



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4105711/2016 Held in Aberdeen on 14 November 2018

Employment Judge: Mr J Hendry (sitting alone)

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A

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Claimant
In Person:

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B

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Respondents
Represented by:
Ms.A.Stobbart–
Counsel

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The Tribunal having considered the respondents' application to strike out the claims
refuses same for the reasons given.

REASONS

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1. In December 2016 the claimant, **A** raised proceedings against her former employers, the respondents seeking a finding that she had been unfairly

E.T. Z4 (WR)

dismissed from her post as a Speciality Doctor in Elderly Rehabilitation and that she had also been the victim of sex and religious discrimination. The claimant had been dismissed from her position on the 17 August 2016. Initially the case did not proceed quickly as there were internal appeals to conclude.

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2. The claims were opposed with the respondents arguing that the dismissal was fair and that no discrimination of any description had occurred. The respondents were represented by Mr Gunn, a solicitor, who, at the time of the claimant's dismissal, was advising them in relation to the disciplinary action taken against her.

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3. The claimant was initially represented by solicitors when the ET1 was lodged although she later dismissed them and, apart from a period where she had the assistance of a Paralegal, Ms Paige, has represented herself. Just prior to the hearing the claimant advised the Tribunal that she had instructed solicitors to act for her in these proceedings but they were unable at short notice to appear when the Tribunal refused a request for postponement. She subsequently indicated that she intended to continue to represent herself.

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4. The claimant has argued that her original solicitors had failed to set down in her ET1 all the facts on which she relied. From the outset the respondents have sought clarification of various aspects of the claims. The management of the case has been made difficult as the claimant regards her former employers and their solicitor with suspicion and distrust. The claimant's jaundiced view of the respondents has led to her making numerous allegations against the respondents' staff and their solicitor in correspondence. The consequences of such an attitude has also been reflected in the unusually high number of requests made by the claimant for documents and other information from the respondents and her divergence from issues properly within the jurisdiction of the Tribunal. This does not in itself form part of the reasons advanced for Strike Out. It is the context in

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which the claimant's prolific correspondence both with the respondents and the Tribunal has taken place.

5. The Strike Out Application hearing took place on the 14 November 2018. The respondents sought strike out of the claims on the basis that the claimant's behaviour has been scandalous, vexatious and unreasonable.
6. The respondents helpfully lodged an Inventory of Documents containing copies of correspondence on which they relied. I also had regard to the Tribunal file and to the Witness Statement from 'SS' a potential witness. Following a discussion with parties it was agreed that Mr Gunn would give evidence about three matters. The first was the circumstances surrounding the taking of the Witness Statement by him, secondly his understanding of the witnesses' attitude and reaction to giving evidence and finally the impact the terms of the claimant's correspondence has had on him.
7. I have anonymised names.

Issues

8. The principal issue for the Tribunal was whether the claims should be struck out in terms of Rule 37 given the claimant's actings.

Findings in Fact

Background

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9. The Claimant is Indian. She is a qualified Doctor who worked for the respondents for over eight years. She is a Hindu and takes her faith seriously. She asserts that she is required to act and behave modestly and that her relationship with her husband is sacrosanct and private.

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10. The Claimant had a sexual relationship with a senior male colleague (Dr X). She states that she regarded him as a father figure. The relationship

5 appears to have had abusive and controlling aspects. She regards herself as being married to him in the eyes of her religion and has stated repeatedly that she had to treat him 'as a God' and obey his every wishes. She has during these proceedings adopted his name. She came to suspect that he was having a relationship with another more junior colleague 'SS' although both denied this. Dr X initially denied that he had a relationship with the claimant. The claimant asserts that the respondents refused to believe she had such a relationship and referred her to a Psychiatrist in relation to a possible delusional relationship. The claimant at some point produced 10 emails from Dr X to her which demonstrated that a relationship had existed. Dr X later admitted the relationship but denied one with SS.

11. The Claimant was dismissed purportedly for disciplinary reasons including an alleged assault on 'SS'. Criminal proceedings were taken and the 15 claimant found not guilty after trial. One of the background issues in the disciplinary process was that the claimant asserted that she should be regarded as the wife of Dr X through the practices of her religion.

