BETWEEN

Claimant		**Respondent**
Mr GE Yagomba	**AND**	Axa Services Ltd

OPEN PRELIMINARY HEARING

HELD AT Bristol **ON** 29 March 2017

EMPLOYMENT JUDGE Pirani

Representation

For the Claimant: in person
For all Respondents: Ms C Davis, counsel

JUDGMENT

Claim 1401099/2016 (claim 4) is dismissed on withdrawal by the claimant.

DECISION

By consent the claimant is permitted to amend claim 1400148/2013 (claim 1) in the following respects:

i. The final two incidents relied on in the Scott schedule produced for the Open Preliminary Hearing at pages 903 and 904 are to include claims of victimisation in the alternative; and
ii. The protected acts relied on for these final two incidents are as set out in claim 2, namely those which were done on 22 May 2012, 11 July 2012, 25 September 2012 and the claim form in claim 2.

Case management note and reasons

1. The claimant, who was a former employee of the respondent has brought four tribunal claims against the respondent.

2. The issues which were to be determined at this open preliminary hearing were previously set out as follows

3. **Claim 2: 1401077/2014**

    i. Whether to strike out the claim because it is scandalous or vexatious
    ii. Whether to strike out the claim because the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous or vexatious
    iii. Whether the claim should be dismissed because the claimant is not entitled to bring it because the statutory time limit has expired and it would not be just and equitable for time to be extended

4. **Claim 3: 1401466/2014**

    i. Whether to strike out the claim because it is scandalous or vexatious or has no reasonable prospects of success
    ii. Whether the claim should be dismissed because the claimant is not entitled to bring it because the statutory time limit has expired and it would not be just and equitable for time to be extended

5. **Claim 4: 1401099/2016:**

    i. Whether the claim should be dismissed because the claimant is not entitled to bring it because the matters complained of four within judicial proceedings immunity; and/or
    ii. Whether to strike out claim 4 because it is scandalous or vexatious or has no reasonable prospects of success

6. All claims: To the extent that claims 2, 4 and 4 are neither struck out or dismissed, whether claims 2, 4 and 4 should be consolidated and heard together.

7. To the extent that claims 2, 3 and/or 4 are neither struck out or dismissed, whether claims 2, 3 and/or 4 should continue subject to deposit orders.

Claim 1: 1400148/2013

8. The claimant was employed from 26 June 2005 until he was summarily dismissed on 17 October 2012. He presented his first ET1 on 16 January 2013 following his dismissal on 17 October 2012 from employment with AXA Services UK Ltd on grounds of alleged fraudulent activity. He alleged that he had been unfairly dismissed; and alleged breach of contract, unlawful race discrimination, harassment and victimisation by his employer.

9. The direct race discrimination claim comprises some 13 allegations spanning 28 June 2011 until 15 March 2013. The same allegations are relied on as harassment related to race in addition to 6 other complaints spanning June 2011 until May 2012.

10. As set out at the case management hearing on 20 February 2017

11. Subject to:
    i. The addition of the matters set out in the claimant's letter of 30 April 2014 relating to unfair dismissal
    ii. Bad faith is not alleged in relation to victimisation pursuant to section 27(3) EqA 2010
    iii. For the purposes of contribution the only conduct relied on by the respondent is that set out in the dismissal letter

    the issues are as set out in the document provided to the tribunal by the respondent (see bundle at 951-956 and in the Scott Schedule at 898-904).

Claim 2: 1401077/2014

12. By a claim form received at the Employment Tribunal on 29 May 2014 (some 19 months following the termination of his employment) the claimant presented a second claim against Axa UK plc together with 16 individuals for (387-427):
    i. Victimisation
    ii. Direct race discrimination
    iii. Harassment related to race

13. The dates on the ACAS certificates are 5 May 2014 – 7 May 2014 for R1. There were no ACAS certificates for any of the individual respondents. Included was a claim for psychiatric damage said to amount to £63,000.

