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THE EMPLOYMENT TRIBUNALS

Claimant: **Mr N Anemouri**

Respondent: **Barnardo's**

Heard at: **East London Hearing Centre**

On: **18 June 2018**

Before: **Employment Judge Goodrich**

Representation

Claimant: In person (two friends in attendance to observe and assist)

Respondent: Mr P Halliday (Counsel)

PRELIMINARY HEARING (OPEN)
CASE MANAGEMENT ORDERS AND JUDGMENT

1 The Claimant's application for this Preliminary Hearing to be adjourned is refused.

2 The Claimant's claims are struck out, as further set out below.

REASONS

Background and the Issues

1 There is a long history to these four sets of proceedings.

2 The Tribunal's files on the Claimant's four claims are thick and heavy. Amongst the details of what has taken place to date are the following.

3 The Claimant presented his first claim to the Employment Tribunal against the Respondent on 3 March 2015 (case number 3200647/2015).

4 This case was listed for a Preliminary Hearing on 3 August 2015, before Employment Judge Prichard. He conducted a Case Management Discussion and made various Case Management Orders, including listing the case for a Preliminary Hearing Open before himself. He listed the case to consider whether to strike out any of the complaints on the basis of being out of time; and whether to strike all or any of them out; or to make a deposit order on the basis of their prospects of success.

5 The Preliminary Hearing conducted by Employment Judge Prichard on 29 September 2015 resulted to part of the Claimant's claims being dismissed.

6 On 13 October 2015 the Claimant presented his second Employment Tribunal claim (case number 3202065/2015).

7 The two cases were originally listed for a three day hearing in April 2016 and postponed.

8 The two cases were also listed for a Preliminary Hearing and the both the Preliminary Hearing and full merits hearing dates were postponed, because of the Claimant's ill health. Eventually they were listed for a Preliminary Hearing before Employment Judge Foxwell on 20 June 2016.

9 By the time of the Preliminary Hearing on 20 June 2016, the Claimant had issued a third set of Employment Tribunal proceedings. This claim was presented to the Employment Tribunal on 7 June 2016 (case number 3200530/2016).

10 Employment Judge Foxwell conducted a Preliminary Hearing for the three cases on 20 June 2016. He discussed the issues with the parties and postponed the Preliminary Hearing to a later date. His purpose for doing so, described in paragraph 13 of the Preliminary Hearing document, was to consider the full circumstances in determining whether the complaints of discrimination because of religion or belief had been presented in time; and, if out of time, whether it was just and equitable to extend time.

11 On 25 July 2016 I conducted the Preliminary Hearing that had been listed by Employment Judge Foxwell.

12 At the Preliminary Hearing on 25 July 2016, amongst what took place was:

12.1 I decided that the Claimant's race and religion or belief harassment claim was out of time; that it was not just and equitable to extend time limits; and the complaint was dismissed.

12.2 I listed the case for a Telephone Preliminary Hearing to consider whether or not to conduct a judicial mediation.

12.3 I listed the three cases for a full merits hearing, for seven days, in January 2017.

12.4 I ordered the Respondent to provide the Claimant and the Employment Tribunal an updated list of issues to follow the amendments to the Respondent's draft list of issues that had been made at the Preliminary Hearing.

13 A Preliminary Hearing was conducted by Regional Employment Judge Taylor on 8 September 2016 to consider the possibility of judicial mediation. By then, however, the Claimant informed the Tribunal that he had recently been dismissed and intended to bring a fourth claim. She made various Case Management Orders, one of which was to list the case for a further Preliminary Hearing by telephone to consider judicial mediation.

14 The case was listed for judicial mediation. However the judicial mediation has never taken place to date, having been postponed, on the Claimant's request, on the grounds of his ill health.

15 On 3 October 2016 I conducted another Preliminary Hearing. I listed the case for an Open Preliminary Hearing on 25 and 28 November 2016 to determine the issues in the fourth case that the Claimant had said he was about to lodge; to make such Case Management Orders as might be required in this and the other cases; and to consider the Respondent's applications for strike out, or a deposit order.

16 On 3 October 2016 the Claimant issued a fourth claim (case number 3200880/2016).

17 The outcome of the Preliminary Hearing before Employment Judge Jones on 25 and 28 November 2016 was that:

17.1 The Claimant's race discrimination claim made in his third claim was dismissed as being out of time.

17.2 His complaint of religion or belief discrimination for his third claim was dismissed as having no reasonable prospect of success.

