Case Number: 2400107/2016

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EMPLOYMENT TRIBUNALS

Claimant ***Respondents***

Mr E Ukwu **v** **1. Afren Plc (in Administration)**
2. Afren Mena Limited (in Liquidation)
3. Indigo Beta Energy Ltd (Dissolved)
4. Mr P Burrell
5. Mr D Imision
6. Mr S Appell
7. Mr G Virani
8. Mr D Thomas
9. Mr D Comyn
10. Ms A Vallely
11. Mr P Gupta
12. Mr O Shahenshah
13. Ms J Barker
14. Mr A Linn
15. Mr P Bingham
16. Mr I McLaren
17. Mr D Frauman

Heard at: London Central **On**: 17 and 21 September 2017 (the latter in Chambers) 11-13 March 2019

Before: Employment Judge Glennie (Sitting alone)

Representation
For the Claimant:
For the Respondent: R1-4 Neither present nor represented
R5-6 Mr S Devonshire, QC
R7 Mr O Issacs, of Counsel
R8-11, R13-17, Mr P Halliday, of Counsel
R12 Not present, written submissions received from Ms J Russell, of Counsel

Note: the above representation reflects the hearing in March 2019

REASONS

1. The Claimant, who is a solicitor, was employed by the First Respondent as Company Secretary. The First Respondent was placed in administration on 31 July 2015 and the Claimant's employment came to an end for the stated reason of redundancy (although he disputes that) on 4 August 2015. The claim was then presented on 9 December 2015. In the claim form the Claimant made complaints of unfair dismissal and of dismissal and detriments due to protected disclosures. He also made other claims for notice pay, holiday pay, arrears of pay and other payments which were not specified. The Claimant named 23 Respondents to the claim, 17 of whom were served in the event, and subsequently the Tribunal declined to serve the proceedings on the remaining six intended Respondents.

2. The particulars of complaint ran to 72 pages and 490 paragraphs. I am told and I accept (I have not counted them up for myself) that the particulars of complaint contained 90 alleged disclosures and 290 alleged detriments. The particulars of complaint were in my judgment (and this is a view shared by the other judges who have seen the case in the past) excessively long, but that is not the only point about them. The particulars were not formulated in chronological order. By way of example, and there are many other examples of the same thing happening throughout the pleading, I refer to paragraphs 153-160 on pages 36-37 of the bundle. Paragraph 153 refers to events in August 2015. There is then in 154-156 an account of events in 2011, 157 refers to events between 2012 and 2014 as does 158, 159 refers to events in 2014, 2012, 2013, 2014, 2015 in that order. Then paragraph 160 goes to events said to have occurred on 2 October 2010.

3. The particulars of complaint are also vague in many places. Again I will give a single example, found in paragraphs 162, 163 and 164. Paragraph 162 says as follows, "the Directors, Executive and Management fostered a culture that put the company share price above everything else at any cost in order to maximise the remuneration of Executives and their cohorts/lieutenants and enrich them". Paragraph 163 says that they undermined the corporate governance structure of the organisation and ran the group in their personal interest rather than the interest of shareholders. In 164 it is said that the Chairman of the Board and former chairs of the committee failed to address areas of governance concerns and provided ineffective leadership; and that despite the Claimant's persistent efforts to highlight the issues to them, the executives and management undermined his efforts and competence.

4. The case first came before Employment Judge Snelson on 12 August 2016 and the orders that he made and the note of the hearing that he made are at pages 234-235. Judge Snelson made the following observation; "this case is in desperate need of clarification and simplification". That led Judge Snelson to make an order for a Scott Schedule of all the claims which the Claimant sought to pursue in the proceedings, and he specified the form in which that should be produced.

5. It is quite clear to me from what Judge Snelson said that what he intended was that the Claimant should make a selection from the allegations that were set out in the particulars of complaint in order to achieve clarification and

simplification of the claim that he was putting forward. What in fact followed in the Scott Schedule that the Claimant produced was a document that contained 95 alleged disclosures and 95 numbered detriments. That does not, however, represent a reduction in the number of detriments from the 290 that had previously appeared in the pleading, because many of those 95 are sub-divided into anything from 2 to 13 individual allegations. Again, I have not attempted to count how many there are, but it is clear that the number must be in hundreds.

6. Again, the way in which the case was put was vague. I will give just one example of that. On page 153 disclosure 3 is described in the following terms: date October 10; oral or written is answered writing and verbally; recipients Afren Plc, Mr O Shahenshah**,** Mr D Comyn, Ms J Barker and another named person; information disclosed "disclosures relating to criminal offences of market abuse, insider dealing, share dealing in closed and prohibited period, disclosure relating to the grant of share options. That is not the sort of pleading that would enable either the Respondents or the Tribunal to understand exactly or even generally what was said to whom, when, and so on.