Conduct of Tribunal Proceedings

20 12. The first Preliminary hearing took place by telephone conference call on the 27 July 2017. The claimant was assisted by Ms Paige, a Paralegal, who was knowledgeable in employment law. The claimant had lodged a detailed Agenda document which indicated that she was making claims for Direct and Indirect Discrimination on the grounds of Religious Belief (including 25 harassment) and Direct and Indirect Sex Discrimination (including harassment). The claimant made reference to calling thirteen witnesses. This figure has steadily escalated over the ensuing months.

30 13. A Note of the hearing was prepared and issued on the 31 July. It was recorded by the Tribunal that the background was sensitive and personal to the claimant and there was discussion about a Restricted Reporting Order being appropriate. No order was made at that stage. The claimant

was asked to consider the List of Issues prepared by the respondents, disclosure of information was discussed and the claimant was given 21 days to produce Better and Further Particulars of her claim.

5 14. On 18 September 2017 the claimant emailed SS: *"I am the legal representative investigating this case and the court will be investigating you in the court in Public. The following documents must be submitted by 9am on 19th September 2017 to my email address ...*

10 *9. Where were you based since 2014. where is your office which had been given to you.*

10. Did you continue to stay in my Dr X's research office on the first floor in the Aberdeen Royal Infirmary where you have sex with him almost daily both in the office and....

15 *.....*
15. Does the SENATOR team members know you had sex during all the meetings and in Aberdeen Royal Infirmary.

20 *.....*
31. STATEMENT From You Regarding your evidence on 3rd May 2017 in NHS Grampian process where you said I had a relationship with my man is DIRTY ILLICIT and you continued to scream and shout saying that my Dr S has nothing to do with me. WHAT DO YOU MEAN BY ILLICIT AND DIRTY describe in details of that what do you mean by that. YOU HAVE BULLIED, HARASSED, ABUSED, THREATENED, STALKED, ASSAULTED ME AND MADE DEFAMATORY REMARKS

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15. On the 25 September 2017 the claimant emailed SS, Dr X and others:

"This is my REMINDER 364.

30 *I had written to you last year in September 2017 and you still did not send me any information and you continuing to have sex with my husband Dr X*
..... in the offices of NHS Grampian and in various hotels around the world All that is the Public money, the money for your salary, stipend, hotel rooms, your food, your travel, your sleeping in various hotels with various
35 *men around UK and outside of UK, the millions of pounds spent on Criminal court. This is not your inherited family property, it is taxpayers money. Did you take permission from Taxpayers before you used them, you are looting Public money in the name of Research and misusing the funds. Do REPLY ASAP. Do you understand or not? Normally shameless*
40 *people and a fraudster like you should keep their head down and mouth shut not shout and scream in Public, it will only cause harm to you as you will be exposing yourself in Public of all your crimes that you had committed since 2014. You are definitely not clever and you are totally dumb and lack insight".*

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16. A second Preliminary Hearing took place before Judge Gall on 18 October 2018. The hearing was attended by the claimant and Mr Gunn. Ms Paige took part by telephone. Mr Gunn raised the issue of time bar. The disclosure of documents and witnesses were discussed. Mr Gunn raised the terms of the claimant's email to SS. Following the hearing Judge Gall issued a Note. He recorded (at paragraph 14) that the pleadings were the 'touchstone' in assessing which witnesses were relevant. At paragraphs 21 and 22 he raised with the claimant her approach to the witness and the language she had used which he described as being '*not appropriate*'. He went on to explain the process of asking a witness to attend and obtaining an order if they would not do so voluntarily. He noted that the approach had been made by her in "*very emotive language*". In response to this matter being discussed at the hearing Ms Paige agreed to discuss any correspondence with the claimant before it was sent.
17. On the 1 November 2017 the claimant wrote to Judge Gall saying that she was disappointed that he had not had time to read the entire file and that this, she alleged, had put her at a disadvantage. She believed he had formed a view about some matters. She made reference to an audio recording and emails which she claimed would disclose: "*the sexual and abusive nature and inappropriate language used against me by this student, Daniel Gunn and all the management in NHS Grampian who are listed on the witness list...*"
18. On the 1 November 2017 the claimant wrote to Mr Gunn asking him to confirm that he had read an email at the disciplinary appeal which contained explicit sexual content relating to her relationship with Dr X, which the claimant found distressing, and whether he had been instructed to do this.
19. On the 13 February 2018 (R p1,2) the claimant emailed Mr Gunn (copied to the Employment Tribunal): "*The President Shona Simon did not react at all until now when I had been telling the court since more than a year about attempted manslaughter of the 44 patients, killing of patients by Dr*

