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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
MEDIA AND COMMUNICATIONS LIST
[2018] EWHC 3599 (QB)



No. TLJ18/0987

Rolls Building
Fetter Lane
London EC4A 1NL

Wednesday, 5 December 2018

Before:

MR JUSTICE POPPLEWELL

B E T W E E N :

HELEN ROCHESTER

Claimant

- and -

INGHAM HOUSE LIMITED

Defendant

THE CLAIMANT appeared in Person.

MS B. GROSSMAN appeared on behalf of the Defendant.

J U D G M E N T

MR JUSTICE POPPLEWELL:

- 1 There are three applications which I will need to deal with first, which were ordered to be listed before a judge of the Media and Communications List by an order of Deputy Master Leslie dated 13 August 2018. They are, in chronological order: (1) An application by the claimant, Mrs Rochester, brought by her application notice issued on 14 June 2018, for relief pursuant to s.8 of the Defamation Act 1996. By that application she seeks summary disposal of the case in her favour, on the grounds that the defendant has no realistic prospect of defending the case on the facts. (2) An application by Mrs Rochester brought by her application notice issued on 24 August 2018. That is an application to strike out the defence and/or for summary judgment, on the grounds that the defence has no prospect of success and that the defence of qualified privilege is bound to fail. (3) An application by the defendant brought by an application notice issued on 11 September of this year seeking summary judgment in its favour or for an order striking out all or parts of the claim.
- 2 The factual background to the claim, briefly, is this. Mrs Rochester is a qualified nurse who has worked in care settings since 1983. She let her registration as a nurse lapse, she says, in 2013 but has continued to work as a carer. The defendant company runs a residential care home in Eastbourne which at the material time had 37 residents who were all vulnerable adults with a variety of care needs. Its registered manager is Ms Sterling. It is regulated by the Care Quality Commission ("CQC") and is subject to the provisions of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 3 Mrs Rochester applied for a role with the defendant, as part-time team leader on night shifts, by an application form, which appears to be dated 1 April 2017. By a letter, which appears to be dated 31 March 2017, she was offered a post as "team leader (nights)" subject to satisfactory references and a satisfactory response from the Disclosure and Barring Service ("DBS"). The DBS was established under the Protection and Freedoms Act 2012 and provides information to help employers in England and Wales make informed and safe recruitment decisions in relation to those working with children or vulnerable adults. From 1 December 2012 it took over the functions which had previously been undertaken by the Criminal Records Bureau and the Independent Safeguarding Authority.
- 4 Mrs Rochester commenced work on the evening of Wednesday, 12 April 2017 and worked for four successive nights. On the morning of 16 April 2017, which was Easter Sunday, Mrs Rochester spoke to the deputy manager, Ms Kemp, and raised a number of concerns about the way in which the care home was being operated. These included, she says, concerns about understaffing, a cord bell system not being fit for purpose, unsafe care, documentation being falsified, health and safety equipment not being sufficient for the care of residents or the protection of staff, and poor staff training. She says that she told Ms Kemp that she was resigning as a result of her concerns with immediate effect.
- 5 The defendant's case is that Ms Kemp raised with Mrs Rochester at that meeting a number of concerns which she and Ms Sterling had about Mrs Rochester's conduct during her short time at the care home and, in particular, over clinical decisions in relation to three patients. In two cases the concern was that Mrs Rochester had herself decided to change the programme for turning patients at night, or waking them up, and had overridden the team

leader in doing so. The third issue related to the administration of medication to a patient (a dose of Lorazepam) which, on the defendant's case, Mrs Rochester was not authorised to prescribe and whose prescription the defendant says was not in accordance with the policies and procedures of the home. The defendant's case is that that was regarded as amounting to gross misconduct justifying summary dismissal.

