determination at a hearing of preliminary issues as to the meaning of certain statements, whether those statements are defamatory at common law or under s.1 Defamation Act 2013, and whether the statements are fact or opinion. The Claimant seeks in her application of 29 June 2020 an order that the preliminary issues be determined without a hearing, based on the parties' written submissions. I am not prepared to accede to this application. The Defendants made their application three months ago and notice that the hearing was in the warned list for this week was given by the Court more than two weeks ago. The hearing is going ahead tomorrow and sufficient time is available for the preliminary issues (as well as other matters) to be heard. There is no good reason, and in the circumstances it would be unjust, to preclude the parties from making oral submissions in relation to the preliminary issues at the hearing that has been listed (in part) for that purpose."

20. In respect of the Claimant's application for an order regarding her interim injunction application, I said in the order of 30 June 2020:

> "I am not prepared to make an order that an as yet unseen, unfiled and unserved application, should take priority over the application which was filed three months ago, and which has been listed to be heard tomorrow. If the Claimant files any interim application prior to the hearing tomorrow, and if the Claimant makes an oral application at that hearing for any such application to be heard, I will consider the matter at that stage. However, I draw attention to the notice requirement for applications specified in CPR 23.7."

21. In addition, although not reflected in the Claimant's draft order, the Claimant sought in the body of her application made on 29 June an order that the Defendants must remove various documents from the hearing bundle. In respect of this application I said in my order of 30 June 2020:

> "Insofar as the Claimant's concern relates to any difficulties she has encountered in navigating the electronic bundle, the Defendants have offered to deliver a hard copy of the bundle to the Claimant. Insofar as the Claimant contends that any of the

> documents are irrelevant, I consider that is a matter for the oral hearing. I have not made any determination at this stage as to the relevance (or lack of relevance) of any documents in the hearing bundle. It would not be fair to do so without hearing from both parties. Accordingly, I have not made the order sought."

22. On 30 June 2020, the Court also provided the parties with a protocol for the hearing, which explained the precautions in place to prevent the transmission of COVID-19, such as the (2m distanced) seating arrangements in court and, in order to enable communication whilst maintaining such distance, permission to use mobile telephones in court so long as they remained on silent.

23. At 13.24 on 30 June 2020, the Claimant sent to the court and the Defendants by email an application for an injunction, together with supporting evidence. I address the details of this application below.

24. I note that the applications of 29 and 30 June 2020 did not include the "applications for anonymity and to amend her claims" foreshadowed in the Claimant's letter of 17 June 2020, and there were no such applications before me.

25. Later in the evening on 30 June 2020, the Claimant filed a skeleton argument and the Defendants filed preliminary submissions in response to the Claimant's applications of 29 and 30 June 2020.

26. On the morning of 1 July 2020, that is, the morning of the hearing, the Claimant filed an electronic hearing bundle.

C. The Claimant's application for her interim injunction application to be heard together with the Defendants' application

27. The Claimant filed an application for an injunction at 13.24 on 30 June 2020. The Claimant sought an order that the Defendants be:

> "I. Prohibited from use of confidential medical information belonging the Applicant; namely, medical reports dated 10 May 2017 and 5 June 2018, and repeated in the Judgment of the Employment Tribunal promulgated on 12 April 2019. To be effective immediately until the end of the full appeal hearing of case number UKEAT/0291/19/LA & UKEAT/0298/19/LA before the Employment Appeal Tribunal; or until a time otherwise determined by the court.
>
> II. Prohibited from use of confidential medical information belonging to the Applicant; namely, medical reports dated 10 May 2017 and 5 June 2018;

> III. Return, the above named documents to the Applicant no later than 9AM on 1 July 2020 and to prevent any further processing of the same."

28. At the outset of the hearing, I explained to the Claimant that I had received her application for an injunction and I understood she wished it to be determined at the hearing, but that gave rise to a preliminary question as to whether I should hear her application at the hearing which had been listed solely for the purpose of determining the Defendants' application. I drew the Claimant's attention to CPR 23.7(1) and (4) and sought to explore the basis on which the Claimants submitted that, in the circumstances of the case, sufficient notice had been given.