17.3 The Claimant withdrew his claim of discrimination against him by not allowing him to join the LGBT and disability forums.

18 Employment Judge Jones listed the case for a five day hearing, to determine liability only, in March 2017.

19 The full merits hearing listed in March 2017 was vacated, on the

application of the Claimant, on grounds of his ill health.

20 Likewise, the judicial mediation that had been listed in February 2017 by Regional Employment Judge Taylor, was also vacated on grounds of the Claimant's ill health. The cases have not been relisted for a full merits hearing, or for judicial mediation. The Claimant has sent a series of medical certificates setting out details of his ill health.

21 By a letter dated 6 February 2018, sent by the Employment Tribunal on my direction, I asked the Claimant to provide specific medical information. This was:

21.1 What is the Claimant's current medical condition affecting his fitness to attend by telephone?

21.2 Could he attend if adjustments are made? If so, what adjustments do you think would be necessary? If not, why?

21.3 If he is presently unfit to attend the hearing, when will he be fit to do so? (please be aware that a postponement may be refused). There was a typing mistake for the remainder of the sentence which should have read if not in the reasonably foreseeable future; and instead stated "if it reasonably foreseeable future".

21.4 If applicable please provide any information that may assist the Judge modify their procedures to take account of parties' reasonable needs.

22 I indicated to the parties my wish to list the case for a five day hearing.

23 By letter dated 20 March 2018 the parties were notified that a Preliminary Hearing would be conducted on 18 June 2016, listed for three hours, to identify the issues and make case management orders, including orders relating to the conduct of the final hearing.

24 My intention in listing the case three months ahead was to give the Claimant an opportunity to recover from his ill health. An email had been received by the Tribunal stating that he had recently had a kidney stone operation.

25 By email dated 13 April 2018 the Tribunal received an email, sent on behalf of the Claimant, enclosing a GP note. Although it was stated that it confirmed the Claimant's inability to attend court in June 2018, in fact it was a fitness for work certificate, certificating the Claimant off work until 10 July 2018. No opinion was given as to the questions I had asked.

26 The Tribunal sent another letter to the parties, on 26 April 2018, reiterating the medical information that I had requested and not received, I

stated that I needed the information in order to decide how to proceed with the Claimant's cases; and could not allow the cases to remain "in limbo" for an indefinite amount of time.

27 Although I had initially set the case down for a Preliminary Hearing (closed), by letter dated 18 May 2018, the Respondent made an application for the Claimant's claims to be struck out, asking for this to be considered at the Preliminary Hearing. Detailed grounds of the application were given. A detailed chronology was given. The basis of the application was under Rule 37(1)(d) of the Employment Tribunals Rules of Procedure 2013 (claim not being actively pursued); 37(1)(c) (Claimant's non compliance with an Order of the Tribunal); and 37(1)(b) (Claimant's unreasonable behaviour).

28 The Claimant sent a letter dated 29 May 2018 objecting to the application. He stated that it was very much his intention to carry on with his case but that medical issues had proved problematic and caused his inability to carry on with proceedings for the time being alone. He asked for the proceedings to be postponed until such time as his health permitted him to attend to put forward his case.

29 In response to the Respondent's application and the Claimant's opposition to it and postponement request I directed a letter to be written to the parties. This was dated 31 May 2018. I notified the parties that I was not satisfied that it would be in accordance with the Tribunal's overriding objective for the Preliminary Hearing to be postponed, as there had already been numerous postponements and the cases were brought several years ago. I stated that I would consider his representations at the Preliminary Hearing on 18 June, together with any further written or oral representations made by him or on his behalf.

30 I also granted the Respondent's application for their strike out application to be considered.

31 This Preliminary Hearing was converted, therefore, from a Preliminary Hearing (closed) to a Preliminary Hearing (open), in order to allow the Respondent's strike out application to be considered.

32 For this Preliminary Hearing the Claimant provided a further letter, dated 18 June 2018; and Mr Halliday, on behalf of the Respondent, containing submissions in support of his strike out application and in opposition to the Claimant's postponement application.

33 The Claimant's written submissions included the following points:

33.1 He felt that he had been put under duress by the court as his medical report and letter from GP and sick note all confirmed his inability to currently attend the court hearing.

33.2 He had explained in full that he was not fit to be in the court on a number of occasions, he suffers from severe headaches which make it hard for him to concentrate and fully understand.