7. There is another problem with the Scott Schedule and that appears from the second part of it, which is the schedule of detriments. Under the heading "protected acts alleged to be the reason for the treatment complained of", the Claimant has completed against each of the 95 sections the very same observation which is "protected disclosures prior to the detriment (see Scott Schedule of protected disclosures)". So, apparently the Claimant was seeking to put forward the case that every one of several hundred detriments was causally linked to every one of the 95 disclosures. This would create obvious problems for any party or Tribunal attempting to analyse the causal relationship that is being put forward between the disclosures and the detriments.

8. The case came before Employment Judge Gay on 11 November 2016 and the orders and the observations that Judge Gay made are at page 236 onwards. At page 238 Employment Judge Gay made the following observation, "it is regrettable that this case is still in a confused state some fifteen months after the termination of the Claimant's employment and ten months after the claim was presented. The provision of a Scott Schedule did not as Employment Judge Snelson had hoped to clarify and refine the issues instead they seemed to have burgeoned. In any event they are not presently identified in a manner which appears reasonable and proportionate in accordance with the overriding objective".

9. I should say that at both of these earlier preliminary hearings the Claimant was represented by Counsel, and it is evident that Counsel who appeared on this occasion proposed that the Claimant should have another opportunity to refine and clarify his claims by way of an amended claim. Judge Gay expressed a lack of enthusiasm about that, but in the event there was an application to amend the claim and supporting that there was a draft dated 31 May 2017 which had evidently been drafted by Counsel. This preliminary hearing was then listed to determine four matters, of which two are really at the forefront of this hearing. The four matters in the notice of preliminary hearing were:

1. the Claimant's application to lift the stay in respect of claims against all Respondents except Respondent One
2. the Claimant's application to amend the claim form
3. the Respondents application for striking out orders

4. subject to the first three, case management generally

I have been concerned with the applications to strike out and in shorter terms with the Claimant's application to amend.

10. The hearing was listed for 17-18 September 2017. It proceeded before me on the first day only: I was unable to sit on 18 September and there was no other judge available to take the case. There was not time for the hearing to be completed. I deliberated on 21 September and following that caused some matters to be raised with the parties. It is not necessary to go into the correspondence that followed save for the more recent correspondence which I will deal with shortly, but in the event the hearing was relisted to take place over the three days 11-13 March 2019.

11. The Claimant has not appeared at this resumed hearing. All three Counsel present and Ms Russell in written representations asked me to dismiss the claim pursuant to Rule 47 of the Rules of Procedure. That Rule provides as follows: "If a party fails to attend or to be represented at the hearing the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so it shall consider any information which is available to it after any enquiries that may be practicable about the reasons for the party's absence".

12. In case it be thought that rule refers only to the substantive hearing of the matter, in other words the trial, it appears in the section of the rules headed, rules common to all kinds of hearing.

13. I was referred to the authority of **Roberts v Skelmersdale College [2003] ICR 1127** in the Court of Appeal. That case concerned the former rule that was applicable in these situations, Rule 9(3) of the 2001 Rules. That rule provided as follows: "If a party fails to attend or to be represented at the time and place fixed for the hearing the Tribunal may, if that party is an applicant dismiss, or in any case, dispose of the application in the absence of that party or may adjourn the hearing to a later date; provided that before dismissing or disposing of any application in the absence of a party the Tribunal shall consider his originating application or notice of appearance, any representations in writing presented by him in pursuant of Rule 85, and any written answer furnished to the Tribunal pursuant to Rule 43." So, it is evident that under that earlier rule what the Tribunal had to consider before exercising the discretion provided by the rule was different from that under the present rule, but I find that the guidance in principal given by the Court of Appeal in that case remains applicable.

14. At paragraph 14 of the Court's judgment, Mummery LJ said this: "A number of points may be observed about Rule 93. First, it confers on Tribunals a very wide discretion to deal with cases (which are not uncommon) when a party fails to attend or to be represented at the time or place which has been fixed. Secondly, if the absent party is the applicant [the Claimant in present day terms] as was the case here, the Tribunal may in its discretion do one of a number of things.

1. It may adjourn the hearing to a later date
2. It may dismiss the application or
3. It may dispose of the application in some other way than adjourning it or dismissing it

15 In paragraph 30 of the judgment Mummery LJ referred to the particular facts of that case saying that the Claimant had failed to attend the hearing even though he knew it was taking place on the due date, and he knew that he had been refused any adjournment or postponement of the case in advance of the hearing. It had been made clear to him that if he wished to obtain a postponement it would be necessary for him to turn up to the hearing, he did not turn up and was not represented, and he did not give the Tribunal adequate reasons for failing to attend either to present his case or to seek an adjournment.