14. Within their response, received on 18 January 2016, the respondent says among other things (434-454):
    i. The factual ground covered by claim 2 is the same as claim 1 and it should therefore be struck out as an abuse of process.
    ii. To the extent that claim 2 raises new claims (i.e. the victimisation claims), the alleged acts upon which the claimant relies occurred significantly longer than three months before the submission of claim 2 on 29 May 2014.

15. At a preliminary hearing on 19 October 2016, before me, it was clarified that in relation to claim 2 that:
    i. The first act of discrimination relied on is said to be 15 June 2012
    ii. The last act of discrimination relied on is said to be 19 April 2014. The claimant refers to page 427 of the bundle and points to a paragraph 70 which makes reference to detriment done to one of his witnesses which the claimant says amounts to victimisation. It was explained that the allegation is that the first respondent refused to promote the claimant's witness and subjected him to a disciplinary hearing.

iii. The claimant accepts that to the extent there is overlap between claim 1 and claim 2, he does not proceed with the causes of action contained in claim 2.
iv. The claimant does not accept that all actions which predate claim 1 are excluded from claim 2. In particular, the claimant says that he did not bring these claims within claim 1 because without access to relevant documentation he did not know of their existence.

16. Among the Orders made at the hearing on 19 October 2016 was that the claimant set out the date on which he says he became aware of these new causes of action.

17. The allegations which the claimant makes in claim 2 are now set out at pages 905-917 of the bundle for the OPH. These cover some 46 separate incidents which are said to have occurred from May 2012 until April 2014. The penultimate allegation chronologically is said to have ended on November 2012.

Claim 3: 1401466/2014

18. By a claim form received at the Employment Tribunal on 26 September 2014 the claimant submitted a third claim, with Axa UK plc listed as the first respondent, together with five other individual respondents (457-483). The claimant says he suffered victimisation (with direct discrimination and harassment in the alternative), occasioned by the deliberate and collective conduct of these respondents, and was therefore pursuing them jointly and severally in his claim.

19. The detriment suffered by the claimant is said to be the sudden and undue pressure on his already prolonged ongoing case, thus interfering with his human rights of access to justice by inevitably causing postponements and extensive delay of his case to facilitate the investigation of these complaints.

20. The claimant says he first had knowledge of these acts on 5 June 2014. The essence of the claim is that Axa UK lodged a criminal complaint against him. It is said that this amounts to victimisation and direct race discrimination.

21. The dates on the ACAS certificates are:
    i. For R1 7 July – 7 August 2016
    ii. For Rs2-5, 28 July – 27 August 2016

22. A response to this third claim was received at the Employment Tribunal on 23 December 2015 (484-498). Among other things, the respondent say:
    i. In accordance with its policy, the first respondent was obliged to refer the claimant's conduct to the police. Whether the fraudulent behaviour resulted in a loss to the first respondent itself or a third party is said to be irrelevant. Nor is it relevant that the claimant reached some form of

settlement with DSP for money they said they lost at the hands of the claimant.

ii. None of the alleged comparators, whether named or unparticularised by the claimant, are valid comparators required in order to pursue a claim for direct race discrimination. The circumstances of the alleged comparators are materially different to those of the claimants.

23. The claimant clarified at the hearing on 19 October 2016 that this claim only relates to the referral of him by the respondents to the City of London Police. The claimant says this occurred in September 2013, although he only became aware of it on 5 June 2014. The respondent says the referral was done orally in May 2013 and in writing in June 2013.

24. The claimant's case, as set out at the 19 October 2016 hearing, is that there have been at least three occasions when people within his department were dismissed for fraud yet their cases were not referred to the police.

25. I ordered a Scott schedule to be produced setting out the allegations. At page 918 of the bundle for the OPH, among other things, the claimant says that the first respondent's referral was in "bad faith" and amounted to "retaliation" because it provided "false statements and falsely manufactured documents" to the City of London Police.