29. The Claimant submitted that it would be in the interests of justice for time to be abridged as the injunction application needed to be heard urgently. She contended that the Defendants had demonstrated that they had had sufficient notice of the application because they had submitted preliminary submissions in response on 30 June 2020. The Claimant also contended that since the parties were in court, it would save time and expense for the application to be determined, it would place the parties on an equal footing and assist in dealing with the case justly. The Claimant submitted that if there was any prejudice, she was the one who would be prejudiced as she contended that use of her medical information was a fundamental violation of her article 8 rights.

30. The Defendants had raised a question as to whether the application of 30 June 2020 had been formally filed, or merely emailed to the Court. The Claimant submitted that she had formally filed the application and provided a fee remission code in accordance with the guidance. I assumed in the Claimant's favour that the application had been filed on 30 June 2020.

31. CPR 23.7(1) provides:

> "A copy of the application notice—
>
> (a) must be served as soon as practicable after it is filed; and
>
> (b) except where another time limit is specified in these Rules or a practice direction, must in any event be served at least 3 days before the court is to deal with the application."

32. The general rule is, therefore, that a respondent to an application should be given at least 3 clear working days' notice before the Court deals with the application. The Defendants were not given 3 clear working days' notice. Indeed, as it was served on the afternoon immediately before the hearing, they were not even given 1 clear working days' notice of the application.

33. CPR 23.7(1) is subject to CPR 23.7(4) which provides:

> "If—
>
> (a) an application notice is served; but
>
> (b) the period of notice is shorter than the period required by these Rules or a practice direction,

> the court may direct that, in the circumstances of the case, sufficient notice has been given, and hear the application."

34. I decided that "*in the circumstances of the case*" *"sufficient notice"* had not been given and, accordingly, I refused to hear the Claimant's application for an interim injunction.

35. In making this determination, I took into account the following matters:

36. ***First***, the period of notice given was very short indeed, the application having been served on the afternoon immediately before the hearing.

37. ***Secondly***, there was no good reason for the application being made at such short notice:

    i) The claim was issued on 9 January 2020. Any concern the Claimant had about processing or retention of the medical reports (or the judgment which refers to those reports) had already arisen. (Although I have referred to reports in the plural, I note that only the report of 10 May 2017 is the subject of the claim.)

    ii) The Claimant submitted a draft "order and directions" on 20 March 2020 in which she indicated her intention to file "an application for an interim injunction to prohibit disclosure of her personal information and any further processing of the personal data it contains" and asked for an order that she do so by 4pm on 27 April 2020. It is true that an order to that effect was not made, but it was open to the Claimant to file the application by that date, or earlier. She simply chose not to do so.

    iii) The Claimant was aware on 15 June 2020 that the Defendants' application would be heard in the week beginning 29 June 2020. Even at that late stage, the Claimant could have filed an application giving the requisite notice, if she wished. On 17 June 2020, the Claimant referred in her letter to the Court to her intention to make an application for an interim injunction, but she still did not file any such application.

    iv) The order sought by the Claimant is in the same terms (save for the dated specified in III) as the order the Claimant sought pursuant to an application filed in the High Court on 9 September 2019. The Claimant sought the order on a without notice basis. Bryan J made an order on 9 September 2019 adjourning the application to a return date which was fixed as 17 September 2019. The reasons appended to his order state:

> "For the reasons more fully set out in the oral ex tempore judgment of the Court, this matter is not suitable for hearing without notice, there is no proper justification given for it being heard without notice, it is not so urgent that it should be heard without notice, and the Defendants should be given a fair opportunity to respond thereto including as to whether the Court has jurisdiction to grant the Order sought and/or ought to do so in circumstances where the judgment of 12 April 2019 (the "Judgment") is already in the public domain