C, Dr CB and JN, forgery and patient abuse by AM, abuse by this student SS towards me and this student having sex in the offices of Aberdeen Royal Infirmary but Shona Simon tried to cover up everything including covering up of Judge Gall...’ The claimant continued that the President failed to take any action and that it was “very clear that Daniel Gunn has a family member who is senior in the Legal profession and people are trying hard to cover up his crimes including sexual harassment. Is there no Code of Conduct in the employment law for the lawyers who are engaged in crimes and sexual harassment when the case is the court and do the Judges not have any responsibility to deal with such criminals and sexual harassers”.

20. The claimant emailed Mr Gunn on the 11 September 2018 (R p8):

“You all had repeatedly sexually harassed me, humiliated intimidated Bullied threatened and forced me to tell you all the dates of losing Virginity what does it mean to lose a sort of Virginity and what does it mean to be seen naked by my husband Dr X, forcing me to tell when I had sex with my husband and tell you all my bedroom details with my husband Dr X. This Sexual harassment and abuse was during the internal process in NHS Grampian which was authorised by Dr F You and all the management had said throughout that you all had followed Employment Laws and Policies in NHS Grampian which allowed you to sexually harass abuse and intimidate and threaten me.

...I want the reply this evening .I will make sure the Prime Minister and the Westminster Government conducts a formal investigation”.

21. On the 25 September 2018 the claimant emailed SS (R p8-10):

“This is REMINDER 364. I had written to you last year in September 2017. You still did not send the information and you are continuing to have sex with my husband ...”. The email accused the witness of taking public money under false pretences and using public funds to book hotel rooms ‘for sexual pleasure’. She alleged that the witness was not entitled to her

PhD and that she was ‘*dangerous to society*’. The claimant warned her that lying under oath was a crime punishable by imprisonment.

22. On the 27 September 2018 (Rp11-14) the claimant emailed the Employment

5 Tribunal:

10 *“I am a victim of Sexual harassment, Sexual assault, Abuse, Bullying harassment, Stalking. Patients had been manslaughtered and covered up and I had raised concerns about those crimes for which I had been suspended and dismissed and made to undergo a false/fake case in the Criminal court which was made by Police and Fiscal and General Medical council. I am a victim of abuse and I refuse any further harassment by the Respondent and their Representative and I want Justice now. I want PH to be held in October 2018. I do not accept or agree for PH in November or December. I want this case started as soon as possible.*

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20 *It is 1215 (1215 days) now and Respondent and their Representative have failed to provide me with the Reasons for Suspension, minutes from the day of Suspension, failed to provide the documents and policies that had been referred to and requested and it is also not clear as to why they are asking for Restrictive reporting order saying that Dr X had sexually assaulted me and why Dr X was not investigated and why I was investigated if he had assaulted me. It is also not clear that if they want a restrictive reporting order for Dr X sexually assaulting me, they failed to reason it as to why Dr X was not suspended or investigated or reported to the police and was not dismissed by NHS Grampian. They also failed to say or reason as to why SS having sex in NHS Grampian office is not a Gross misconduct and how come if she had sex in NHS Grampian offices is classed a misconduct by me and you also failed to reason as to why SS is allowed to kill and murder the staff and patients and it will still not be classified as a crime. **This is terrorism.**”*

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23. The claimant emailed SS on the 27 September 2018 (Rp11-14):