26. At a later hearing on 20 February 2017 I ordered that the claimant to set out which documents he is referring to and why they are said to be "false". He produced a reply by letter of 6 March 2017.

Claim 4: 1401099/2016

27. By a claim received at the Employment Tribunal on 22 June 2016 the claimant brought a further claim against Axa UK plc, together with 16 other respondents, for race and disability discrimination (635). The dates on the ACAS certificates are all 8-23 May 2016. The disability he relies on is said to be a "mental impairment".

28. The claim appears to relate to direct disability discrimination and discrimination because of something arising in consequence of his disability. He also says he was victimised and sets out a number of protected acts, including issuing the previous tribunal claims. The claim form also alludes to harassment.

29. He explains that on 9 February 2016 the parties appeared before Mrs Justice Simler, president of the EAT. At the outset of that hearing, he says the he made an application to withdraw his appeal. Subsequently, the respondents made an application against the claimant for costs. The claimant's application for costs was dismissed, but the claimant was ordered to pay the respondent £6,000.

30. Within his claim form the claimant says that the respondents compiled a dossier of documents for the purposes of their costs application and "did so in a malicious grotesque attempt to pervert the course of justice, so as to ensure financial reward for themselves by preventing the EAT judge from accepting the reality of the claimant's situation regarding his lack of means" (see at 651).

31. The claim also makes reference to steps taken by or on behalf of the respondent in seeking to enforce the costs order.

32. By a response received at the tribunal on 5 August 2016 the respondents said among other things (657-669):
    i. The claimant had appealed to the EAT against a decision of the Bristol Employment Tribunal to allow the respondents an extension of time to submit their defence to claim to until after the strikeout hearing.
    ii. Following the lifting of the stay and prior to the EAT hearing, the respondents informed the claimant that in order to avoid the costs of an EAT hearing, they would file a defence to claim to before the strikeout hearing, thus rendering the EAT hearing unnecessary.
    iii. The respondents informed the claimant that he should withdraw his appeal and that an application for costs would be made if he refused to do so.
    iv. The claimant continued to pursue the appeal until at the EAT hearing itself, the claimant withdrew his appeal consequently the first respondent made an application for its costs.
    v. Counsel for the first respondent made submissions to the effect that there was relevant material which cast doubt on the claimant's assertions as to his means.

33. The first respondent denied that in drawing the EAT's attention to this information they were malicious, dishonest as alleged or at all.

34. The respondents' position is that the tribunal does not have jurisdiction to hear this claim because the matters complained of by the claimant clearly fall within judicial proceedings immunity, both as regards the submissions made at the EAT hearing on 9 February 2016 and the subsequent steps taken to enforce the costs order made by the EAT. The respondents submit that the limited exceptions to the principle of judicial proceedings immunity do not apply in this case.

35. At the 19 October 2016 preliminary hearing the claimant clarified in relation to this fourth claim that:
    i. His case is that the actions of the respondent are not covered by the principle of judicial proceedings immunity.
    ii. The allegation is that the documents shown to the EAT were fraudulently compiled and/or maliciously manipulated: this is said to amount to discrimination/victimisation/harassment.

iii. The nature of the allegation is that the documents were altered or created.
iv. The documents are said to fall within the following categories (a) what purported to be Internet printouts (b) what purported to be financial documents including those from company house (c) what purported to be documents showing a live Twitter feed
v. Further, the claimant says that the then first respondent's agents (now the only respondent), namely bailiffs, engaged to enforce the costs award, committed criminal acts by sending him malicious letters.

36. Included in my Orders from the 19 October 2017 hearing was one requiring the claimant to state the precise documents which the claimant says were altered or created, when, by whom and in what way.

Judgments at 19 October 2016 Preliminary Hearing

37. At this hearing I made judgments in the following terms:
    i. The claims against all individual respondents (not Axa Services Ltd) were dismissed on withdrawal by the claimant.
    ii. By consent Axa UK plc was removed as the respondent in claim numbers 1401077/2014, 1401466/2014 and 1401099/2016 and was substituted by Axa Services Ltd.