> and/or there is an extant order of the Registrar of the EAT in relation to the use of the Judgement in the EAT that is being appealed, and the hearing judge in the EAT will be able to rule on the use that may be made of the Judgment at the hearing (as contemplated by the Registrar) and/or in all the circumstances." (emphasis added)

v) The Claimant chose to withdraw that application and subsequently to pursue this claim instead. I acknowledge that in part that decision was made because the Defendants were prepared to agree not to put the judgment to which she took objection before a tribunal at a particular hearing. Nevertheless, it is plain that if the application was not so urgent more than 9 months' ago that it should be heard without notice, it is manifestly not so urgent now that it should be heard without proper notice in accordance with CPR 23.7(1). It was clear from the Defendants' defence and from the witness statement of Mr Drew which was filed in support of the Defendants' application, together with exhibits, that the Defendants had put the employment tribunal judgment promulgated on 12 April 2019 ("the Grewal judgment") before the Court and intended to rely on it.

vi) The Claimant's justification for failing to file the application earlier is essentially that the devices on which she is working are slower than they were, as she has had them for more than three years, and if it were not for the pandemic she would use alumni facilities at Maughan library, where the network connection is more stable and reliable than the connection she has at home, to work on this case. This is a wholly inadequate excuse for such a lengthy delay. The Claimant was able to file the application on 30 June and there is no reason she could not have done so much earlier.

38. Those factors alone demonstrate that, in the circumstances, insufficient notice of the application had been given. The Claimant has had ample opportunity over many months to file her application.

39. However, I also explained to the Claimant that there appeared to be no reason for the Claimant to fear that any reference would be made at the hearing of the Defendants' application to either of the medical reports or any summary of the contents of those reports. That was apparent because:

i) The Defendants did not put either of the medical reports in the hearing bundle. They are only before the court because the Claimant has exhibited them to her witness statement in support of her application for an injunction.

ii) The Defendants had put the Grewal judgment in their hearing bundle, but they had not referred in any submissions or evidence to those paragraphs of that judgment which summarise the medical reports.

iii) The Defendants had made clear in their preliminary response to the Claimant's applications that they did not consider that the Court needed to see the medical reports to determine their application and they said: "The Defendants cannot presently see any reason why the contents of the medical reports should be discussed at the instant hearing, or feature in the Court's judgment".

40. For these reasons, I refused the Claimant's application to have her application dated 30 June 2020 determined at the hearing on 1 July 2020 which had been listed solely for the purpose of determining the Defendants' application of 30 March 2020.

D. The Claimant's application for certain documents to be ruled inadmissible

41. The Defendants' application was supported by a witness statement made by Mr Drew, a partner of Fladgate LLP, the Defendants' solicitors, on 30 March 2020. Attached to his statement is exhibit BD1 which runs to 321 pages and includes a number of judgments that have been given by the Employment Tribunal and the Employment Appeal Tribunal in the extensive litigation between the parties to this case.

42. In her application dated 29 June 2020, the Claimant asked the court to direct that the following documents "shall be removed and struck from the record":

    i) **The Grewal Judgment**: that is a judgment of the Employment Tribunal, chaired by Employment Judge Grewal, promulgated in April 2019. The judgment addressed the Claimant's "claim 4", dismissing her complaints of (a) unfair dismissal, (b) protected disclosure detriment, (c) victimisation and (d) direct race and sex discrimination and harassment, as not well-founded. The Claimant has been granted permission to appeal to the Employment Appeal Tribunal ("the EAT") on a number of limited grounds.

    ii) **The Morton Judgment**: that is a judgment of Employment Judge Morton (sitting alone), dated 17 March 2017, refusing the Third Defendant's application for the claims to be struck out on the grounds that the Claimant's conduct at a hearing on 31 January 2017 ("the Hall-Smith hearing") had been "scandalous and vexatious". Although the Claimant was successful in resisting the strike out application, the Morton Judgment has led to satellite litigation. In particular, (a) an unsuccessful application by the Claimant for the Morton Judgment to be removed from the public register, or alternatively for the Claimant to be granted anonymity in relation to the judgment (judgments of Employment Judge Hildebrand and then HHJ Eady QC (as she then was)); and (b) an application by the Claimant for reconsideration of the Morton Judgment which was refused (the Morton Decision), but is the subject of an appeal to the EAT in respect of which the Claimant has been granted permission.

    iii) **The Morton Decision** (see above).

