THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE MORTON**

(sitting alone)

BETWEEN:

Miss F Matin **Claimant**

AND

(1) Disability Law Service

(2) Sean Daytona Rivers **Respondents**

ON: **19 April 2017**

Appearances:

For the Claimant: **No appearance**

For the Respondent: **Ms S Cowen, Counsel**

JUDGMENT

The Claimant's claim is struck out in light of the manner in which she has conducted the case to date. A fair trial is not possible in the circumstances of the case.

REASONS

Introduction

1. The purpose of the preliminary hearing was:

    a. to consider whether in light of the manner in which the Claimant has conducted the litigation to date the Tribunal ought to exercise its discretion to strike out her claims;

    b. to consider whether any or all of the Claimant's claims are out of time and whether the Tribunal has jurisdiction to hear them;

    c. to consider an outstanding application by the Claimant to add two further individuals as Respondents to the claim. This application was the subject of case management orders by Judge Balogun on 1 December 2016 (paragraphs 4 – 6 of the order);

    d. to consider whether the Claimant has complied with the unless order set out at paragraphs 7 – 9 of the case management orders of 1 December 2016 and if she has not, what should be the consequence.

2. I note that at the time of the hearing the case was for the most part proceeding in accordance with the case management orders made to date. The disclosure exercise has been complied with although the Claimant still maintains that the Respondent has not complied and there is voluminous correspondence documenting that assertion. At the time of the hearing the deadline for the preparation of the bundles had not passed. This was a task that had been allocated to the Claimant at her own request.

3. I heard no evidence at the hearing but was asked to review two bundles of documents although the contents of the smaller bundle, prepared by the Claimant, was in fact a subset of the contents of the larger bundle that had been prepared by the Respondent. References to page numbers in this judgment are to page numbers in that bundle. Unfortunately the Respondent's bundle was neither complete nor in chronological order, which made an already difficult more difficult than it should have been. That has led to delay in producing this judgment as it was necessary for me to consult the case file and there was a delay before I could do so.

The law

4. The rules on striking out claims and responses are set out in Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013. Rule 37 states as follows.

> **Striking out**
>
> **37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—**

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

There are various authorities on the interpretation of a Tribunal's exercise of the discretion to strike out. I have had regard to the decisions in **Bolch v Chipman [2004] IRLR 140** and **Blockbuster Entertainment Limited v James [2006] IRLR 630**. The decision in **James** sets out the approach that a Tribunal must take in deciding whether or not to strike out a claim and in particular a claim that raises important issues of potential discrimination by an employer. I have also considered the principles set out in **Bolch** and whether the Claimant's behaviour in the case to date amounts to wilful, deliberate or contumelious disobedience of the Tribunal such that the circumstances are exceptional and there is no need for me to consider whether a fair trial is possible.

5. The law on time limits in a discrimination case is set out in S123 Equality Act 2010:

123 Time limits

(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

The facts

6. The Respondent is a registered charity that provides free legal advice and representation for disabled people. The Claimant was employed by the Respondent between 20 July 2015 and 16 March 2016 as a paralegal/triage adviser. Her employment therefore lasted a little under eight months. The Second Respondent is an employee of the Respondent who had management responsibility for the Claimant and is described by her as his supervisor.

7. The Claimant presented a claim form to the Tribunal on 4 July 2016. Her claims, which she set out at length over 30 pages, were of direct and indirect discrimination, harassment and victimisation under the Equality Act 2010 ("Equality Act"). She also made reference to the ACAS Code, the Data

Protection Act 1998 and the Human Rights Act. She complains in particular of harassment and sexual harassment by the Second Respondent.