Further EAT appeal

38. After the 19 October 2016 preliminary hearing disputes arose in relation to several issues, as set out in correspondence between the parties. I ordered a telephone hearing be convened on 23 January 2017 to resolve those disputes. At the telephone hearing on I determined that:
    i. Claims 3 and 4 were not stayed.
    ii. The preliminary hearing in February 2017 will not be listed before a full tribunal panel.
    iii. The preliminary hearing will consider, in addition to the issues set out by the respondent on 23 December 2016, whether the claimant should be ordered to pay a deposit not exceeding £1,000 for each contention made in relation to claims 2, 3 and 4 if it is determined that such contentions have little reasonable prospect of success.
    iv. I declined to write to the EAT to request the notes of the President and/or disclosure.
    v. It was appropriate to consider witness evidence in relation to the respondent's application pertaining to claim 4.

39. The claimant then appealed the case management order on 15 February 2017. The EAT, by letter of 16 February 2017, indicated that in the opinion of Singh J the appeal has no reasonable prospects of success. At a further preliminary hearing on 20

February 2017, which had been converted from an open preliminary hearing to a case management hearing, the claimant indicated that he had already applied for a hearing in person at the EAT pursuant to Rule 3(10). In the event, at the Rule 3(10) hearing on 16 March 2017 the appeal was dismissed.

Documents and evidence for this hearing

40. I had before me:
    i. An agreed bundle which ended at page 1033
    ii. Written submissions from both parties
    iii. A 43 page document from the respondent commenting on the overlap between claims 1 and 2
    iv. Witness statements from the claimant and the respondent (in the event no evidence was given)
    v. Copies of documents said to have been disclosed to the claimant
    vi. Further documents handed up by the claimant including his letter of 6 March 2017
    vii. The claimant's email to the tribunal dated 24 March 2017

41. Although ultimately the parties were able to agree I will set out their respective positions on the claims and applications.

Submissions in relation to Claim 2: 1401077/2014

42. The particulars of claim in relation to claim 2 run from pages 404 to 427 of the bundle. They have now been condensed against into some 46 or so separate incidents which are variously pleaded as different forms of discrimination.

43. The claimant says that within claim 2 he pursues causes of action that he could not pursue previously. He does not dispute duplication between claim 1 and claim 2, but he says this is for the purpose of background information only. His position is that he could not have pursued claim 2 in January 2013 because he did not have "the very crucial and relevant factual information and knowledge that would have allowed him to do so".

44. In particular, the claimant relies on the following:
    i. At the point of issuing claim 1 in January 2013 he did not have access to his HR personnel file and personal documents relating to his employment history, nor the full relevant facts and information to enable him to properly construct and structure his case.
    ii. He made numerous requests for documents to HR directors and managers to no avail.
    iii. At the time of issuing claim 1 he was still waiting for a decision on his appeal to the dismissal which, despite previous assurances, was not forthcoming until March 2013.

iv. Due to mental health problems his ability to construct his claim was severely inhibited.
v. Disclosure was delayed by the respondent.

45. The respondent's case is that claim 2 is an abuse of process because, in essence, it is a repeat of claim 1. In addition, it is said that parts of claim 2 are significantly out of time.

46. The respondent points out that the claimant had attempted to amend and broaden the scope of claim 1. In particular,
    i. On 23 April 2013 he produced a 43 page response to a request for further and better particulars of his complaint (16-57)
    ii. On 4 June 2013 he provided a further document which was discussed at a case management preliminary hearing on 24 July 2013 (94). Permission was refused to amend claim 1 to add a claim for victimisation.
    iii. At a further preliminary hearing on 8 November 2013 a further application to amend claim 1 was refused (97).
    iv. Although the claimant further intimated that he would pursue another application to amend claim 1 on 7 January 2014 in the event he neglected to pursue such application before Employment Judge Livesey on 16 April 2014 (105).