35 *“This is REMINDER 405 to provide the requested information for the public inquiry against you for fraud and cheating and abusing and assaulting and threatening me and giving false witness statements since 2015 in the courts and in NHS Grampian”. The claimant went on to insist that SS had sexual relations with Dr X and continued to do so. She said she was calling for a public enquiry.*

40 24. In an email of the 5 of October 2018 (Rp19-22) the claimant emailed the

Tribunal:

5 *“By giving more time to the respondents only allowing them to commit more crimes, encouraging to justify terrorism and more threats and more harm to me and to the public which is not accepted under any circumstances ... I am a Hindu and I am taught by my Hindu gods to raise voice against any injustice done by anyone in the world even if it was the ruler of a nation or the world whoever they are. Everyone is equal in the eyes of law and no-one is above the law and even the monarch is subject to law as per Magna Carta which is written in this country. I am only telling the truth”. By email of the 8th of October the claimant wrote to the Employment Tribunal “I have received an email from a staff member called Rebecca which was unhelpful and discriminatory towards me. I had received similar interaction ?? last week. I had met them for the first time last week in 2 years and both of them have been very biased and Discriminatory which they would not do to the other party Legal representative as the other party was given my details. Both these staff have behaved in a very Discriminatory manner and said they do not know for everything including if you were working a particular day. I phoned last week and they said they do not know and when I asked how come they do not know then they confirmed you were not on leave. They are not telling me even if you were at work or on leave. This is racial discrimination as the white legal representatives are given all the information from me and these 2 staff are not treating them the same as they are treating me. It is very strange that when a member of the public or anyone phones and tells them that they will phone again for an update they class it as a threat, and if that was the case then the criminal courts would be full all day with cases of threat not giving information when requested including if the judge is at work or on leave and answering one single phone call and classifying as a threat is in my view a threat towards me”.*

25. On the 26 of October the claimant emailed the secretaries at NHS Grampian asking them to forward correspondence to a Dr B:

35 *“This case will also be against all the staff including yourself as I had informed you about the sexual harassment and sexual assault by my husband Dr X and had also informed you about that the PhD student SS had been having sex with my husband Dr X in his offices in Aberdeen Royal Infirmary in the Geriatric Department and also in the business educational meetings. You failed to inform the management of all these misconducts and criminal offences and instead you threatened me to stop contacting my own husband by interfering in my personal life with my husband including your racial discrimination towards me. You had contacted me only in professional capacity and failed to act on the misconducts and the criminal offences and instead caused me harm”.*

26. On the 29 October the claimant emailed 3 medical secretaries asking them to pass correspondence to a Doctor who in turn she asked to pass the correspondence to her father another Doctor involved in the disciplinary process. The email once more rehearsed the allegation that Dr X was having sex with SS. The email stated:

"I will make sure the whole world will know how dangerous you and human resources are including ..."

27. On 2 November 2018 the claimant emailed Daniel Gunn (Rp36,37) addressing the email to the 'SEXUAL HARASSER AND BULLY AND STALKER'. The email continued:

"You are involved in sexually harassing me on multiple occasions both directly and indirectly including Bullying, harassment, Threatening (including in this email) Stalking Abuse treating Indians and Hindus as slaves and treating Indians in the degrading manner. You are involved in Torture and the violent behaviour towards me including Breach and assault of my human rights. You have encouraged and supported and said all these crimes where more than 80 members involved is legal and lawful.

STOP WRITING RUBBISH TO ME YOU SEXUAL ABUSER, STOP WRITING DISGUSTING EMAILS TO ME YOU ABUSE AND SEXUAL HARASSER. You DISGUSTING PERSON STOP WRITING APPALLING AND DISGUSTING INFORMATION TO ME. DO YOU UNDERSTAND OR DO YOU WANT ME TO START THE MARCHING AND PROTESTS IMMEDIATELY IN PUBLIC IN FRONT OF YOUR HOUSE, YOU SEXUAL HARASSER AND BULLY AND SHAMELESS MAN".