8. The case is listed for a 10 day hearing commencing on 2 October 2017.

9. There have been four previous preliminary hearings for case management in these proceedings:

    a. The first was held before Employment Judge Baron on 12 September 2016. The Claimant did not attend. Judge Baron made orders for the Claimant to particularise her claims and said that further case management orders, such as orders for disclosure, should follow once she had done so. The Claimant responded on 6 October 2016 with a 33 page application (page 52) to vary or set aside those orders, and for full particulars of the Respondent's response, full disclosure and a request for the Respondent's response to be struck out or subject to a deposit order. It was clear from this application that the Claimant was contesting the Tribunal's approach to the management of the case, maintaining for example, that a list of issues could not be settled without full disclosure of documents (paragraphs 58 and 59). (In doing so she contradicted herself as at paragraph 3 of her application she referred to her own list of issues and maintained that that should stand as the agreed list in the case.) She then went on to make very wide ranging requests for documents over 10 pages and 47 paragraphs.

    b. The second hearing was held on 27 October 2016 before Judge Spencer to deal with an application by the Respondent to strike out the Claimant's claims. The Claimant did not attend. On 20 October she made written submissions (page 49) maintaining that she was afraid to attend the hearing in case of further harassment and seeking disclosure of documents. In effect she repeated the applications she had made on 6 October. She then made further written submissions (page 85) in response to the Respondent's application made on 21 October 2016 to strike out her claim. These submissions contain very serious allegations against Mr Rivers and the Respondent. The Claimant reiterated that she was afraid to attend the Tribunal and sought a hearing by electronic communication and /or the use of written submissions, referring to rules 42 and 46 of the Tribunal Rules. Judge Spencer made a number of orders:

        i. An order for a further preliminary hearing on 1 December 2016 to consider strike out of the Claimant's claim and if not struck out clarify the factual allegations made;

        ii. An order that unless the Claimant attended that hearing in person her claim would stand dismissed on 1 December;

        iii. That the Claimant give further particulars of her complaints as she had still not complied with the original order of 12 September;

iv. That the Claimant send her correspondence only to the Respondent's solicitors and not Counsel, employees and others;

v. An order refusing the Claimant's application for further and better particulars of the response, further disclosure, a request for a strike out of the response or deposit order against the Respondent.

vi. An order refusing the Respondent's application to strike out the Claimant's claim which would be a disproportionate response to the Claimant's failures at that point.

c. The third hearing was before Employment Judge Balogun on 1 December 2016 and the Claimant did attend. Judge Balogun made case management orders, a deposit order in respect of the indirect discrimination claim, an unless order in respect of the victimisation claim and an order requiring the Claimant to identify which paragraphs of her table of allegations were allegations against the two individuals whom she wished to add as Respondents to the claim.

d. The fourth hearing, which the Claimant did not attend, took place on 11 January. That hearing was a preliminary hearing for the purpose of discussing whether the case would be allocated resources for judicial mediation. The Claimant had sought a postponement of the hearing on the basis that there needed to be full disclosure before the hearing. The application was refused.

10. Again the Claimant did not attend the hearing before me on 19 April. She applied to have the hearing postponed on 29 March and Judge Balogun refused the application. An application for that decision to be reconsidered was refused on 31 March. As in previous instances of non-appearance the Claimant sent written submissions for today's hearing in place of her attendance.

11. I make the following observations from considering the submissions of the parties for the hearing on 19 April and from reading the case file.

a. Judge Spencer made it very clear in her case management orders of 3 November 2016 that the manner in which the Claimant was conducting the litigation at that point was unacceptable and that the procedure in the Employment Tribunal requires the parties to attend hearings. Judge Spencer made it clear at paragraph 13 of her reasons that she was giving the Claimant an opportunity to change her approach to the litigation.

b. Following that order the Claimant did attend the hearing on 1 December and considerable progress was made in identifying the allegations and issues in the case. Since that date however matters have gone downhill again, with the Claimant failing to attend the last two hearings. The Claimant therefore appears not to have heeded the warning implicit in Judge Spencer's orders. The case file contains

voluminous correspondence from the Claimant which makes the Tribunal's task in determining whether case management orders have been complied with very difficult. The fact that the Claimant has now not attended four out of five hearings, as well as representing a clear disregard for the orders given by Judge Spencer calls into question whether the Claimant has any real intention of attending the final hearing and whether she does in fact want the Tribunal to determine her claims at a hearing at all.