47. The respondent says:
    i. Claim 2 is nothing more than an attempt to amend claim 1 and circumvent previous orders that have been made in the proceedings.
    ii. Virtually all matters raised in claim to have been raised previously by the claimant.
    iii. Claim 2 seeks to recast allegations made in claim 1.
    iv. The claimant could and should have raised allegations contained in claim 2 within claim 1.
    v. The claimant had the requisite knowledge of the matters raised in claim 2 even prior to submitting claim 1.

48. In support of its argument the respondent has produced a table running to some 43 pages commenting on the overlap between claims 1 and 2.

49. The respondent says that the explanation advanced by the Claimant for the delay in submitting claim 2 is set out in paragraph A(a) of the Details of Complaint, namely that disclosure provided to the Claimant as part of the Claim One disclosure process "*contain[s] new and crucial facts, and important background information on acts previously unknown and unavailable to him"* does not stand up to scrutiny.

Submissions in relation to Claim 3: 1401466/2014

50. The claimant says he was not aware until approximately 5 June 2014 that a police report had been made.

51. The respondent says the claimant was aware from October 2012 that his conduct was to be referred to the City of London Police. In particular, the disciplinary report informed him that his conduct would be reported (494). Further, in the decision rejecting the claimant's appeal against dismissal, David Fretter said that he would support the decision to refer the claimant conduct to the police (131).

52. Further, the respondent says that even if it were correct that the claimant only became aware on 5 June 2014 that his conduct was being investigated by the City of London Police he has advanced no explanation for his failure to present claim 3 between 5 June and 24 September 2014. During this period it is said that he was clearly able to manage his own affairs because among other things, he applied to review the tribunal's decision to reject claim 2 and to appeal the same decision.

53. It is also said that claim 3 should be struck out on the basis that it is scandalous or vexatious or has no reasonable prospects of success.

54. I previously recorded in my case management note of 19 October 2016 that the claimant's case was that there have been at least three occasions when people within his department were dismissed for fraud yet their cases were not referred to the police. This was broadly repeated in the table of allegations produced subsequently.

55. In a letter dated 11 January 2016 the claimant sought to elaborate the facts surrounding the three individuals.

56. The respondent says the reality is that if the claimant cannot point to any individual who was dismissed for fraud-related gross misconduct but not reported to the police, then he has no meaningful hope of succeeding in his complaint that the decision to report him to the police was an act of direct race discrimination and or victimisation and/or harassment in circumstances in which the respondent's act of reporting the claimant to the City of London Police was in accordance with its policy and clearly communicated to the claimant at the time of his dismissal and his appeal against dismissal.

57. It is however accepted by the respondent that the claimant may rely on a hypothetical comparator for the purposes of his direct race discrimination claim and his claims of victimisation and harassment require no comparator.

58. The claimant says in response:
    i. The claim is in time. The detriments complained of include being contacted by the police, interviewed as well as "all other actions in

their 2 years of investigation". The detriments continued until November 2015.

ii. In any event, it would be just and equitable to extend time. Not allowing the claim would cause severe injustice: "The conduct of the Respondent is so deplorable that it is just and equitable that this matter be allowed to proceed because it is in the public interest. Despite confirming in almost 10 reports dating back from September 2011 that there had been no financial loss whatsoever to R1, they reported this matter to the police two years later, and, alleged that R1 had after all suffered financial loss of £134k. The police concluded, as the Respondent themselves had in 2011, that they lost £0.00."

iii. He was not interviewed until early June 2014 and "would not have been made aware of the investigation prior to that date" (530-2).

iv. As soon as he was aware of the investigations and cause of action he "promptly took the matter to the ET despite having limited information to properly substantiate his claim, but presented in a timely manner at the earliest opportunity".

v. He is a litigant in person who has never conducted an ET claim before his own

vi. He was suffering from mental health issues.

vii. He has never seen the policy which is said to require the respondent to report him to the Police.

viii. Claim 3 pursues a victimisation claim with harassment as an alternative, with the success of neither being dependent upon the naming of a comparator.