- 6 Mrs Rochester's case is that she administered the Lorazepam on that occasion because the carer who was with her, who was supposedly competent to prescribe it, did not know what to do; it was appropriate medication to give to the patient which the training as a nurse enabled her to identify as appropriate; that it was done in the presence of the person authorised to give it; and that and that its prescription gave rise to no harm and no risk of harm to the patient.
- 7 As I have said, Mrs Rochester's case is that at the meeting with Ms Kemp on 16 April 2017, in the morning, she made clear that she was resigning and then left. The defendant's case is that there was some confusion about whether she intended to resign, although she had said she was not intending to come in that evening. Later that afternoon, Ms Sterling prepared a letter to be sent to Mrs Rochester dismissing her for gross misconduct. That was sent by post to Mrs Rochester but was not received until 19 April 2017. In the meantime, Mrs Rochester had confirmed her resignation in an email to the defendant on 17 April 2017.
- 8 What followed was that over the course of the following months, the defendant published statements about Mrs Rochester on seven occasions, which are the subject matter of these proceedings for defamation. The first occasion was by email to the CQC on 20 April 2017, and that is the subject matter of para.7 of the particulars of claim. The second occasion was on the telephone to Ms Steadman of the CQC on 21 April 2017; that is the subject matter of para.9 of the particulars of claim. The third occasion is by telephone to the relevant personnel in Adult Safeguarding at the local authority, the East Sussex County Council, on or shortly after 24 April 2017; that is the subject matter of para.11 of the particulars of claim. The fourth occasion was a formal written referral to the DBS, which is dated 26 April 2017 but which Mrs Rochester says was not sent or at least not received until 2 May 2017; that is the subject matter of para.15 of the particulars of claim. The fifth occasion is an email sent by Ms Sterling to the DBS on 11 May 2017; that is the subject matter of para.21 of the particulars of claim. The sixth occasion is a conversation with the DBS on 23 May 2017; that is the subject matter of para.25 of the particulars of claim. Finally, what is complained of is certain passages in the evidence which was prepared for, or submitted to, an employment tribunal, following claims brought by Mrs Rochester against the defendant for unfair dismissal and whistleblowing; that is the subject matter of para.27, 29 and the first paragraph numbered 30 of the particulars of claim. With the exception of the statements made to the employment tribunal, all the words complained of were written or spoken by Ms Sterling, the manager of the care home.
- 9 Mrs Rochester commenced these proceedings against the defendant on 12 February 2018 following a claim she had brought in libel against Ms Sterling as the defendant, which she had discontinued on 15 January of this year. So far as her employment tribunal proceedings are concerned, the history is this. On 16 May 2017 an application that she had made for interim relief was refused by Employment Judge Siddall. On that occasion, Judge Siddall made a finding that she had resigned and had not been dismissed. There were then proceedings which took place before Employment Judge Elliot on 18 September of 2017 in which her claim regarding detriment arising out of her dismissal was struck out because there had been a finding that there was no dismissal; but an application to strike out her claim for detriment arising from whistleblowing was refused and consequential directions were given for trial. That trial came before Judge Siddall on the 11th and 12 December of

2017, at which she heard evidence from, amongst others, Mrs Rochester and Ms Sterling. She found that the decision to make the referral to the DBS had been made out of concern for the residents and not directly caused by the protected disclosure. Mrs Rochester's appeal against that decision was made out of time, and an application for an extension of time was refused.

10 The legal principles which apply on these applications are not controversial. Section 8 of the Defamation Act provides:

"8. Single publication rule

(1) This section applies if a person -

(a) publishes a statement to the public ('the first publication'), and

(b) subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same.

(2) In subsection (1) 'publication to the public' includes publication to a section of the public.

(3) For the purposes of section 4A of the Limitation Act 1980 (time limit for actions for defamation etc) any cause of action against the person for defamation in respect of the subsequent publication is to be treated as having accrued on the date of the first publication.

(4) This section does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication.