c. The Respondent concedes that the Claimant paid the deposit ordered by Judge Balogun on 1 December and the claim of indirect sex discrimination would therefore continue on the terms of the deposit order, subject to the decision on the Respondent's strike out application.

d. On 8 December in response to paragraphs 4-6 of the case management order of 1 December the Claimant sent a 29 page document in support of her application to join two individuals (Eric Appleby and Priya Bahri) as individual Respondents to the claims. She thus complied with the time limit imposed.

e. On 15 December in response to paragraphs 7-9 of the case management order of 1 December she sent a 57 page document in relation to her victimisation claim in response to Judge Balogun's unless order. Again she complied with the time limit imposed.

f. Her Schedule of Loss, sent on 22 December 2016 in compliance with paragraph 12 of the case management order of 1 December 2017 was accompanied by a 27 page application in support of ar claim for aggravated damages. She again complied with the time limit imposed.

g. However in complying with the case management orders the Claimant approached the task in a way that was prolix, difficult to digest and time consuming for the parties and the Tribunal to deal with. This was plainly not consistent with the overriding objective, which was explained clearly to the Claimant by Judge Spencer at paragraph 12 of the case management order of 3 November 2016. The documents submitted by the Claimant also contained extensive details of her allegations in language that was at times highly explicit and inflammatory. Whilst some allowance must be made for the fact that the Claimant is unrepresented, her work as a paralegal for the Respondent must entail some knowledge of the law, the tribunal system and the manner in which litigation should be undertaken.

h. On 12 December 2016 the Respondent drew to the Claimant's attention he fact that she had referred extensively to privileged material in her document of 8 December. That material had inadvertently been disclosed to her pursuant to a subject access request. The Claimant's response to that was unreasonable. Instead of agreeing to remove the privileged material from her submissions and agreeing not to make further use of privileged material, she adopted an antagonistic tone

towards the Respondent's solicitor in correspondence and on 15 December made an inappropriate application to the Tribunal for use of the privileged material. I make the same observation in relation to this matter as I have in the previous paragraph about what could reasonably be expected of an unrepresented Claimant. I accept that a paralegal might not grasp the implications of material being privileged but the problem was clearly explained to the Claimant by Mr Robinson in correspondence and her response was wholly unreasonable.

i. On 4 January 2017 the Claimant made substantially the same application for the use of privileged materials alongside an application to postpone the preliminary hearing listed for the purpose of discussing the suitability of the case for judicial mediation (an application that was refused).

j. On 12 January the Claimant sent a list of issues in purported compliance with paragraph 10 of the case management order of 1 December. The Respondent disputes that the list was compliant - I refer to this further below in paragraph l (iv).

k. It appears that on 24 February the Claimant did comply with paragraph 13 of the 1 December order with regard to disclosure. The Respondent has not submitted otherwise.

l. On 27 February the Respondent made an application to strike out the Claimant's claims. The grounds for its application were set out in a letter and made the following points:

    i. That the Claimant's claims are scandalous and vexatious and her conduct of the proceedings is unreasonable.

    ii. The Claimant's claims are ostensibly out of time.

    iii. The Claimant had not complied with Judge Balogun's case management order as regards her complaint of victimisation; furthermore she had embellished, extended and added to her list of allegations in her document of 15 December 2016, making the Respondent's task in identifying the claims it had to meet very difficult.

    iv. The List of Issues produced by the Claimant in response to Judge Balogun's case management order raised fresh allegations rather than identifying the PCPs on which she was relying; this was a breach of the case management order.

    v. She had referred to obviously privileged material in her 15 December document and had unreasonably refused to desist from doing so.

    vi. The Claimant was making scandalous and indiscriminate allegations. The Respondent pointed to an allegation that Mr

Appleby had intimidated the Claimant at the hearing on 1 December as obviously unfounded and spurious. It submitted that in effect many of the Claimant's allegations were fanciful and/or exaggerated and should therefore be subject to deposit orders or strike out.

m. The Respondent had also in the letter of 27 February made an application for a restricted reporting order due to the explicitly sexual nature of many of the allegations made against Mr Rivers. However it did not persist with that application at the hearing and I have not therefore dealt with it further in this judgment.