43. The basis given in the 29 June application, and reiterated in the Claimant's skeleton argument and orally, for seeking to have these judgments removed from the hearing bundle is that they are the subject of an ongoing appeal to the EAT. The Claimant contends that what "the Defendants are attempting to do is to invite the High Court to opine on these matters which would be, in principle, to usurp the jurisdiction of the EAT as the appropriate Appellate Court to properly determine the legality of the ET decisions. The matter therefore is sub judice and should be struck off from the record."

44. In the application of 29 June 2020, the Claimant also raised an objection to the presence in the hearing bundle of the "**Hall-Smith Order and Reasons**", that is, a judgment of Employment Judge Hall-Smith dated 2 March 2017 in which the judge

described the Claimant's conduct at a preliminary hearing on 31 January 2017. The Claimant's object to this document being in the bundle is that it is "intrinsically linked to and referred to in the Grewal judgment" and she contends that putting it before the court may prejudice her appeal to the EAT.

45. The final category of documents to which the Claimant objected in her application of 29 June 2020 were certain judgments which she contends are "wholly irrelevant", namely:

    i) **The Baron Judgment**: This was a judgment of the Employment Tribunal, chaired by Employment Judge Baron, given in March 2018, dismissing the Claimant's "claims 1-3".

    ii) **The Auerbach Judgment**: This was a judgment of HHJ Auerbach, sitting in the Employment Appeal Tribunal, dated 11 December 2019, dismissing the Claimant's appeal from the Baron Judgment.

    iii) **The Eady Judgment**: As explained above, this is a judgment of HHJ Eady QC dismissing an appeal in relation to the Claimant's unsuccessful application to have the Morton Judgment removed from the public register or for anonymity in relation to that judgment.

    iv) **The Decision of Flaux LJ**: this is a decision of Flaux LJ refusing permission to appeal to the Court of Appeal from the Auerbach Judgment.

46. The Claimant also contends more generally that "the voluminous hearing bundle prepared by the Defendants must be reduces (sic) to save time and expense".

47. In my judgment, the Claimant's objection to these documents being put before the court has no merit.

48. The Defendants contend in their application that by her claim the Claimant seeks to mount a collateral attack upon the employment tribunal proceedings. In order to determine the Defendants' application, it is necessary for the court to be apprised of the nature of those proceedings.

49. The claim alleges defamation and malicious falsehood in respect of the Third Defendant's application to strike out which was the subject of the Morton Judgment. The application to strike out was made on the basis of the Claimant's behaviour at the preliminary hearing on 31 January 2017. At the heart of this claim is the description of the Claimant's behaviour at the hearing which is the subject of the Hall-Smith reasons and the Morton Judgment. These judgments are, therefore, clearly admissible and relevant.

50. The claim also alleges breach of confidence or misuse of private information in relation to a medical report that the Claimant submitted to the Employment Tribunal and which was then provided to the Defendants on terms as to confidentiality. The Defendants contend that enforcement of confidentiality imposed by the Employment Tribunal is a matter for that Tribunal, and not actionable; and they contend that the Employment Tribunal has rejected the Claimant's contention that there was any fault

in the Defendants' handling of the report. They rely on the Grewal Judgment in support of this argument.

51. It is clear from the Defendants' submissions that they rely on:

    i) The Morton Judgment in relation to their contentions regarding serious harm and estoppel/abuse;

    ii) The Grewal Judgment in relation to their contentions regarding serious harm, estoppel/abuse and regarding the breach of confidence/misuse of private information claim; and

    iii) The Hall-Smith reasons in relation to meaning, serious harm and estoppel/abuse.

52. There is no basis on which the Court could properly preclude the Defendants from referring to these public judgments in support of their submissions.