(5) In determining whether the manner of a subsequent publication is materially different from the manner of the first publication, the matters to which the court may have regard include (amongst other matters) -

(a) the level of prominence that a statement is given;

(b) the extent of the subsequent publication.

(6) Where this section applies -

(a) it does not affect the court's discretion under section 32A of the Limitation Act 1980 (discretionary exclusion of time limit for actions for defamation etc) and

(b) the reference in subsection (1)(a) of that section to the operation of section 4A of that Act is a reference to the operation of section 4A together with this section."

11 Section 8 was introduced at a time when defamation claims fell outside the scope of the general powers to grant summary judgment under what was then Ord.14 of the Rules of the Supreme Court. Since the inclusion of defamation claims within the ambit of what is now Part 24 of the Civil Procedure Rules, its use - that is to say the use of s.8 of the Defamation Act - has become rare (see per Warby J in *Alsaiji v Amunwa* [2017] EWHC 1443 (QB) at [56]). The jurisdiction under s.8 is not coextensive with that under Part 24: for example

summary disposal under s.8 relates to the claim as a whole and does not permit summary determination on individual issues or parts of a claim; on the other hand, there are some remedies which are available under s.8 which are not available under the jurisdiction conferred by Part 24, for example a declaration of falsity and orders for an apology, which are amongst the remedies for which s.9 of the Act expressly provides.

- 12 So far as concerns Mrs Rochester's two applications, it is convenient to address the substance of them at the same time. The essential question in each case - or at least the threshold question in each case - is whether the defendant's defence has a real prospect of success or whether there is some other reason why the case should be disposed of at a trial. There is a potential procedural glitch resulting from r.53.2(3) of the Civil Procedure Rules which provides that a Part 24 summary judgment application may not be made if an application for summary disposal under s.8 has been made and not yet disposed of. However, the convenient course, which I have taken in this case, is to determine whether the threshold test I have identified, which is common to both applications, is made out for the whole or part of the claim. If it is made out for the whole claim, then the application can be dealt with under s.8. If it is not made out for the whole claim, but is made out for part of the claim, the s.8 application can be dismissed and the Part 24 application can be treated as being immediately made thereafter. If it is not made out for any part of the claim, then both applications will fall to be dismissed. For those reasons, I have found it convenient to hear arguments on both applications at the same time.
- 13 The relevant principles on applications for summary judgment, whether by a claimant or a defendant, are well established. They have been summarised in a number of cases, most recently by Hamblen LJ in *Global Asset Capital Inc v Aabar Block SARL* [2017] 4 WLR 163, approving the well known passage of the judgment of Lewison J (as he then was) in *Easyair Limited v Opal Telecom Limited* [2009] EWHC 339 Ch at [15], and that of Simon J (as he then was) in *Arcadia Group Brands Limited v Visa Inc* [2014] EWHC 3561 (Comm) at [90]. For present purposes, it is sufficient to identify five points which are of potential relevance to the current applications.
- 14 First, the court must consider whether the opposing party has a realistic, as opposed to a fanciful, prospect of success. A realistic prospect of success is one that carries some degree of conviction and not one that is merely arguable.
- 15 Secondly, the court must avoid conducting a mini trial without the benefit of disclosure and oral evidence and should avoid being drawn into an attempt to record conflicts of fact which are normally resolved by a trial process.
- 16 Third, that does not mean that the court must take at face value, and without analysis, everything that a party says in his or her statement before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents, but the court can only dispose of factual issues in this way if there is no real prospect of the evidence on one side on that issue being accepted, and such a disposal must be justified by particularised reasoning as to why the witness is to be disbelieved (see per Flaux LJ in *Optaglio Ltd v Tethal* [2015] EWCA Civ 1002 at [31-32]).
- 17 Fourth, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment but the evidence that can reasonably be expected to be available at trial.
- 18 Fifth, some disputes on the law, or the construction of a document, are suitable for summary determination. If the application gives rise to a short point of law or construction, then if the

court is satisfied that it has before it all the evidence necessary for the proper determination of the question, and that the parties have had an adequate opportunity to address it in argument, it should "grasp the nettle and decide it". On the other hand, it may not be appropriate to decide difficult questions of law on an interlocutory application where the facts may determine how those legal issues will present themselves for determination and/or the legal issues are in an area that requires detailed argument and mature consideration.