n. It was this application for strike out that was to be dealt with by me at the hearing on 19 April. On 28 February the Claimant sent a letter objecting to the Respondents' application and inviting the Respondents to concede the claim.

o. The Claimant then applied for the preliminary hearing to be postponed on three grounds: that she would be involved in a preliminary hearing in another case on 20 April; that the Respondents had not complied with the disclosure order dated 1 December 2016 and that the Respondents had already made substantially the same strikeout applications. The Respondents objected to this application and the Tribunal refused to postpone the hearing.

p. The file also contains an email in highly intemperate language sent by the Claimant to the Respondent's solicitor Mr Robinson on 22 March. I have sympathy with the Respondent's concern that the Claimant was conducting herself scandalously by sending such correspondence. The language used and the indiscriminate and hyperbolic manner in which the Claimant's repeated her allegations was in my view inflammatory and wholly inconsistent with the overriding objective. The letter was part of a chain of correspondence which contained an earlier letter dated 13 March which made further applications for disclosure based on the Claimant's perception that the Respondent was deliberately withholding documents. The tone of this email is again extraordinary and inflammatory. It also contains defamatory comments about Ms Cowen. On 10 March the Claimant had alleged in an email that Mr Robinson had 'some sort of contact or agreement with the Tribunal this time and you may have fixed a judge for this purpose…your conduct clearly amounts to gross misconduct and is interfering in the administration of justice'. There is no evidence that the Claimant had any grounds for the assertions she was making in this correspondence.

q. I will also include a passage from an email the Claimant sent to the Respondent on the same day, 10 March (page 199) as illustrative of her general mode of expressing herself in the case;

> **"The documents made by Priya Bahri particularly documents that refer to me as FM Is very important because it shows I was subjected to a hostile sexually charged atmosphere where decisions on my employment were not based on merit but on my submission to coercive sexual advances,**

> **which I had the gumption to reject, I was subject to continuous reprisals including but not limited to adverse retaliatory employment decisions by the respondents, backlash, ostracism, stigmatisation, threats and I was treated less favourably than Miss Bahri , who is the boss's paramour, he paraded his personal relationship with his paramour and with many alleged women, Miss Bahri participates in sick and perverted sex games with him, abusing working time to go to hotels as they did on 18 February 2016, Miss Bahri in concert with Mr Rivers subjected me to a campaign of harassment, deliberately creating a humiliating, degrading and hostile work environment against me because of my sex, dehumanising me reducing me to two letters FM, and continues to fabricated discriminatory assumptions and allegations because of my sex to harass and victimise me in concert with Sean Rivers and Eric Appleby because she wields power above her station/position as Sean River's assistant and is permitted to abuse her power because of her personal relationship with the boss."**

r. This passage sets out a litany of accusations in language so hyperbolic that it is difficult to see clearly what conduct or language the Claimant is actually complaining about. It is entirely typical of the manner in which she expresses herself, at length, in her communications to both the Respondent and the Tribunal.

s. On 29 March 2017 the Claimant made an extensive application for specific disclosure. She made a further application for additional documents on 31 March. This was treated also as an application to reconsider the refusal of her postponement application regarding the hearing before me and that application was refused.

Submissions

12. On 12 April the Claimant sent written submissions in relation to the hearing on 19 April and made it clear that she would not be attending the hearing. She repeated her request for a disclosure order against the Respondent and asserted on no grounds that I can discern, that pressure had been put on Judge Balogun to refuse her application for a postponement of the hearing. The Claimant's written submissions make no reference to the Respondent's assertion that her claims are out of time. She alluded to, but did not explicitly object, to the application for a restricted reporting order.

13. Ms Cowen had prepared written submissions and supplemented these with oral submissions at the hearing. As regards the Respondent's strike out application, Ms Cowen submitted that the Claimant's failure to attend the hearing was an attempt on her part to frustrate the Respondent's application. It pointed to her letter of 12 April, which suggested that the Claimant had never intended to attend the hearing.