33.3 The Claimant asked for recommendations to put in place in due course for future hearing dates. These were for the lights in the court room to be turned off during the hearing, as they bothered his eyes (glaucoma) leading to further pains in his head. He asked for each matter to be discussed at a slow and steady pace. The swelling in his hand made it difficult to take notes. He asked for regular breaks to enable him to stand at regular intervals, making it impossible for him to sit down for more than 20 minutes at a time. He asked for toilet breaks every 30 minutes due to urology issues. He asked for clarification of any unclear matters to be discussed, to support his dyslexia. He asked for time to explain his side of events and understand matters discussed by the others in legal terms.

33.4 The Claimant provided a medical certificate dated 1 May 2018. He also provided a letter from his GP. The main points in the GP's report included the following.

33.5 The GP referred to Mr Anamouri having had a diagnosis of panic attacks since 2012 which he has medication for he has had psychological input and is on medication for. This could affect his mental state and concentration. He had seen a neurologist and been diagnosed with tension headaches for which he takes medication; and has suffered from recurrent episodes of loss of consciousness and being diagnosed with recurrent vasovagal syncope likely due to automatic dysfunction. The GP also reported that Mr Anemouri underwent decompression of the left wrist for severe carpal tunnel syndrome in October 2017 and will need the right side done as well. Mr Anemouri was under the care of urology as he suffers from kidney stones and is due to have this removed via a right supermini percutaneous nephrolithotomy in March this year. He has had previous trabeculectomies in both eyes for open angle glaucoma and may need further surgical intervention for this later on.

33.6 The above conditions and subsequent medications that Mr Anemouri needs to take mean that his concentration can be affected which affects his ability to attend the Tribunal.

33.7 His conditions are chronic ongoing conditions which are still being treated under secondary care.

34 The GP gave no indication as to whether, with adjustments, the Claimant could attend the Tribunal. Nor did he give advice on, if the Claimant is currently unfit to attend an Employment Tribunal hearing, when he would be fit to attend.

35 Mr Anemouri's oral submissions in support of his postponement application were that he hopes that in a few months time he would be fit to come in to the Tribunal. He reiterated that he wanted to continue with his case.

36 On behalf of the Respondent Mr Halliday's typed submissions in opposition to the Preliminary Hearing been adjourned included that:

36.1 The Claimant had not produced any medical evidence that he is unfit to attend this hearing.

36.2 Although he undoubtedly has various medical conditions there is no reason to conclude that they render him incapable of attending this hearing. His medics have not said that they render him unfit to attend the hearing at this time.

36.3 There had already been four Preliminary Hearings postponed already; proceedings had been dragging on for more than three years; and they now need to be resolved or, at the very least, progress.

37 Mr Halliday's oral submissions opposing a postponement included that even the high point of the letter from his GP and fit note did not say that he was incapable of attending the hearing. So far as caselaw was concerned he submitted that I had a broad case management discretion and referred to the overriding objective's reference to cases needing to be treated fairly and expeditiously and that the Claimant was asking for yet another adjournment.

38 I considered the Tribunal's overriding objective of dealing with the case fairly and justly, including so far as practicable:

38.1 Ensuring that the parties were on an equal footing.

38.2 Dealing with cases in ways which are proportionate to the complexity and importance of the issues.

38.3 Avoiding unnecessary formality and seeking flexibility in the proceedings.

38.4 Avoiding delay, so far as compatible with the proper consideration of the issues; and

38.5 Saving expense.

39 I decided to refuse the Claimant's application to postpone and proceed with the Preliminary Hearing for the following reasons:

39.1 I had sought to ensure that the requests for adjustments made by

the Claimant were carried out. I turned the lights out in the room, sought to discuss each matter at a slow and steady pace, notified the Claimant that he could stand at any time he wished, took breaks after around 30 minutes with the parties and sought to give clarification when requested.

39.2 Neither the option of postponing or proceeding with this Preliminary Hearing was ideal. From the Claimant's perspective he is not in good health and wished to have the case adjourned in the hope that his health would improve.

39.3 Fairness involves fairness to both parties. The Respondent has been waiting for years to get this case to a hearing. They are a charity and the costs of defending the proceedings are ever increasing. Legal proceedings are usually stressful for all parties involved, particularly when there are allegations of unlawful discrimination. It is, generally, stressful for those accused of unlawful discrimination to have the case protracted indefinitely, as well as for the Claimant.

39.4 From reading the medical evidence, particularly the latest GP letter, I am not confident that if I were to adjourn the Preliminary Hearing the position would be any different in any reasonably foreseeable near point in the future. The GP referred to further treatment and operations for the Claimant.