53. The electronic bundle runs to 462 pages, plus a fully linked index. The bulk of the hearing bundle is exhibit BD1 which contains numerous judgments from the employment proceedings between the parties. The Claimant raised no objection to this exhibit, which she has had for three months, until two days before the hearing. Given the nature of the claim, which is directly related to the employment proceedings, it is readily understandable that the Defendants have chosen to exhibit not only the judgments which are of most direct relevance to the claim, but also some which are more peripheral. Doing so assists in explaining the chronology and background. While a different judgement call might have been made to exclude some of these judgments, I do not consider that the Defendants can fairly be criticised for including them. In any event, at this late stage, it would not save any time or expense to seek to slim down the hearing bundle.

54. A further objection raised by the Claimant in her skeleton argument and orally is that the version of the Grewal judgment exhibited to the Mr Drew's statement is not the version which carries a manuscript signature, internal page numbering and the case reference in the header on every page. The Claimant submits that Mr Drew has exhibited a draft judgment, rather than the final version.

55. Clearly, if that were so, it would be impermissible to rely on it. However, the reasons for the differences between the two versions that the Claimant has identified are unclear. No differences in the substance of the two versions have been identified and the version attached to Mr Drew's witness statement is dated and bears a stamp indicating the date on which it was sent to the parties by the tribunal. If the version exhibited by Mr Drew were a draft, I would expect the document to state that it is a draft on its face, but it does not.

56. There is absolutely no basis for the Claimant's suggestion that the Defendants have in any way tampered with the judgment and I reject that submission as wholly without merit.

57. Nevertheless, as there is no doubt that the version of the Grewal judgment included in the Claimant's bundle is a final and approved version, any references to that judgment

in these proceedings should be to the copy in the Claimant's bundle rather than the copy in the Defendants' bundle.

58. In her skeleton argument, the Claimant has also objected to certain documents being in the hearing bundle on the grounds that they are "strictly governed by legal privilege". However, those documents were sent by the Claimant, by email, to the Employment Tribunal, the Second Defendant and the editor of the Evening Standard on 31 January 2017. The Claimant has not put forward any basis for contending that she did not thereby waive privilege.

E. McKenzie friend

59. The Claimant was accompanied at the hearing by Mr Ogilvy (as well as two other supporters). In an email sent prior to the hearing she had identified Mr Ogilvy as her "litigation friend". At the start of the hearing, I explained to the Claimant that a litigation friend is a person who acts for a child or a protected party whereas a McKenzie friend is a lay person who provides assistance to an unrepresented party. The Claimant made clear that she wished Mr Ogilvy to act as her McKenzie friend.

60. I agreed to permit Mr Ogilvy to act as the Claimant's McKenzie friend and I explained that his role, as a McKenzie friend, would be to provide the Claimant with moral support, which might include taking notes, helping the Claimant with her case papers and quietly giving the Claimant advice on any aspect of the conduct of the case.

61. I also explained that it would be the Claimant's role, not Mr Ogilvy's, to make oral submissions. Although the Claimant had begun the hearing making oral submissions on her own behalf, she expressed surprise that he would not be permitted to make oral submissions and I reiterated the limits of his role as a McKenzie friend.

62. I also drew attention to the permission that I had granted in the protocol for the hearing - in light of the difficulties in communicating caused by the need for those in court (who were not members of the same household) to sit two metres apart, in accordance with government guidance to prevent transmission of COVID-19 – to use mobile telephones in court as long as they were kept on silent.

63. After I had given my ruling that I would not hear the Claimant's application for an injunction, and after I had given the Claimant a short break to speak to Mr Ogilvy, the Claimant applied for Mr Ogilvy to be given permission to make oral submissions on her behalf. She explained that it was her intention to make oral submissions on the facts but that she was relying heavily on Mr Ogilvy to assist her on the law. She submitted that I should exercise my discretion to grant him the right to make oral submissions on her behalf.

64. Guidance on this issue was provided by Lord Neuberger MR and Sir Nicholas Wall P in *Practice Note (McKenzie Friends: Civil and Family Courts)* [2010] 1 WLR 1881:

> "**The right to reasonable assistance**

2. Litigants have the right to have reasonable assistance from a lay person, sometimes called a McKenzie friend ("MF"). Litigants assisted by MFs remain litigants in person. …

What McKenzie friends may do

3. MFs may: (i) provide moral support for litigants; (ii) take notes; (iii) help with case papers; (iii) quietly give advice on any aspect of the conduct of the case.