14. Ms Cowen correctly submitted that the key consideration in a strike out application is whether a fair trial is still possible. The Respondent considers that a fair trial is not possible because of the manner in which the Claimant has conducted herself so far:

a. It points to the defamatory nature of the comments she has made about employees of the Respondent and the Respondent's representatives.

b. It submits that the Claimant has no respect for the Tribunal process and has no interest in pursuing the matter in accordance with the overriding objective. Out of five hearings, the Claimant has attended only one, on 1 December 2016. This is leading to considerable additional cost to the Respondent. The Respondent submits that a fair trial of the case is being prejudiced by the Claimant's conduct of it.

c. The Respondent points to the Claimant's inappropriate use of privileged material, referring to the exchange of correspondence at pages 128 – 132.

d. It drew my attention to the email from the Claimant to the Respondent at pages 193-196 as an example of the manner in which the Claimant expresses herself and the manner in which she alludes to and understands the law and the tribunal process. It cites the Claimant's request for access to Priya Bahri's email account as evidence that the Claimant's approach to preparation for trial is difficult to respond to and manage. It also referred me to the Claimant's continued requests for further documentation, despite the fact that she has had been sent a comprehensive set of documents pursuant to a subject access request under the Data Protection Act 1998.

e. There was, the Respondent submitted no reason for the Claimant not to attend the preliminary hearing before me – she is not too ill or incapable of running the case for any other reason. This is evidence of her unwillingness to accept the authority of the Tribunal or respect its procedures.

f. In light of these observations it expressed concern about the management of the Claimant over the course of a 10 day hearing.

15. As regards the application in respect of time limits, Ms Cowen submitted for the Respondent that the Claimant having resigned on 22 March 2016 and her last allegation being dated 21 March 2016 many of her allegations are out of time. There are no allegations against the second Respondent after 26 February. The Claimant approached ACAS on 19 April and the ACAS certificate was issued on 4 May. Her claim form was presented on 4 July 2016. The Claimant, she submits, has made no argument in support of an extension of time either in her written submissions for the hearing or in the table she produced for the Preliminary Hearing on 1 December.

Conclusions - strike out application

16. I have considered the submissions of both parties and my observations from reading the case file before reaching my conclusion on the Respondent's strike out application.

17. Strike out is a power to be used exceedingly sparingly and should not be used in a discrimination case unless the circumstances are exceptional. I have considered the guidance given by the EAT in **Bolch v Chipman** UKEAT 1149/02 and **De Keyser Ltd v Wilson** [2001] IRLR 324. There are a number of principles arising out of those decisions, which are relevant to this case.

18. For Rule 37 to apply there must be a conclusion by the Tribunal not simply that a party has behaved unreasonably but that the proceedings have been conducted by or on her behalf unreasonably. In my judgment Ms Matin has acted unreasonably in a number of respects, by failing to attend hearings and failing to accept the authority of the Employment Tribunal or respect its procedures. I am particularly concerned by her unwarranted assertion that pressure had been brought to bear on Judge Balogun to refuse her application to reconsider her decision that the 19 April hearing should not be postponed. In her submissions to the Tribunal for this hearing the Claimant writes:

> **"I invoke Rule 42 that the Tribunal consider my written representation as I do not propose to attend the hearing because my right to a fair hearing in contravention of article 6(1) ECHR has been denied due to the failure of the Tribunal to enforce its disclosure order made on 1 December 2016 against the respondents and direct the respondents to comply, the respondents' persistent and gross abuse of the Tribunal process to subject me to personal attacks to deliberately intimidate me, put me in fear replicating the harassment and victimisation they calculatedly committed against me when I worked for them and continue to do me even when I left their employment because the respondents' aim is to cause me injury and harm, debase my dignity and are retaliating by making ad hominem attacks to run 'slut or nut' smears to minimise , deny and cover up their illegality exploiting the Tribunal process to create a fearful, hostile, degrading, humiliating or offensive environment at the hearing and deflect from the fact that they have no defence….**
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> **… The postponement application has become political and I have reason to believe pressure was put on Judge Balogun to make the decision she did on 31 March 2017 and to ignore my submissions dated 29 and 31 March 2017. This repeated paternalistic protection towards the respondents in flagrant disregard of the principle that the Tribunal is supposed to be independent and impartial is fundamentally undermining the trust which I, as a member of the public, should have in the Tribunal. The respondents are deliberately jeopardising my claim to cover up their illegality, deprive my right to access to justice and to a fair hearing in breach of article 6(1) ECHR. The respondents' plan is working, I am too afraid to go to the Tribunal because the respondents can act in flagrant contempt of the disclosure order to cover up their illegality and are being permitted to replicate their harassing and victimising conduct towards me without any sense of risk because they have the paternalistic protection of the Tribunal and are abusing the Tribunal process to put me and my claim in a corner".**