39.5 I have had the benefit of written submissions from both parties as to the strike out application.

39.6 I consider that I have enough information, with short further oral submissions, to decide the Respondent's application; and, if I do not grant the Respondent's strike out application, to make relevant Case Management Orders for the case.

40 After I had given my decision on the adjournment application orally to the parties, the Claimant remarked that he had made a complaint against me because I had made mistakes in the Preliminary Hearings he had with me.

41 The Claimant's comment did not appear to me to be a reason for not continuing with the Respondent's strike out application. The losing party in any application, or case, will often consider that the Judge has made the wrong decision. If so, they are entitled to appeal against the judgment. I am aware that the Claimant did appeal against at least one of the Employment Judges' judgments (Judge Prichard) and may have done so with others, including myself. So far as I am aware no appeals have been successful and none are outstanding. As a (now former) President of an Employment Tribunal stated in an appeal involving an issue as to recusal of the judge, it is as important for judicial officers to discharge their duty to sit and not accede too readily to suggestions of bias, as it is to refuse to recuse themselves when appropriate to

do so.

42 I then went on to consider the Respondent's strike out application.

43 Before the Respondent had given its oral submissions on their strike out application I asked for details of the list of issues in the case; and as to (following up one of the written submissions about the Respondent being a charity and the heavy costs of the litigation) how much the Respondent had incurred in legal costs.

44 As notified above that there was a list of issues that had been drawn up by the Respondent following Tribunal Orders and updated following the judgment of Employment Judge Jones. I was informed that the issues had not been agreed by the Claimant.

45 As referred to above a number of the Claimant's claims in the four set of proceedings had been struck out. The list of issues that remain to be decided are as follows.

46 The Respondent accepts that the Claimants' glaucoma and diabetes amounted at all material times to a disability. They did not admit, if relevant, that the Claimant was also disabled (for the purposes of his fourth claim) by reason of depression, anxiety, panic attacks, gout and arthritis.

47 The Claimant's outstanding claims, as listed in the list of issues include:

47.1 A disability discrimination case arising out of requiring the Claimant to work in a new building from September 2013.

47.2 A disability discrimination case from the Claimant second and third claims arising from his medical suspension from work from 7 August 2015.

47.3 An unfair dismissal, discriminatory, whistleblowing and victimisation complaints concerning dismissal arising from the Claimant's fourth claim.

47.4 There was also a section on remedy.

48 As regards costs of the litigation I was informed that the Respondent's costs have amounted to £120,000 - £130,000 and that they do not have legal insurance to cover these expenses.

49 When making their strike out application the Respondent's solicitors sent a letter making detail submissions; and a lengthy chronology. The submissions in support of strike out are replicated to some extent in the skeleton arguments produced by Mr Halliday. The Respondent's chronology is replicated to some extent in my summary above, although I also read the Employment Tribunal's

files for the cases. I do not seek to set out the solicitor's submissions in full.

50 The Respondent's skeleton arguments were detailed coming under various headings. The first was headed "introduction and overview". The second was headed "the claims and the procedural background". The third was headed "should this hearing be adjourned?" The fourth heading was "should these claims be struck out?" There was also a section on case management if the Tribunal declined to strike out the Claimant's claims. I also asked Mr Halliday to give oral submissions as to this possibility. I had a further case listed in the afternoon and notified the parties that, in the circumstances, I would be reserving my judgment.

51 I seek to summarise some of the main points in the Respondent's skeleton argument, rather than set out an exhaustive recital of them.

52 Under the section "introduction and overview" were the following points:

52.1 The proceedings started more than three years ago. The only substantial progress so far had been strike out various aspects of the Claimant's claims. Disclosure is incomplete. There are no bundles for the trial. There are no dates yet set for exchange of witness statements. This was despite having had 8 Preliminary Hearings so far, a vast amount of correspondence and four postponements of Preliminary Hearings, two of which occurred because the Claimant wrote to the Tribunal on the morning of the hearing saying he was too unwell to attend that day. Trial dates have been vacated on numerous occasions.

52.2 There has been no substantive progress since the hearing in November 2016, when aspects of the Claimant's claims had been struck out.

52.3 The reason that there had been no progress was that the Claimant contended that he had been too unwell to progress the case during this period. Detailed submissions were given as to why the Respondent said that this contention was not supported by medical evidence. It was asserted in the submissions that the Claimant had repeatedly and persistently breached directions from the Tribunal by failing to produce such evidence, giving details of that assertion.