Submissions in relation to Claim 4: 1401099/2016

59. The respondent argues:

i. The Claimant was ordered to identify precisely which documents he says were altered or created, when, by whom and in what way. Despite having copies of the dossier since 9 February 2016 (when it was provided to him as part of the EAT hearing), the claimant has wholly failed to comply with that order and has not, and indeed cannot, identify a single document that is anything other than a genuine and unaltered document.

ii. All of the matters about which the claimant complains in claim 4 are matters which fall squarely within judicial proceedings immunity and the Tribunal therefore has no jurisdiction to consider Claim 4: ***Lincoln v Daniels*** [1962] QB 237 and ***Parmer v East Leicester Medical Practice*** [2011] IRLR 641.

iii. Insofar as claim 4 is concerned, the claimant's claim that he was victimised because of a disability is misconceived in circumstances in which the protected acts relied upon all appear to relate to proceedings

and complaints where the subject matter of the complaint was discrimination on grounds of race and not disability.

60. In response, the claimant argues:
    i. The respondent has misinterpreted the claimant's case
    ii. A reading of the claimant's ET1 particulars at page 651, 5th & 6th paragraph, confirms exactly the opposite of what the Respondent's application is saying. The Claimant says: *"It is the Claimant's case that it is this malicious and dishonest conduct (**as opposed** to the presentation of the consequential documentation to the EAT and/or the false and malicious submissions made to the Judge in reliance on the said manipulated and fabricated documents), which did not, and would never form part of the evidence in the judicial enquiry, despite its intimate association the actual judicial process, that he complains about. The compilation of these documents by the Respondents, did not form part of the judicial process, since there was no such requirement of them, by either the EAT, the EAT Judge, the EAT Rules, or the EAT Practice Directions, requiring them to collate and present rebuttal evidence against the Claimant's question of means."* [Emphasis added]
    iii. Claim 4 takes no issue with the submissions made at the EAT hearing, but of their external malicious conduct in the procurement and compilation of falsely and fraudulently manipulated documents. The full particulars of the conduct which he complains about, are also articulated within his particulars (at 652).
    iv. Again, as regards the process of enforcement, the Respondents have misread the Claimant's complaint because he expresses this very clearly on the 3rd paragraph of page 655, thus: *"The Claimant complains of the Respondents' malicious and dishonest conduct in pursuit of their contribution from the Claimant towards their legal costs (**as opposed** to the enforcement process itself which the Respondents are entitled to pursue through the prescribed judicial legal channels), which he submits did not, and would never form part of any evidence in the judicial enquiry, despite its intimate association the actual judicial process, that he complains about. …"*
    v. The Claimant is therefore not pursuing the Respondents on the basis of their enforcing the costs order, but of the conduct external to this process which he particularises in the same paragraph.
    vi. The judicial process accords the respondent immunity from action, but conduct outside of that process which do not form part of that judicial enquiry are not protected with the same cloak. Making submissions and presenting documents is protected, but maliciously and fraudulently compiling of documents against the Claimant is not protected.
    vii. Similarly, the sending bailiff to legitimately attempt to enforce a write is acceptable, but the conduct of committing (as in this case), criminal offences contrary to the Malicious Communication Act or Fraud Act is most certainly

not protected by judicial immunity and is a free-standing act outside of this protection for which there must be remedy.

viii. The ET has jurisdiction to proceed with Claim 4, and that the matter should proceed to a full hearing where the merits of the Claimant's claim can be fully heard

Agreed Resolution of Disputes

61. After some discussion, the parties were able to agree a sensible and pragmatic way forward, which seems to be both in their own interests and also accords with the overriding objective.

62. Because the parties have adopted such a sensible and reasonable approach the listing of this case can remain unaltered. However, as set out below, with the agreement of the parties I have changed some of the directions given on 20 February 2017.