19. These are very serious allegations to make without any apparent foundation or evidence to support them. They indicate at best a fundamental misunderstanding and at worst a serious lack of respect for the Tribunal process. It seems to me that it is the Claimant herself who is "putting herself in a corner", as she expresses it, by refusing to attend hearings to explain her concerns about the process, or why she is making particular applications or allegations, thereby preventing her concerns from being fully aired and considered by a judge. She has repeatedly demanded further disclosure from the First Respondent despite the First Respondent's repeated assurance that

she has already had full disclosure of relevant documents. She is now making the nonsensical assertion the Tribunal's failure to enforce the disclosure order made on 1 December amounts to a breach of her right to a fair trial thereby justifying her decision not to attend the hearing. In my judgment the unsubstantiated allegation of collusion between the Respondents and the Tribunal in relation to the postponement application, against the background of the Claimant's repeated failure to attend hearings without a proper reason, plainly amounts to unreasonable conduct of the proceedings, falling within the scope of Rule 37(1)(b).

20. If there is a finding that the proceedings have been conducted unreasonably, that is not the final question. The decision of the EAT **De Keyser Ltd v Wilson** makes it plain that whilst there can be circumstances in which a finding can lead straight to a debarring order, that is not automatic (and would nevertheless have to be considered subject to the test of whether a fair trial was still possible). However it may follow where there is "wilful, deliberate or contumelious disobedience" of the Order of a court.

21. Is there "wilful, deliberate or contumelious disobedience" in this case? It seems to me that the Claimant's failure to attend hearings or moderate the manner in which she is conducting the litigation, following the very clear terms of Judge Spencer's order of 3 November 2016, does amounts to wilful disobedience. I could therefore consider striking out the Claimant's claims solely on that basis. However I consider that I should be slow to do so and should not do so without considering whether a fair trial is possible in this case. Strike out of a claim should not be a form of punishment for having conducted a case in an unreasonable manner, particularly a case involving allegations of discrimination by an employer. ***Blockbuster Entertainment v James*** [2006] IRLR 630 makes this clear.

22. The Respondent's submission is that the Claimant's disregard for the authority of the Tribunal and its procedures is jeopardising a fair trial. I see the force of its submission. The Claimant has from the outset bombarded the Respondent and the Tribunal with very lengthy communications, some of them containing highly explicit and indiscriminate allegations expressed in unrestrained and inflammatory language (see paragraph 11 (q) above – this is not the most egregious example). The Claimant has then failed to attend four Tribunal hearings, submitting, by reference to her right to a fair trial under Article 6(1) European Convention on Human Rights that she is entitled to have matters resolved on the papers, in her absence. In her submissions for the hearing (quoted at paragraph 18) it seems clear that the Claimant has no trust in the Respondent and little trust in the Tribunal and its processes but would nevertheless like the Tribunal to spend time reading the documents to which she has referred it with a view to arriving at a decision to strike out the Respondent's response. The Claimant's communications in fact suggest that the Claimant does not actually want a trial of her claims to take place and is actively seeking to avoid one.