19 As to strikeout, r.3.4 provides:

"(1) In this rule and rule 3.5, reference to a statement of case includes reference to part of a statement of case.

(2) The court may strike out a statement of case if it appears to the court -

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order."

20 On the facts of this case, the jurisdiction under 3.4(2)(a) to strike out a statement of case, or part of a statement of case, on the grounds that it discloses no reasonable grounds for bringing or defending the claim, adds nothing to the application or the test under Part 24. In so far as there is a factual challenge to the sufficiency of a plea, the same question arises, which is whether it has a real prospect of success on the evidence.

21 I find it convenient to deal first with the defendant's application. A number of points were taken. The first point taken by Ms Grossman on behalf of the defendant was an argument that the particulars of claim are defective because they fail to comply with CPR 53 PD 2.3, which requires the defamatory meaning of the words which are complained of to be specified. In this connection, it is important to keep in mind that Mrs Rochester is a litigant in person and the overriding objective requires that she be put, so far as possible, on an equal footing. That does not of itself excuse her from complying with the Civil Procedure Rules but it can fairly be said that someone in her position cannot be expected to produce a statement of case with the meticulous precision of an experienced defamation lawyer, in an area of the law which is replete with technicalities.

22 The published words of which complaint is made are clearly identified in the pleadings in bold. A few are not so much complaints about what the defendant was saying but complaints about other aspects of what is alleged to be misconduct on the part of the defendant. Those are not irrelevant, because they are relevant to the question of malice rather than to defamatory conduct in themselves. But with those few exceptions it is, in my view, tolerably clear from the pleading exactly what is complained of in relation to the words used and the occasions on which they were either written or spoken.

23 Nor, to my mind, is this one of those cases where, so far as meaning is concerned, the pleading is so vague or diffuse as in reality to put a defendant in difficulty in understanding what it is that is being complained of or what natural and ordinary meaning of the words is being relied upon. It is true that those meanings are not separately set out in terms in the statement of case. In the course of argument, I articulated what I understood to be the natural and ordinary meaning of the words which were being alleged and Mrs Rochester

confirmed that those indeed were the meanings which she wished to allege. In reality, they appear tolerably clear from the pleading. I will set them out in this judgment so that they are clear for the purposes of the future conduct of this litigation.