Claims 1 and 2

63. The claimant agrees to withdraw all causes of action pursued in claim 2 (which will not be dismissed at this stage) other than the final incident relied on which is set out in the Scott schedule at page 917 of the bundle produced for the open preliminary hearing.

64. The respondent accepts that no jurisdictional issues arise in relation to this last claim, in that it was presented in time.

65. The respondent agrees not to pursue a deposit in relation to this claim, although it makes no concessions as to the merits of the claim.

66. The respondent agrees that claim 1 is to be amended such that the final two incidents relied on in the Scott schedule produced for the open preliminary hearing at pages 903 and 904 are to include claims of victimisation in the alternative. Further, the first claim is amended such that the protected acts relied on for these final two incidents are as set out in claim 2, namely one done on 22 May 2012, 11 July 2012, 25 September 2012 and the claim form in claim 2.

67. The parties have very sensibly agreed to this course of action on the express understanding that:

i. the claimant is not substantively disadvantaged by withdrawing all but one of the causes of action contained in claim 2
ii. the withdrawal of causes of action in claim 2 will not prevent the claimant from asking questions in cross-examination which he otherwise would have been entitled to ask

Claim 3

68. Although this claim has been presented out of time the respondent accepts that it is in a position to deal it. In other words, it advances no positive case as to prejudice.

69. The Scott schedule produced for claim 3, which is contained in the open preliminary hearing bundle at page 918, is amended such that the allegation of "providing false statements and falsely manufactured documents regarding it being a victim" is changed to the "respondent providing the police with inaccurate documents in the sense that the claimant says he did not commit fraud, contrary to what is set out in the documents, and losses said to be incurred were either not incurred or not to the extent set out in the documents".

70. Again, in light of the change to the substantive allegation, the respondent pursues no deposit in relation to claim 3, although makes no concession in relation to the merits of the claim.

71. Further, it is agreed that the question of whether time should be extended on a just and equitable basis for this claim should be dealt with by the tribunal hearing the substantive claim.

Claim 4

72. Claim 4 is dismissed on withdrawal by the claimant

73. The respondent makes no further application in relation to claim 4. For the avoidance of doubt, the respondent makes no costs application pertaining to claim 4. However, this is without prejudice to its contention that the claimant's conduct in relation to claim 4 is unreasonable. Accordingly, the respondent seeks to reserve the right to refer to any such alleged unreasonable conduct in support of any future costs application in relation to other aspects of the proceedings in this case.

74. I further record that the claimant emailed the tribunal copying in the respondent on 24 March 2017 indicating that he would like to withdraw claim 4, but subject to preserving the right to bring this claim in the future. He goes on to say that there is an active criminal complaint against the respondent in relation to these exact allegations, the outcome of which would have significant impact on the viability of this claim, if found culpable. Further, the claimant says that without certain crucial information his Article 6 rights would be breached as he would be presenting his case in unfair and unjust circumstances.

75. I explained to the claimant that if he withdrew claim 4 it would be dismissed on withdrawal without any proviso. The claimant was afforded a break during the hearing to consider his position in relation to claim 4 as well as the other claims. In the event, the claimant elected to withdraw claim 4 in its entirety.

ORDERS

I make the following case management orders with the express agreement of all parties (which replace the Orders made on 20 February 2017):

Claims Heard Together

1. The remaining claims in claims 1, 2 and 3 will be heard together on the dates previously listed.

Schedule of loss

2. Unless the claimant provides the respondent with a medical report for the purposes of the claim for psychiatric injury by **4pm on 29 May 2017**, which deals with diagnosis, prognosis and causation, then his claims for psychiatric will be struck out without further Order.

3. By no later than **4pm on 29 May 2017** the claimant is to provide the respondent with the following information:
    i. The factual basis for his claim for loss of earnings, setting out when he anticipates he will secure alternative employment and/or alternative income and at what level.
    ii. The amount claimed for "care and assistance" setting out who provided the care, at what level and for how long.
    iii. The amount paid for medical treatment to date, setting out what expenses were incurred and when.