23. The Claimant has also acted in other ways that seem to me to undermine the possibility of a fair trial. She has taken an unreasonable and belligerent stance

with regard to the Respondent's request that she desist from using privileged material that was disclosed to her inadvertently. This calls into question whether the Claimant has sufficient command of herself and a sufficient respect for the principles that govern legal proceedings, to make a fair trial of the action possible. She has also pressed the Respondent for access to Priya Bahri's personal email account without properly explaining her basis for doing so and has failed to explain her complaints about Priya Bahri other than in generalised and repetitive assertions. My concern about the Claimant's approach to both of these issues is again amplified by her unwillingness to attend Tribunal hearings to explain the applications she wishes to make and engage in the dialogue that is an essential component of the resolution of disputes through a hearing. Instead, as I have observed she bombards the tribunal and the Respondent with lengthy, repetitive and discursive documents in the expectation that the Tribunal will make the orders she seeks on the basis of them. This is not an acceptable way to conduct litigation. That point was clearly made to the Claimant by Judge Spencer in November 2016.

24. The picture that emerges is of a Claimant who does not understand or respect the employment tribunal or its procedures and whose approach is at odds with the way in which the tribunal system operates to resolve employment disputes. The Claimant's reluctance to attend hearings and her repeated requests for her applications to be dealt with outside the format of a hearing must in my judgment call into question whether her claims can be resolved by the tribunal in a way that is fair to both parties in the case and thus whether a fair trial is possible. I have also consider the requirements of the overriding objective of the tribunal rules, which is to deal with cases justly, including, in a case where as here one party is unrepresented, the requirement to ensure that the parties are on an equal footing. The overriding objective also requires me to consider whether to allow the case to proceed would be just to the Respondent.

25. I have also taken into consideration the guidance of the Court of Appeal in ***Blockbuster Entertainment v James*** [2006] IRLR 630 and the requirement placed on a tribunal that has reached the view that a fair trial is in jeopardy, to consider the proportionality of a strike out. ***James*** has caused me to weigh carefully the Respondent's submission that Ms Matin's case be struck out for the manner in which she has disregarded the authority of the Tribunal and to consider also very carefully whether strike out is indeed a proportionate response to the problems identified both by the Respondent and by my own assessment of the manner in which the Claimant has approached her case. In weighing the question of whether a strike out is proportionate I consider the following passage from the judgment of Lord Justice Sedley in James to be helpful. He says:

> **'The first objective of any system of justice is to get triable cases tried. There can be no doubt that among the allegations made by Mr James are things which, if true, merit concern and adjudication. There can be no doubt either that Mr James has been difficult, querulous and uncooperative in many respects. … But the Courts and Tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their cases unreasonably'.**

26. In this case the Claimant has in my judgment gone beyond being difficult, querulous or uncooperative. At earlier stages of the case it has not been considered proportionate to strike out, but I consider that matters are now different. The Respondent is facing the costs and time commitment 10 day hearing, involving a Claimant who has shown herself unwilling to attend the tribunal in person and unwilling to accept the principles and conventions that govern the manner in which employment tribunal litigation is conducted. It seems in fact that the Claimant does not want a trial at all – as noted already, her communications suggest that she wants the Tribunal to read her written submissions and decide the case in her favour without a hearing taking place. That strikes at the root of whether a fair trial can take place in this case – it is clear to me from my reading of the Claimant's approach to the proceedings to date, that the Claimant is trying to subvert the normal tribunal process and to arrive at a resolution of her complaints without having to attend a hearing. It is hard to see how a fair trial can take place in the face of such a disposition.

27. I have considered whether these problems can be resolved by a less drastic measure than striking out the Claimant's claims. The Claimant has already been the subject of an unless order and that did in fact result in her attending the hearing on 1 December. It has not however had a lasting effect and the Claimant went on to fail to attend either of the two subsequent hearings. I am not therefore confident that an unless order will have the effect of preserving the possibility of a fair trial in the case by ensuring that the Claimant understands what is expected of her and how she should conduct her case – the evidence suggests that it will not have that effect. In the meantime the Respondent is prejudiced by the way in which the Claimant is conducting the case.