What McKenzie friends may not do

4. MFs may not: (i) act as the litigant's agent in relation to the proceedings; (ii) manage litigants' cases outside court, for example by signing court documents; or (iii) address the court, make oral submissions or examine witnesses.

…

Rights of audience and rights to conduct litigation

18. MFs do not have a right of audience or a right to conduct litigation. It is a criminal offence to exercise rights of audience or to conduct litigation unless properly qualified and authorised to do so by an appropriate regulatory body or, in the case of an otherwise unqualified or unauthorised individual (i e, a lay individual including a MF), the court grants such rights on a case-by-case basis: Legal Services Act 2007, sections 12–19 and Schedule 3 .

19. Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.

20. Any application for a right of audience or a right to conduct litigation to be granted to any lay person should therefore be considered very carefully. The court should only be prepared to grant such rights where there is good reason to do so taking into account all the circumstances of the case, which are likely to vary greatly. Such grants should not be extended to lay persons automatically or without due consideration. They should not be granted for mere convenience.

21. Examples of the type of special circumstances which have been held to justify the grant of a right of audience to a lay

> person, including a MF, are: (i) that person is a close relative of the litigant; (ii) health problems preclude the litigant from addressing the court, or conducting litigation, and the litigant cannot afford to pay for a qualified legal representative; (iii) the litigant is relatively inarticulate and prompting by that person may unnecessarily prolong the proceedings.
>
> 22. It is for the litigant to persuade the court that the circumstances of the case are such that it is in the interests of justice for the court to grant a lay person a right of audience or a right to conduct litigation.
>
> 23. The grant of a right of audience or a right to conduct litigation to lay persons who hold themselves out as professional advocates or professional MFs or who seek to exercise such rights on a regular basis, whether for reward or not, will however only be granted in exceptional circumstances. To do otherwise would tend to subvert the will of Parliament.
>
> 24. If a litigant wants a lay person to be granted a right of audience, an application must be made at the start of the hearing. …" (emphasis added)

65. The Queen's Bench Guide states at paragraph 2.6.1:

> "A party may act in person or be represented by a lawyer. A party who is acting in person may be assisted at any hearing by an unqualified person (often referred to as a McKenzie friend) subject to the discretion of the court. The McKenzie friend is allowed to help by taking notes, quietly prompting the litigant and offering advice and suggestions. The litigant however must conduct their own case; the McKenzie friend may not represent them and may only in very exceptional circumstances be allowed to address the court on behalf of the litigant." (emphasis added)

66. I refused the Claimant's application to permit Mr Ogilvy to make oral submissions on the law on her behalf for the following reasons:

i) It is clear that while the Court has the power to grant a McKenzie friend the right to address the court on behalf of an unrepresented party, the Court should be "slow" to allow a McKenzie friend to make oral submissions, only granting such a right in what have been described as "special circumstances" or "very exceptional circumstances".

ii) I was not satisfied that there were any special or exceptional circumstances for granting Mr Ogilvy a right of audience in this case.

iii) The Claimant is a well-educated, intelligent woman who was clearly well able to speak on her own behalf.

iv) It is readily apparent from the history of litigation between the parties that the Claimant has extensive experience of litigation, including experience representing herself (albeit she has also been represented on many occasions).