28. The email continued: *"I am writing to you as the legal representative in the case against you in the Tribunal. I understand that you are not the legal representative of NHS Grampian and they have a Counsel who will*

5 *represent them. You must not contact me under no circumstances for that reason as you are not the representative. I must receive a letter from your Counsel informing me (who is representing NHS Grampian) as to why you are writing to me if she is NHS Grampian's legal representative. If you are working as an assistant and working in the background behind the scenes and not represented legally then I must receive a formal letter from your legal representative (Counsel) to myself as to why you are writing to me and what is your role.*

10 *You are involved in the biggest Fraud and Cheating in the history of NHS in this country ...”*

29. On the 2 November 2018 (R39,40) the claimant emailed three NHS staff copying the email to others:

15 *“I had listed you all as my witnesses in the case against NHS Grampian. This is because you all had abused and harmed me in all possible ways and means and also because you have told SS to continue to have sex with my husband Dr X in his office and Wilson's room opposite his office and accompany him on study leave to the Educational Conference of British Geriatric Society and Senator Education Meetings in this country and in*
20 *various countries around the world and you are all involved in Fraud and cheating by using millions of pounds of taxpayers money to make a fake since 2015 and also misusing and looting research money ...”*

25 30. On 2 November the claimant emailed Mr Gunn once more referring to him as a sexual harasser, bully and stalker. This email was in response to an email from Mr Gunn on the 1 November asking her not to contact employees in NHS Grampian. The email had stated:

30 *“My clients inform me you are sending emails to their employees looking to obtain the availability of numerous employees and former employees of NHS Grampian. I understand that, in addition to emailing some individuals*

5 *directly, you are also sending emails to Medical Secretaries and asking to forward the emails on. In addition, rather than just asking the witnesses to provide their availability you are including scandalous allegations against them in your emails. I have seen for example an email you sent to Dr X in which you accuse her amongst other things of having sex with Dr X at ARI “every single day”.* The email asked the claimant to desist sending emails immediately and if she wanted a witness who was an employee of NHS Grampian to contact the HR Department.

10 31. On 5 November the claimant wrote to Mr Gunn asking for no further contact with him describing him as a sexual harasser.

32. On the 5 November 2018 the claimant wrote to the Tribunal:

15 *“Could you please pass these emails to Judge Hendry. I had sent this email to a man called Daniel Gunn who had sexually harassed and abused me both directly and indirectly since 2015.”*

33. The Tribunal responded by email dated 6 November:

20 *“Employment Judge Hendry has asked me to write to respond to your email dated 5 November. He is very concerned at its terms. There is no indication that in the file that Mr Gunn’s firm has ceased to act for the Health Board and accordingly he is entitled to write to you about the case. There appears to be nothing in the correspondence to justify the terms of your response.*

25 *Solicitors acting for clients are not able to fully defend themselves from such allegations as they have to bear in mind the best interests of their clients. They are entitled to go about their professional duties without being abused in correspondence.*

30 *The Judge is conscious that you are conducting this case yourself and has asked me to strongly suggest that it might be in your best interests to consider taking legal advice on your position or to consult a senior*

professional colleague, friend or family member particularly about the terms in which you write your correspondence.” The email reminded the claimant about the terms of Rule 37(1)(b).

5 **Submissions**

34. The respondent’s Counsel moved for strike out of the claim. She asked the Tribunal to consider the whole circumstances and to conclude that the claimant’s actions had been scandalous, vexatious and unreasonable. Her position was that it was no longer possible to have a fair trial given her conduct. She accepted that strike out was a ‘draconian’ measure and one seldom granted but that the circumstances here warranted such an action. For completeness she also indicated that the claimant’s proposed amendment was opposed. Ms Stobbart took the Tribunal through the relevant background as she saw it starting with the comments made by Judge Gall at the second Preliminary Hearing about the tone of the correspondence. She referred to the many bizarre allegations made by the claimant in correspondence including of terrorism, manslaughter and sexual abuse. She directed the Tribunal’s attention to the email correspondence quoting passages from that correspondence. There were two main targets namely Mr Gunn and the witness SS. The correspondence was ‘peppered’ with serious and unfounded allegations including complaints against Judge Gall and Judge Hosie. Because of the serious nature of the allegations the respondents had to be in correspondence with the Scottish Government to allay concerns.