- 24 The defamatory words complained of fall into one or more of six categories of meaning. The first are statements that the claimant, Mrs Rochester, had been dismissed rather than resigned. The ordinary and natural meaning here being alleged is that she had committed gross misconduct such as to justify summary dismissal, which would comprise either dishonesty or serious incompetence or other serious breach of the terms of her employment contract. That same meaning is the meaning which is being attributed to statements that she resigned in the process of dismissal and to express statements that she was dismissed for gross misconduct. That is the meaning being alleged in the words which are identified at para.7 (the first and fourth bullet points), para.9 (the third and fourth bullet points), para.11 (the first bullet point) and para.15 (the second bullet point).
- 25 The second category are statements whose natural or ordinary meaning being alleged is that Mrs Rochester's avowed whistleblower concerns were not honestly and genuinely held but were only raised as a response to her having been dismissed. This applies to the words which are complained of at para.11 (the fifth bullet point), para.16 (seventh bullet point) and the bullet point at para.21.
- 26 The third category are statements whose meaning is alleged to be that Mrs Rochester's conduct towards residents at the home caused or risked harm to vulnerable adults and/or were such as to cause justifiable concern as to whether she should be permitted to work with vulnerable adults or children. Those meanings are what is being alleged in relation to the words which are identified at para.7 (second, third and last bullet points), para.9 (first and third bullet points), para.11 (first bullet point), para.13 (all four bullet points), para.15 (fifth bullet point), para.16 (second, third and fourth bullet points and sixth bullet point), para.17 (second bullet point) and para.30 (all three bullet points).
- 27 The fourth category are statements whose meaning is alleged to be that Mrs Rochester had lied about events at the care home and the circumstances of her dismissal. A number of those already identified are alleged to bear this meaning and so are the statements which are identified and complained of at para.7 (fifth and sixth bullet points), para.9 (second bullet point), para.11 (second, third and fourth bullet points) and para.15 (first bullet point). Those meanings are alleged to arise either as ordinary and natural meanings, and/or by way of innuendo to those who, as recipients of those statements, had particular knowledge of what Mrs Rochester herself had said about the events in issue.
- 28 The fifth category are statements whose meaning is alleged to be that Mrs Rochester had lied about her previous employment or concealed discreditable facts about her professional career or told other lies. That applies to the statements which are complained of at para.12 (all three bullet points), para.15 (third and fourth bullet points), para.16 (first bullet point) and para.25.
- 29 The sixth category is a statement whose meaning is alleged to be that Mrs Rochester engaged in criminal conduct; that is the subject matter of the statement referred to at para.27 of the particulars of claim.
- 30 I should make clear that I am not to be thought to be making any preliminary determination as to what the meaning of the words complained of is; that will be a question for another day if these applications fail. What I am holding is that the particulars of claim itself, supplemented as it has been by evidence from Mrs Rochester in her various skeletons and

witness statements, is sufficient to make clear that the meanings which she wishes to allege are those which I have identified and that having been identified in that way, the particulars of claim cannot be said to be so defective as to cause the defendant any embarrassment or difficulty in addressing those alleged meanings.

- 31 The second point taken by Ms Grossman on behalf of the defendant is that the statements were made on occasions attracting qualified privilege and there is no sufficiently particularised plea of malice, which is required to be set out under the rules in a reply; and that there is no sufficient evidential basis for an allegation of malice. I am unable to accept either of those submissions. There is a clear plea in the particulars of claim that Ms Sterling was motivated by malice. There is a clear plea that she knew the statements to be untrue and that her motive was retaliation for Mrs Rochester's complaints and Mrs Rochester's whistleblowing. That gives rise to issues of fact which cannot be resolved on the evidence before me on a summary application as to whether Ms Sterling honestly believed in the truth of what she was saying.
- 32 There are a number of matters in support of Mrs Rochester's case on malice which renders it something which cannot be rejected on a summary basis. It was established, Mrs Rochester says, in the employment tribunal that she had resigned and had not been dismissed, Judge Siddall expressed surprise if Ms Kemp had not communicated to Ms Sterling that which had occurred at the morning meeting on 16 April 2017. Mrs Rochester says in her witness statement that someone in Ms Sterling's position would not have regarded giving what was in the event appropriate medication to a resident in the presence of someone authorised to do so by a nurse of over 30 years' experience as something which would qualify as gross misconduct justifying summary dismissal. I express no opinion on whether that is right, but that is certainly not an allegation which can properly be discounted on a summary basis. She relies also on the fact that the reference to the DBS was not made promptly and upon the finding of Judge Siddall that Ms Sterling would not have made a DBS reference at all but for the suggestion made by Ms Steadman at the CQC that she might wish to do so.
- 33 In addition, there are set out by Mrs Rochester a significant number of allegations of surrounding dishonest behaviour in relation to the investigation of the disputed events. They are set out in the document which is at p.150 of the bundle. I do not propose to go through them individually but they are all matters the accuracy of which simply cannot be adjudicated upon on a summary application.
- 34 Accordingly, my conclusion on this argument is that the matters which are being relied on as particulars of malice are those which I have identified, and the evidential basis for them is something which will have to be investigated at trial and cannot be dismissed on a summary judgment application. I will return to the question of malice in the context of the claimant's application, on which she argues that she is bound to succeed on her plea of malice so as to defeat the defence of qualified privilege.
- 35 The next point taken in support of the defendant's application relates to the pleas of slander. Two points are taken. The first is that the rules provide that in a claim for slander, the words complained of, including the precise words, must be provided so far as possible, and that it is not permissible to plead the effect or gist of the words in the hope of fishing for disclosure. It is said that the claims in slander pleaded at paras.9 to 10 and 11 to 12 of the particulars of claim fall foul of those requirements because they do not plead the words complained of as having been spoken in the calls. In my view, that is not a legitimate criticism. Both at para.9 and at para.11 of the particulars of claim there is a clear and precise plea of what it is alleged was said in the course of the telephone calls. It is evidenced by subsequent documents, and Mrs Rochester cannot reasonably be said to have