16 With all of that in mind I turn to the information that is available to me about the reason for the Claimant's absence. That involves looking at the recent correspondence.

17 At the hearing in September 2017 the Claimant asked for permission to record the proceedings, as a medical condition affecting his right shoulder meant that he could not take notes. Counsel then representing the Fifth and Sixth Respondents objected and, in the event, I did not allow this. The hearing proceeded as I have indicated and it appears that sometime later in November 2018 the Claimant underwent a surgical procedure on his shoulder. On 27 January 2019 the Claimant sent an email at page 769 in which he repeated the application for all hearings to be recorded because he was unable to take notes. He did not in that email suggest that he would not be able to participate in the hearing at all.

18 There then followed on 28 February 2019 at page 777e an email from the Claimant to the Tribunal which read as follows: "I hereby request for the postponement of the preliminary hearing scheduled for 11-13 March 2019 on medical grounds till November 2019. I am currently unable to participate in the Tribunal proceedings due to medical reasons. I have had a serious setback in my recovery from surgery and was instructed by my surgeon to avoid work/physical activities which impact the areas I was operated on. As the Tribunal is aware my shoulder injury was a repetitive strain injury caused by computer use, I believe my setback was due to my attempt to comply with the orders made by the Tribunal, please find updated medical documents."

19 The documents that the Claimant referred to were, at pages 777f and h respectively, a letter dated 14 February 2019 from his treating surgeon and a statement of fitness for work also dated 14 February 2019, apparently from his GP. The surgeon's letter referred to the operation and said it would take the best part of a year before the ultimate plateau of recovery comes through, which would be around November 2019. Then the surgeon said: "The rehabilitation will take some time before everything settles down. It is my recommendation that you adapt your physical/work activities to a level appropriate to your systems, please submit this letter to your employers so that sympathetic consideration can be given to your situation. Implicit in this would be your further consent". And then the statement of fitness for work says that the Claimant was not fit for work because of surgery to his shoulder and that this would continue until 15 March 2019.

20 Then on 1 March 2019 solicitors (Taylor Wessing) representing in this hearing the Fifth and Sixth Respondents sent a letter at page 777i which referred to the Claimant's position and this preliminary hearing. They objected to the application for a postponement but said that they would not object to the Claimant's request that the preliminary hearing be recorded so that he did not

have to take notes, and would not object to the Tribunal allowing the Claimant to take reasonable addition breaks if needed. The Claimant then sent a further email on 6 March 2019 at page 777s. In this he said that he accepted that there had been a short delay in making the application from the date of the surgeon's letter and he said that this was because he was too unwell to draft the email. He said "the Claimant is unable to prepare for a hearing or attend the scheduled proceedings, the Respondents have sent numerous documents in relation to the hearing to the Claimant which he has been unable to download or review due to his medical condition. For the avoidance of doubt the Claimant is unable to use a computer or review information or perform administrative tasks, the Claimant is also unable to sleep most nights and has to take medication to mitigate the pain and stress. The medication affects his cognitive abilities significantly."

21 The application for a postponement was referred to Regional Employment Judge Potter, who caused a letter of 8 March 2019 to be sent in which it was stated that the request to postpone the meeting had been refused. The reasons for this were stated to be as follows: "There is a mismatch between the medical evidence dated 14 February and the fitness certificate as against the Claimant's assertions that he cannot perform administrative tasks and sleep and that his cognitive abilities are significantly affected by medication. The assertions in the email of 6 March need to be backed up by medical evidence to support the postponement application."

22 It therefore seems to me that it is clear that it was open to the Claimant to renew his postponement application with medical evidence to support it if he so decided. In the event no further information has been provided regarding the Claimant's absence and there has been on further medical evidence sent to the Tribunal. The available information indicates to me that the reason for the Claimant's absence is his stated inability to prepare for or attend the hearing because of his medical condition. Judge Potter has found that reason to be inadequate and has explained why. The Claimant has not provided further medical evidence or attended, either to further explain the position, or to participate in the hearing with such adjustments as could be made.

23 I find the situation to be somewhat analagous to that of Mr Roberts in **Roberts v Skelmersdale.** The position here is that the Claimant has been made aware of what would be necessary to support his postponement application. He has also been made aware of what adjustments at least the Taylor Wessing Respondents are prepared to consent to in order to enable him to participate. He is also aware that he could come to the hearing and renew his application.

24 Rule 47 provides for a discretion as to what the Tribunal can do in the circumstances. There are things that the Tribunal could do other than dismiss the claim. It could adjourn, or it could deal with the matters in issue in the Claimant's absence.