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35. The claimant had written in explicit terms not just to potential witnesses but to Medical Secretaries seeking email addresses. This was designed to cause upset and be intimidating in her submission. The claimant could approach either the respondent, their solicitor or indeed the Tribunal for such information. The way in which the claimant communicated caused upset and distress particularly to SS who was now very reluctant to give evidence. The claimant’s behaviour was designed to cause the maximum

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distress and embarrassment. Counsel referred to the Witness Statement of SS which had been lodged. That witness has suffered anxiety and depression. The claimant is an intelligent and resourceful person and these actions were not innocent or mistakenly insensitive but it could be inferred that they were deliberate and done with disregard of the consequences.

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36. Counsel addressed the Tribunal in relation to the applicable current law and referred to the recent case of **Basa v Buckingham County Council 2012 EWCA Civ 1910**. This was an appeal from the Employment Appeal Tribunal by Mr Basa which in turn related to the dismissal of an appeal from the Employment Tribunal decision to strike out the claimant's case. The background was that the claimant had brought a claim for detriment arising from a public interest disclosure, discrimination on the grounds of her race and disability. These claims were struck out. The basis for the striking out of the claims was a series of emails which the claimant wrote to Miss Blake her Manager and Dismissing Officer in which she referred to her as "a liar" and making various allegations, comments and veiled threats. The police took action in this case and the claimant was prosecuted successfully. There were in Ms Stobbart's view clear parallels to the present case.

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37. Counsel continued that in the original Judgment the Employment Tribunal Judge described the email correspondence as a "hate campaign" and she concluded that a fair trial was not possible as it would not be possible to focus on what the issues in the claimant's case was if she could not get past her dislike of the Disciplining Officer. She concluded it was unreasonable behaviour within the meaning of the then Employment Tribunal Procedure Regulations. At appeal the case turned more on the process used by the Employment Appeal Tribunal which heard evidence. Reference was made to the case of **Force One Utilities Ltd v Hatfield 2009 IRLR 45** and **Bolch v Chipman 2004 IRLR page 140**. The issues in this case was that Miss Blake would have been an important witness in

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any hearing. The nub of the Judgment was she submitted summarised at paragraph 14 where Lord Justice Pill writes:

5 *“In my judgment, there was nothing perverse about the decision of the employment tribunal. Letters to a potentially vital witness of this kind are unacceptable and inevitably lead to a sense of intimidation, which may affect the entire conduct of the proceedings. I agree with the conclusions of the Employment Tribunal, of the Employment Appeal Tribunal, and Elias LJ, all of whom have carefully considered the circumstances in this case. I am content to approach the matter on the basis of whether a fair trial is possible. I would leave open for further consideration, if the point should arise, whether strike out is justified as an affront to the court and to the administration of justice, upon conduct such as that which the applicant practised namely seriously intimidating letters to a potentially important witness. The decision was under the CPR, where somewhat different considerations may apply, but it is acknowledged for example in **Asiansky Television Plc and anor v Bayer-Rosin (2001) EWCA Civ 1792** that there may be cases where flagrant abuse by a party may itself justify a court striking out. I leave open the question whether such an argument could be raised under the Employment Regulations which govern these proceedings. Having made that reservation I take it no further but decide the application on the basis of the test stated by Burton J in the case of **Bolch**.”*

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25 38. In response to a question posed by me Counsel accepted that SS could not be said to be an essential witness although the respondents had intended calling her, if she agreed, to speak to the continuing conduct of the claimant which would impact on remedy.