failed to provide details of the precise words so far as possible in relation to a conversation during which she was not present.

- 36 The second point that is taken in relation to the allegations of slander is that special damage is an essential averment in relation to claims of slander; and that, it is said, Mrs Rochester has not either alleged, or provided sufficient evidence of, any special damage. Again, that is not an argument which I feel able to accede to. So far as the pleading is concerned, para.31 avers, in terms, that making false allegations and maintaining them in respect of someone who works with vulnerable adults, to the DBS and the other recipients, gives rise to a risk that they will not be able to work with vulnerable adults again, with the financial implications which that involves. It is averred that Mrs Rochester has in fact been unable to obtain work since these events took place, and that was at the time of the particulars of claim, although she says she has subsequently found employment. The particulars of claim go on to aver not only the suffering of emotional stress and psychological harm but to identify in para.36 that a loss of earnings of at least £10,000 has been suffered as a result, it is alleged, of the defamatory conduct of the defendant. That is an adequate pleading of special damage for the purposes of a claim in slander and it is supported by her evidence.
- 37 Mrs Rochester will in due course have to provide some further details of her loss and some further particularisation. She has said today that she approached some six employers on the phone, and she will have to give particulars in due course of who they were, and when, so that those matters can be investigated. As a matter of pleading, and as a matter of sufficiency of evidence on a summary disposal application, there is, in my view, sufficient in the statement of case and supporting evidence for the slander claim to go forward to trial.
- 38 Next on behalf of the defendant it is said that there is no properly pleaded or supported case in malicious falsehood. Ms Grossman identifies, correctly, that in order to establish a claim in malicious falsehood, it is necessary to establish, first, that the statement complained of was published of the claimant, secondly, that the statement was untrue, thirdly, that the statement was published maliciously, and fourthly, that the statement either has caused the claimant pecuniary damage or was calculated to do so. All those matters are alleged in the particulars of claim and for the reasons which I have already covered in this judgment, there is, in my view, sufficient evidence to support those to enable that aspect of the claim to go forward to trial.
- 39 The next point which is taken is that statements which were made at the employment tribunal, or for the purposes of the employment tribunal proceedings, attract absolute privilege. That is right, and that is now accepted by Mrs Rochester. That means that the allegations of defamatory statements which fall within that category will be struck out. That applies to the statements which are pleaded in para.27 of the particulars of claim and those which are identified in the first paragraph numbered 30 in the particulars of claim. To that extent, the defendant's application for a strikeout succeeds.
- 40 Lastly, on the defendant's application, there are some further, what are described as miscellaneous, aspects of the particulars of claim which it is argued should be struck out or on which summary judgment should be given. The first relates to para.34 of the particulars of claim, in which, under remedies being sought, the pleading identifies that Mrs Rochester seeks an apology from the defendant and a declaration that the allegations referred to are false and defamatory, together with directions as to how such an apology and declaration are to be published and disseminated. The position is that in libel proceedings it is not possible at trial to grant a declaration of falsehood of the allegations (see **Gatley on Libel and Slander** 12th edn, section 9.1 and following. Accordingly, the paragraph seeking a declaration that the allegations are false and defamatory will be struck out. The same

applies to the pleading requiring the defendant to produce an apology, which again is not a form of final relief which is available at trial.