v) The Practice Note explains that one of the reasons courts should be slow to grant a McKenzie friend a right of audience is because a person exercising rights of audience must ordinarily be properly trained. This factor is particularly pertinent having regard to the Grewal Judgment in which the Employment Tribunal referred at [27] to Mr Ogilvy's cross-examination of one of the respondent's witnesses and said: "*It was clear that he was not well prepared and that the Claimant was not pleased with his performance.*" After it was disclosed that he had been convicted on counts of falsely representing he was a barrister, Mr Ogilvy said he could no longer act for the Claimant. Rejecting an application to adjourn, the Employment Tribunal said at [29]: "*The Claimant had started the case representing herself and had done so more ably than Mr Ogilvy. She could continue to represent herself.*"

vi) The only reason the Claimant gave for asking permission for Mr Ogilvy to make oral submissions on her behalf was, in effect, that she was underprepared because she had assumed that he would be able to make submissions on her behalf. Given that McKenzie friends are only permitted to make oral submissions in special or very exceptional circumstances, there was no basis on which the Claimant (or Mr Ogilvy) could properly have assumed that the Court would grant him a right of audience. And the Claimant had ample notice of the Defendants' application.

vii) I had agreed that Mr Ogilvy could assist the Claimant. I anticipated, as I explained to the Claimant, that the Defendants' Counsel would make most of his submissions before lunch, so the Claimant would have an opportunity over the lunch adjournment to discuss her response with Mr Ogilvy. I was also prepared to give the Claimant a further break after the Defendants' Counsel finished his submissions, if his submissions continued after lunch.

viii) I also explained that if the Claimant felt that there were matters she was not able to address properly at the hearing, because she had not anticipated making oral submissions on the law, I would be prepared to receive further written submissions provided within seven days of the hearing.

67. Accordingly, I refused the Claimant's application to permit Mr Ogilvy to make oral submissions on her behalf.

68. By way of postscript to this decision, in light of the matters to which I refer below, I note that an example of "special circumstances" which may justify granting a McKenzie friend the right to make oral submissions are where the litigant has health problems which preclude her from addressing the court, and the litigant cannot afford to pay for a qualified legal representative. That was not a ground raised at the hearing on 1 July. If it is submitted that circumstances have changed since I made the decision referred to above, I am prepared to reconsider. However, any such submission will need to be supported by evidence.

F. The adjournment

69. When I refused the Claimant's application to grant Mr Ogilvy permission to make oral submissions on her behalf, the Claimant initially became agitated. She asked me to provide my reasons in writing, stating that she wished to appeal. I made clear that I would provide a written judgment and that she could seek to appeal if she wished.

70. Until this point in the hearing, the Claimant had behaved courteously and respectfully. However, her behaviour changed very suddenly and dramatically. She became extremely angry, shouting very loudly at me, as well as over me when I tried to speak. The Claimant also picked up files and threw them forcefully down onto the bench.

71. Two of the people accompanying the Claimant (who I understand to have been her mother and sister) went forward from the rows where they had been sitting, apparently to seek to calm the Claimant down. The Claimant then appeared to sit down under the bench so that she was no longer visible to me. At this point the Claimant's mother began shouting and became very disruptive.

72. I said that I would rise for five minutes to give the Claimant and those accompanying her time to calm down, and that when I returned I would hear the Defendants' Counsel's submissions on the Defendants' application, before giving the Claimant an opportunity to make submissions in response.

73. After I left court I was informed that the Claimant was lying down, and that Mr Ogilvy had called an ambulance for her. Shortly before 12.30, as I understood that the Claimant was still at court, but with ambulance personnel, I informed the parties that the hearing would adjourn until 1.30 (i.e. taking an early lunch break).

74. The Claimant did not return to court at 1.30. Nor did Mr Ogilvy or any of those who had accompanied the Claimant to court. Nor was any message conveyed to the court as to what had occurred or why the Claimant had not returned to Court. I initially adjourned the hearing for a short period to see if it was possible to ascertain what had happened. At about 2.15 I returned to court, where only the Defendants were represented.

75. It was unclear whether the reason for the Claimant's absence was due to ill-health or because, having been angered by the decisions I had made, she chose not to return to court. However, as it was clear that an ambulance had been called for the Claimant (albeit I had no information as to why), I decided that it would be in the interests of justice to adjourn the hearing of the Defendants' application to Friday 3 July 2020. In the circumstances, the Defendants did not object to the hearing being postponed by two days.

76. The Court informed the Claimant and Mr Ogilvy on the afternoon of 1 July that the hearing had been adjourned to 3 July 2020 at 10.30am.