30 39. The claimant responded by taking the Tribunal to the background of her claim and the detail of who did what and when. She had been traumatised by the whole matter and had to discuss intimate sexual matters in the disciplinary to prove that she had a relationship with Dr X. He had initially

denied that relationship until emails were produced. The respondents had failed to understand her religion or put any weight on the fact that she regarded herself as married to him in the eyes of her faith. She denied harassing SS or causing her any distress and questioned where the evidence was for such suggestions. She explained the circumstances around the alleged assault and the subsequent trial. She repeatedly queried the probity of SS's actions. The claimant was asked to focus on the issues currently before the Tribunal and the legal test for strike out. She explained that she had been upset and frustrated when writing them. She was not a lawyer. She had been referred to a Psychiatrist by the respondents who thought that her relationship with Dr X was a fantasy. She could produce the Report. She doubted that SS was telling the truth in her Statement and she had obtained funding under false pretences. She had been referred by the respondents to the GMC in November and had to deal with that matter over the past few months and this had been stressful. She had suffered from anxiety and had written things when she was 'upset'. She believes that the disciplinary panel had been laughing at her. SS and the respondents had, she said, destroyed her reputation and her career and she would not stop until she saw justice done.

Discussion and Decision

The Law

40. The Tribunal has the power to strike out claims. This is contained in Rule 37(1)(b) and (d) of the Employment Tribunals (Rules of Procedure) 2013 which provides 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)

(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)

(d)

(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)."

5 41. The power of strike out can be exercised at any stage of the proceedings. It is power that should be used carefully and sparingly as it's effect is to deprive a litigant of their entitlement to pursue their statutory employment rights. The respondents argue that two sections of the Rule are engaged namely 37(1)b and 37(1)e. They accept that the test for strike out is nevertheless the same for both namely that a fair trial is no longer possible.

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

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

30 43. The issue of proportionality was considered by Sedley LJ in the case of **Bennett v Southwark LBC 2002 ICR 881** when he wrote:

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"But proportionality must be borne carefully in mind in deciding these applications, for it is not evidence of misuse of the judicial process, albeit properly falls within the descriptions scandalous, frivolous or vexatious which will be sufficient to justify the premature termination of a claim or the

defence to it. Here, as elsewhere, firm case management may well afford a better solution”.

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

10 “ 33.*There is a further hurdle to be surmounted in any strike-out application, as both counsel before us agree. It is that if the conduct of a party's case is shown to have been scandalous, it must also be such that striking out is a proportionate response to it. This seems to me, as it seemed to counsel, to be a commonsense axiom requiring no resort to the article 6 of the European Convention on Human Rights. But – evidently because it was not argued – this requirement was not addressed at all by either the Warren tribunal or the EAT. In the present circumstances there is no need to decide the proportionality of striking out as a response to Mr Harry's conduct of the proceedings because for other reasons the decision to strike out cannot stand. But proportionality must be borne carefully in mind in deciding these applications, for it is not every instance of misuse of the judicial process, albeit it properly falls within the description scandalous, frivolous or vexatious, which will be sufficient to justify the premature termination of a claim or of the defence to it. Here, as elsewhere, firm case management may well afford a better solution...*”

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

46. In the present case I consider that it has been clearly demonstrated that there has been scandalous, vexatious and unreasonable conduct on the

part of the claimant. The content of her communications, containing personal slurs, threats and intemperate language is ample evidence of this. The issues that remain are whether a fair trial is possible and whether strike out in the whole circumstances is a justified and proportionate response to her behaviour.

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47. This is an unusual case and there are a number of factors that should properly be borne in mind. In considering these I do not condone the way in which the claimant has conducted herself or the allegations that she has made but they are in a sense mitigatory. The claimant was clearly very upset at the events surrounding her dismissal and the way in which the investigation developed. She was apparently put on Sick Leave and the respondents suggested that her relationship was a delusion. She was apparently questioned about intimate details of that relationship. The failure of Dr X (to whom she regarded herself as married) to acknowledge their sexual relationship or to continue it was devastating to her. She clearly perceives that there has been a number of injustices perpetrated against her by the respondents, a failure by them to recognise this background, acknowledge her religious views and their impact on the relationship and by ultimately dismissing her. It seems that for some time her protestations that there was a relationship were disbelieved until she provided email evidence for it.

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48. The claimant is a party litigant and although an intelligent person has become frustrated at the slow pace of the proceedings. This has caused her to react badly both towards the respondents and their solicitor who she blames (wrongly as it happens to be) for delays. She is also a Hindu and Indian by upbringing. On a number of occasions, she has said that as part of her culture and religion she has to act modestly and keep intimate details of her relationship with her husband private and having to expose and prove the relationship was humiliating to her as indeed it might be to anyone without these additional sensitivities. In summary, I accept that against this background she will have found the disclosure of her

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relationship and associated sexual conduct deeply distressing, embarrassing and humiliating.