Disclosure of documents

4. On or before **21 April 2017** the parties are to mutually disclose documents relevant to the issues identified above by list and/or copy documents as appropriate. Documents to be disclosed are all relevant documents which are in the parties' possession, custody or control, whether they assist the party who produces them, assist the other party or appear neutral. This includes, from the claimant, documents relevant to all aspects of any remedy sought. Documents relevant to remedy include evidence of all attempts to find alternative employment.

Bundle of documents

5. On or before **26 May 2017** the parties are to agree an index to the bundles of documents.

6. By **16 June 2017** the parties are to agree a common set of core, relevant documents, indexed and page numbered for use of the witnesses and the Tribunal, and limited without further direction to 1,000 pages (excluding pleadings) plus a non-core bundle limited to 3,500 pages.

7. The bundles be prepared by the respondent, one set provided to the claimant and its contents agreed by the parties.

8. The limit on the bundle size may not be exceeded by more than 5% without the express prior consent of the Tribunal.

9. The respondent is ordered to bring four copies of the bundles of documents to the Tribunal for use at the hearing, by 9.30 am on the day of the hearing.

Witness statements

10. By no later than **24 July 2017** the parties shall mutually exchange witness statements (including statements of the parties themselves). No further statements may be served without the consent of the tribunal.

11. No witness will be permitted to give evidence, (without leave of the tribunal), unless a witness statement has been prepared and exchanged in accordance with this order.

12. Each witness statement must contain all the evidence upon which that witness wishes to rely. Witness statements must refer to documents by their page number in the bundle but are not to be bound into the bundle itself. At the discretion of the tribunal, witness statements may be taken as read. Witnesses may be cross-examined.

13. The witness statements be limited as follows –

The claimant, 12,000 words
The claimant's further witnesses, 3,000 words in total
The respondent, 45,000 words in total

14. Each statement must state the number of words it contains. These limits may not be exceeded by more than 5% without the express prior approval of the Tribunal

15. Sufficient copies of the above be supplied to the Tribunal for use at the hearing by 9.30 am on the day of the hearing.

Potential further case management hearing

16. The parties are to write to the tribunal by **4 PM on 7 August 2017** indicating:
    i. whether all the directions have been complied with
    ii. whether the case is ready to proceed to trial as listed

iii. whether they require any further direct case management by way of a telephone case management hearing or otherwise
iv. whether it would be sensible for the claimant and the respondent's representative to attend for a short period on day one (listed as a reading day) to discuss any outstanding issues and/or opening points to the Employment Judge assigned to hear the case

Chronology

17. By no later than **11 September 2017** the parties shall agree:
i. a paginated chronology of the relevant major events.
ii. a cast list, for use at the hearing. It must list, in alphabetical order of surname, the full name and job title of all the people from whom or about whom the Tribunal is likely to hear

Closing Submissions

18. Each party shall prepare a summary or skeleton of the case, for use during closing submissions. The summary shall attach copies of the authorised reports of all cases upon which that party relies. The summaries will be mutually exchanged by the parties after the evidence has been heard.

Further Orders and variation of existing orders

19. All applications for further orders or for variation of these orders are to be made immediately upon receipt of this Order or as soon as is practicable thereafter.

The Overriding Objective

20. In accordance with the overriding objective, set out in Regulation 2 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, this case will be managed so as to ensure a fair hearing. This may include limiting the time for witnesses' evidence, cross-examination and the making of submissions.

Failure to comply with this Order

21. **Failure to comply with any part of this Order may mean that the tribunal has insufficient time to hear the application on the hearing date and may give rise, upon application by a party who has incurred extra costs as a result, to an Order for Costs or preparation time against the offending party. Further, the tribunal may regard any failure to comply with this Order as unreasonable conduct of proceedings in the event of an application for costs or a preparation time order against the party who has failed so to comply.**

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

Employment Judge Pirani
30 March 2017

Sent to the parties on:

4 April 2017

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For the Tribunal:

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