28. I have also considered whether an order for costs, or a warning that an order for costs may be made, would engender the change of disposition in the Claimant that would be needed for the tribunal and the Respondent to have confidence that a fair trial could take place. I am not confident that it would have that effect, for the same reasons as I am not confident in the effectiveness of a further unless order. The Claimant has made it clear that she does not respect the Tribunal process and I do not consider that a fair trail could be secured by the making of a costs order against the Claimant.

29. Therefore, and with some considerable hesitation given the nature of the Claimant's allegations, I consider that the proportionate response to the Claimant's conduct of the case to date is to strike out her claims as her approach to the litigation, the tribunal and the tribunal's procedures makes it impossible for a fair trial to take place.

30. In case I am wrong about my decision to strike out the Claimant's claim at this stage, I will deal also with the other issues that arose at the hearing, although in light of my primary decision it is not strictly necessary for me to do so.

Conclusions - time

31. I would not have been prepared to strike out the Claimant's claims on the basis that they had been brought outside the statutory time limit. The

Respondent is correct to say that the Claimant has not addressed the question of time limits in her submissions, but in my view, if the date of the Claimant's resignation was 22 March 2016, her referral to ACAS was on 19 April and her claim was presented on 4 July then the claim was presented within the primary limitation period as extended 15 days by the 'stop the clock' provision in the early conciliation rules. Furthermore any act relied upon in the three month period ending on the date of the referral to ACAS (ie in the period commencing on 20 January) would also be in time. Even if the Claimant had attended the preliminary hearing the question of whether there had been a series of discrete acts or a continuing act is not one that is apt for determination without consideration of the evidence in the round. In a fact sensitive case of this nature where no evidence has been heard, the only just course of action in my view is to allow the Tribunal determining the case at the final hearing to make a decision as to whether the acts complained of or any of them are in time, or whether there is a continuing act or a continuing discriminatory state of affairs.

32. The application to strike out the claim on the basis that it was not brought in time would therefore have been refused if the case had not been struck out on other grounds.

Conclusions – additional Respondents

33. The Claimant has failed to comply with paragraph 4 of the case management orders made on 1 December 2016. The order was clear – the Claimant was to identify which of the paragraphs of her table of allegations she contends are specific allegations against Eric Appleby and/or Priya Bahri. Her response to this order (8 December) consisted of a discursive 29 page document from which it is impossible to determine which of her existing allegations are made against Mr Appleby or Ms Bahri. It appears that she is also making a series of fresh allegations which expand her claim beyond the matters which were painstakingly identified at the hearing on 1 December.

34. The application was to be dealt with on the papers. I have considered the Claimant's application sent on 8 December, the Respondent's response to it sent on 14 December and the Claimant's reply to that response sent on 15 December. The Claimant has not complied with the order of 1 December 2016 so as to explain clearly why these two individuals should be added as Respondents to the claim. Her application would therefore have been refused if the case had not been struck out on other grounds.

Conclusions – unless order

35. The Claimant has also failed to comply with paragraphs 7-9 of the case management orders made on 1 December 2016. Again the order was clear – the Claimant was to provide specified details in relation to the alleged protected acts referred to at paragraphs 2a and c of her draft list of issues. She was also to identify in relation to the detriments listed at paragraph 3a-f of her draft list of issues which paragraph numbers of the table of allegations were relied upon in respect of each and every detriment.

36. Instead the Claimant sent on 15 December a 57 page document containing a discursive narrative which failed to show how she was complying with the guidance given in the order. It is simply not reasonable to expect the Tribunal or the Respondent to read such long documents that provide no assistance as to how a case management order has been met. As regards paragraph 9, she simply says at paragraph 190 of the document "In relation to the detriments listed at paragraphs 3 a and e of my draft list of issues, I rely on the following paragraphs in my table (some numbers on my table for DD should also have forward slash for victimisation, so they will become DD/V): 1- 491.31".

37. This is an unacceptable way to comply with a case management order and in my view it represents non-compliance. The Claimant's victimisation claim would therefore have stood dismissed if the claim had not been struck out on other grounds.

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Employment Judge C E Morton

Date: 14 June 2017