52.4 The Claimant stance was that he wanted his claims to be stayed indefinitely until his health permitted him to attend court once more to put forward his case. Despite the Tribunal's repeated requests he had no idea as to when in future the Claimant might be fit to conduct these proceedings.

52.5 The time had come for the claims to be struck out. He was not actively pursuing the case. The impossibility of knowing when he

would be ready to continue there is at least a substantial risk of a fair trial being impossible. He had breached numerous Tribunal orders and his conduct of proceedings had been uncooperative and generally unreasonable, putting the Respondent to very substantial and unnecessary expense which for the most part, it would not realistically be able to recover from the Claimant in costs.

The claims and procedural background

53 Under the heading "The procedural history" was set out in outline, with a reference to the Respondent's chronology (to which I referred above).

54 Under the heading of strike out, reference was made to Rule 37 of the Employment Tribunals Rules of Procedure. Reference was made to a number of cases including *Evans v Commissioner of Police of the Metropolis [1993] ICR 151 CA; Peixoto v British Telecommunications Plc EAT 0222/07;* and *Riley v Crown Prosecution Service [2013] IRLR 966 CA.*

55 In support of their submissions that there was a substantial risk of a fair hearing being impossible for the following points:

55.1 The passage of time means that witness memories will undoubtedly faded, with the case as regards lighting in the office concerning events in 2014. The whole case is fact sensitive depending on matters such as what was going through the Respondent's employees' minds when they were addressing his complaints about lighting and his eventual dismissal.

55.2 One of the Respondent's key witnesses, heaving involved in making reasonable adjustments for the Claimant, left the Respondent's employment in 2016. We understand that his new role involves a high level of overseas travel, jeopardising his ability to attend a hearing and give evidence.

55.3 The passage of time in itself will eventually make a fair trial impossible.

55.4 These problems are exacerbated because there is no end point in sight, with the Claimant asking for his claims to be stayed indefinitely. He has not said when he is likely to be fit to attend trial.

55.5 As to breach of orders and unreasonable conduct the Respondent referred, amongst other cases, to *Blockbuster Entertainment Ltd v James [2006] IRLR 630*.

55.6 Giving details of what they said were the Claimant's breaches of

orders and unreasonable behaviour.

56 I have referred to the Claimant's written submissions above, contained in his letter dated 18 June 2018. He felt that he was put under duress to attend by the court was not fit for the hearing and stated that a solicitor had got into contact with the Employment Tribunal on Friday 15 June requesting a short postponement to review his evidence but this was refused without a valid reason. In response to what Mr Halliday had stated about the Respondent's costs date he stated that this was due to them bringing so many people to court each time (this comment appeared to me to have some substance as the list of those attending compiled by the Tribunal clerk included two solicitors and a trainee in addition to Mr Halliday, counsel for the Respondent).

The Relevant Law

57 Rule 37 of the Rules of Procedure provides for striking our 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 the 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)."

58 In the case of *Evans v Metropolitan Police (above)* guidance was given that it is necessary to show, if the default is not intentional and blameworthy, that there has been inordinate and inexcusable delay on the part of the plaintiff or his lawyers, and that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or have caused serious prejudice to the defendants either between themselves and the plaintiffs of between each other or between them and the third party.

59 In the case of *Peixoto v British Telecommunications Plc (above)* guidance was given that in every case there must be some question of proportionality. Concluding that a fair trial is impossible includes consideration of all lesser alternatives, including proportionate measures to see whether the case can be tried.

60 In the case of *Weir Valves & Controls Ltd v Armitage [2004] ICR 371(EAT)* guidance was given that a striking out order or other sanction should not always be the result of disobedience to an order and that the guiding consideration is the overriding objective. The court should consider the magnitude of the default, whether it is the responsibility of the solicitor or a party, what disruption on fairness or prejudice has been caused and still, whether a fair hearing is still possible.

61 In the case of *Riley v Crown Prosecution Service (above)* it is important to remember that the overriding objective is to deal with cases justly and expeditiously without unreasonable expense. Article 6 of the European Convention on Human Rights emphasises that every litigant is entitled to a fair trial within a reasonable time. That is an entitlement of both parties to litigation. It would be wrong to expect Tribunals to adjourn heavy cases, which are fixed for a substantial amount of court time many months before they are due to start, merely in the hope that the Claimant's medical condition will improve. If doctors cannot give any realistic prognosis of sufficient improvement within a reasonable time the case itself deals with matters that are already in the distant past, striking out must be an option available to the Tribunal.