- 41 Next, complaint is made about Mrs Rochester's claim for aggravated damages. In my view, this is not a fair complaint. Paragraphs 24 to 26 identify some matters which might be said to aggravate damages, but the pleading as a whole, including, as it does, a claim that the defamatory course of conduct was maliciously motivated and calculated to cause harm, is a sufficient basis for the court to consider awarding aggravated damages. This is pleaded in summary form in para.37 of the particulars of claim.
- 42 Last, there are two unnumbered paragraphs at the end of the particulars of claim. The first complains that the defendant has had the opportunity to rectify matters and has shown no insight or remorse or made any attempt to rectify matters. That is not a plea which is of any relevance, and that will be struck out. Secondly, it is pleaded that the two firms of solicitors appointed by the defendant have indulged in intimidation and confusion of a litigant in person (presumably on the defendant's instructions) in an attempt to delay the progress of the claim. That too is embarrassing pleading in the most general terms and not, in the form in which it currently stands, sufficient or relevant. That will therefore be struck out.
- 43 To that extent, but to that extent alone, the defendant's application will be granted. That leaves the bulk and the substance of the claim to go forward.
- 44 I turn to Mrs Rochester's application. It follows from what I have said about absolute privilege in relation to the allegations, in the context of the employment tribunal proceedings, that her application under s.8 of the Defamation Act must fail because she cannot succeed on the whole of her claim. Her application, therefore, falls to be considered in relation to the other parts of the claim under Part 24 of the Civil Procedure Rules.
- 45 In this respect, it seems to me there are a number of arguable defences which have a real prospect of success such that it is not possible to dispose of the claim on a summary basis. The first is that the occasions on which the words were spoken attracted qualified privilege and it is, at the lowest, arguable that she will not succeed in making out her case of malice. The allegations of malice involve serious allegations of dishonesty. They will depend upon the evidence which the court will have to hear from Ms Sterling and potentially others. It is of note in this context that Judge Siddall heard evidence over two days, including the evidence of Ms Sterling, and that judge found that Ms Sterling's decision to dismiss Mrs Rochester was because of genuine concerns about the latter's professional conduct on the nights of the 14th and 15 April 2007. That is not a finding which is binding on the High Court in these proceedings but it reinforces the view which I have reached, from the nature of the allegations themselves and the evidence in response, that the prospect of establishing a lack of malice is not a fanciful one.
- 46 The same considerations apply to s.57(2) of the Safeguarding Vulnerable Groups Act 2006, which is relied upon in relation to the information which was provided to the DBS which was said to be pursuant to the defendant's obligations under s.35 of that Act.
- 47 There are also, it seems to me, defences whose prospect of success is more than fanciful. One is that the defendant seeks to attribute different meanings to those which are alleged and to establish the truth of those meanings. Another is that the meaning which the court finds, the meanings which the words bear do not satisfy s.1(1) of the Defamation Act 2013, ie are not such as are likely to cause serious harm in the light of the meanings which the defendant seeks to put upon them and the limited scope of the disclosure in question. In relation to the claims of malicious falsehood, there are arguable defences, both in relation to

falsehood and malice; and in relation to the claim in slander, there are additionally arguable defences as to whether any special damage has been suffered.

- 48 For those reasons, the claims which Mrs Rochester brings will have to be investigated with the benefit of evidence at a trial.
- 49 It follows that save in the limited respects I have already identified, both the claimant's applications and the defendant's application for summary disposal, or summary judgment, or strikeout will be dismissed.
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CERTIFICATE

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This transcript has been approved by the Judge