49. Tribunals require to take great care when considering strike out applications especially in cases involving allegations of discrimination. I also bore in mind the comments made by Lord Hope in **Anyanwu and Ano v South Bank Student's Union and Ano 2001 ICR HL**:

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

15 That does not mean that such claims can never be struck out and that parties advancing such claims can act as they choose relying on this principle.

50. Counsel for the respondents quite properly drew my attention to the fact that when the claimant was responding to the witness statement lodged by SS her response was to wholly discount the possibility that SS had been affected by these events. She wanted evidence of her panic attacks, and had no insight into the likely effect of her actions on SS who she seemed to blame for the breakdown in the relationship she had with Dr X. I posed the question to the claimant at the end of the proceedings whether or not in hindsight she would write in the same terms again and it was only at that point did she indicate that she had been upset, frustrated by the delays and distressed when framing the emails and other correspondence. Despite her comments I have considerable doubts as to whether the claimant has, or wants to have, any insight into the possible effects of her actions on others. She is very bound up in the rights and wrongs of the events surrounding her dismissal.

51. I heard evidence from Mr Gunn about the way in which the statement from SS was obtained and his first-hand impression was of her reluctance to

5 either give a statement or be further involved in these proceedings. I have
no doubt Mr Gunn truthfully relayed these impressions and that SS has
been deeply affected by these events and the claimant's behaviour. I also
fully accept that Mr Gunn despite, having as he put it, a thick skin has found
the way in which he has been regularly described by the claimant in
correspondence as very wearisome and upsetting and that he had genuine
concerns that she might act on her threat to protest outside his house. A
concern that I have is that solicitors in his position are in a particularly
difficult position when defending themselves against such allegations given
10 that their overriding duty is to their client's interests.

52. Counsel asked me look at the whole situation when considering whether a
fair trial is possible. I agree that this must be the approach. I have no doubt
that the behaviour of the claimant has left the witness SS upset and
traumatised and deeply reluctant to be involved in the Tribunal process.
15 She did, however, with some persuasion provide a Witness Statement.
The difficulty I have is that she is clearly not an essential witness, as
Counsel properly conceded. No evidence was led that other potential
witnesses have been affected or influenced by the claimant's bizarre
behaviour although the fact that so many intemperate emails have been
sent to so many people might allow, in different circumstances, such an
inference to be drawn except that these don't appear to have been sent to
20 the decision makers in the disciplinary process apart from the indirect
approach made to Dr R who dealt with the appeal (Rp34-35).

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53. I also considered the effect of this behaviour on Mr Gunn who stoically
continues as agent despite the invective directed against him. There is no
suggestion that he will not continue to represent the respondents. There
was no indication that he might be a witness to fact himself despite his
close involvement with the process. Looking at all the facts before me and
30 focusing on whether a fair trial is possible I am not quite convinced that it
is not but I agree that it may be in considerable jeopardy if the claimant's
behaviour continues.

54. The answer if there is one I believe lies in more robust case management. It must be clear to the claimant that no further behaviour of this sort will be tolerated. At an earlier stage it perhaps should have been made clear to the claimant that her approach was completely wrong and that the Tribunal expects parties to act with courtesy, not to use inflammatory language and to confine themselves to the issues a Tribunal has the power to deal with namely unfair dismissal and discrimination and not wild allegations of medical negligence and terrorism. This could have been buttressed by formal orders made either at the Tribunal's initiative or at the behest of the respondents. If there had then been serious lapses in required standards then the Tribunal could be asked to strike out the proceedings and the claimant would have had ample warning. I therefore, with some misgivings, refuse the strike out request.

15 55. Accordingly, I will make the following orders:

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

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

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Employment Judge:**James Hendry****Date of Judgment:****07 December 2018****Entered in Register:****10 December 2019**

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And Copied to Parties