62 In the case of *Blockbuster (above)*, a case dealing with breach of Tribunal orders and unreasonable conduct, guidance was given that striking out a claim by unreasonable conduct is a draconian power not to be too readily exercised. The two cardinal conditions are either that the unreasonable conduct has taken the form of deliberate and persistent disregard and required procedural steps; or that it is made a fair trial impossible.

Conclusions on strike out

63 I have given careful consideration to two possible causes of action. One would be to list the case for another telephone conference to consider possible judicial mediation; if the Regional Employment Judge thought appropriate, for the case to be listed once more for the judicial mediation; for a possible further Preliminary Hearing if the judicial mediation was unsuccessful; and list the case for a seven day full merits hearing. I was informed by the Tribunal's listing department that, with the shortage of judicial resources in this (and other Employment Tribunals) resources this would unlikely to be before February 2019.

64 The other possible option considered by me is to strike out the Claimant's claims.

65 This is a case where the Claimant has attended the Tribunal today, in spite of his health difficulties; and has frequently emphasised that he wishes to pursue his claims.

66 I have, however, decided not to take this course of action and, instead, to strike out the case including for the following reasons:

66.1 The power to strike out a case is a drastic one, not to be readily

exercised. Alternatives need to be considered. Losing the opportunity to bring a claim and potentially to be successful is as very great prejudice to a Claimant.

66.2 There has already been inordinate delay in getting the Claimant's cases for a full merits hearing. The first of the Claimant's four cases was issued over three and a quarter years ago, on 3 March 2015; and the fourth over one and a half years ago, on 3 October 2016. Some, or at the last count, all of the cases have been listed for hearing on three occasions- in April 2016, January 2017 and March 2017. No real progress has been made in the cases since the Preliminary Hearing conducted by Employment Judge Jones in November 2016.

66.3 Although my decision is based on the case not being actively pursued, the Claimant has undoubtedly been in breach of a number of Tribunal Orders and directions. A serious breach has been his failure, although he has obtained medical evidence, to address my request for medical evidence as to whether he would be able to attend and conduct his hearing with suitable adjustments; and for a prognosis, if unfit, as to when he would be fit. This was important to me in my decision making. I needed to understand whether there was a realistic prospect of the case being concluded within any reasonably foreseeable period of time. I pressed the Claimant for this information. Having met the Claimant on a number of occasions he is an intelligent individual and I consider his failure to supply this information, despite obtaining a number of GP letters following my request, is deliberate.

66.4 In 2016 I took steps to have the case listed for judicial mediation. It was listed, although cancelled by the Tribunal because of the Claimant's ill health. I do not have the confidence I need, if I was to restart the process I set in place in 2016, that the Claimant would not apply for another postponement of any telephone Preliminary Hearing or judicial mediation that might be set in place, if both parties' remained willing for a judicial mediation to be conducted.

66.5 The Claimant's GP's letter referred to a number of medical interventions being required for the Claimant in future. These appeared to me to increase the possibility of further postponements.

66.6 Nor do I have confidence that a trial of the case, even if listed as far ahead as February 2019, will go ahead. The history of this case suggests the contrary.

66.7 I accept that the delays have caused substantial prejudice to the

Respondent. As can be seen from the chronology the details of this case go back many years, witnesses recollection fade and one important witness for the Respondent has left their employment. Although I expect that, nonetheless, he could be called as a witness, I understand that he frequently works abroad and calling him adds an extra difficulty.

66.8 Another prejudice that would be caused to the Respondent through the prolongation of the hearing is the additional costs that would be caused by the continuation of this litigation. They have, I was informed, spent about £120-130,000 on the cases brought against them by the Claimant. Even if, as the Claimant says, the costs of their legal representatives are substantially greater than they should be, the costs are large and mounting. They are a charity dealing with highly vulnerable individuals. There appears to be little reasonable prospect of them recovering these costs, or the costs of any continuation of these proceedings.

66.9 In the *Riley* case (above) guidance was given that Article 6 of the European Convention on Human Rights emphasises that every litigant is entitled to a fair trial within a reasonable time.

66.10 I do not consider that a fair trial of these cases will be possible. The Claimant has given no more than a hope that he will be able to conduct a hearing at some point in the future. This has not been supported by medical evidence. As stated in the *Riley* case, if doctors cannot give any realistic prognosis of future improvement within a reasonable time and the case itself deals with matters that are already in the distant past, striking out a case must be an option available to a tribunal.

Employment Judge Goodrich

3 July 2018