25 I find that in looking at what I should do, it is a significant factor that the Claimant's claim could not, as I find, proceed as currently pleaded, and that to keep it alive the Claimant would have to succeed on an application to amend. I have already repeated what Judge Snelson and Judge Gay have said about the pleadings. As I have said, there is an amended pleading drafted by Counsel which has been put forward. That in itself does not solve all of the problems about the pleading because it is still in somewhat general terms and is open to some criticism of that nature.

26 Moreover, it is not even clear that the Claimant would now seek to amend the claim. I say this because on 6 February 2019 at page 806, the Claimant sent an email to the solicitors for the Respondents in which he said various things about the witness statements that had been sent, including that he disputed the assertions in those. I note in passing that it is evident that at that point the Claimant was able to read and consider the witness statements; but later in the email he said that he suggested that the Respondents provide full responses to his claim form made in 2015. That seems to indicate that he was relying on that first claim form rather than the amended pleading that had been drafted by Counsel.

27 A second significant factor is the length of time the proceedings have been on foot. I find that it is not fair to the Respondents to have the claims hanging over them for years with the Claimant either unwilling or unable to progress them. When I say progress them, it is not just a matter of proceeding to the hearing, we are still at the much earlier stage of getting the pleadings into a state where or condition where the Respondents and the Tribunal could actually deal with the claim.

28 Against all of this there would be the obvious prejudice to the Claimant if I were to dismiss the claim. He would not have a hearing of his complaints. It is said that the financial losses in the event of the Claimant's succeeding would be limited in the sense that they would be likely to be no more than seven months' salary, since all of the employees of the First Respondent were made redundant in February 2016 in any event. That would still be a fairly significant sum, and there would be an award for injury to feelings if the Claimant were to succeed. However, I find that there has already been disproportionate time and cost expended on this case and that allowing it to continue would clearly add to that. On the present condition of the pleadings it really is not capable of being progressed. If it were to go ahead even on the proposed amended pleading, then it is clear that the hearing would take weeks (estimates as to how long it would take and varied between weeks and months but it would clearly be a matter of several weeks as a minimum); and there are multiple Respondents.

29 Taking all of that into account, I find that the correct exercise of the discretion is to dismiss the claim, and I so order. That order brings the proceedings to an end, but in case I am wrong about that I will also deal with the substantive applications.

30 All of the Respondents apply to have the claims struck out under Rule 37(1)(b) of the Rules of Procedure on the grounds that the Claimant's conduct of the proceedings has been unreasonable. The approach that should be taken to such an application has been explained by Sedley LJ in **Blockbuster Entertainment Limited v James [2006] IRLR 630** at paragraph 5 of the judgment, which reads as follows:

"This power, as the Employment Tribunal reminded itself, is a draconic power not to be readily exercised. It comes into being if, as in the judgment of the Tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial possible. If these conditions are fulfilled it becomes necessary to consider whether even so striking

out is a proportionate response."

31 I find that the Claimant has conducted the proceedings unreasonably, in the following particular respects:

31.1 The original claim form was unreasonable in its excessive length and its unfocussed nature.

31.2 That was compounded rather than mitigated by the Scott Schedule.

31.3 The proposed amended claim, although it would be an improvement, is still in my judgment not a proportionate pleading of the case.

31.4 The Claimant has not attended to make the application to amend and it is not clear that he even actually wishes to rely on the proposed amended pleading.

31. I find that the Claimant's conduct of the case so far has made a fair trial impossible. I say impossible, taking into account the current state of the pleadings and the Claimant's non-attendance. It seems to me that there are ways in which it might have been possible for a fair trial to be arranged, but that would have involved substantial amendment to the claim and a reduction and refinement of the issues. None of that has happened, and in my judgment it would be wrong for me to say speculatively that it is possible that these things might still happen in some way or another. The indications are that it will not happen and the Claimant will continue, if participating at all to insist on the full range of his allegations being put forward.

32 The claim could not be fairly tried on the existing pleadings, which remain in the condition described by Judges Snelson and Gay. Any trial on those pleadings would not be fair, partly because the allegations are so vague, and partly because it would be of wholly disproportionate length. I am not convinced that there has been a deliberate and persistent disregard of procedural steps within the meaning of Sedley LJ's observations. I agree with Mr Halliday that the Claimant has not conducted the claim in accordance with the overriding objective, but I regard that as going to reasonableness rather than as to procedural default. There has not been a deliberate and persistent disregard of case management orders or of the Tribunal's procedural rules.

33 There is again a discretion to be considered and as Lord Justice Sedley observed, I have to consider whether striking is as a proportionate response. Really for the reasons that I have already given in relation to Rule 47 and the exercise of the discretion in favour of dismissing the claim, I would exercise the discretion in favour of striking out the complaints against all of the Respondents.

34 The next matter is the application for striking out on the alternative ground under Rule 37(1)(a) of there being no reasonable prospect of success in the claim. This is relied on by all of the Respondents except the Eighth, Thirteenth and Fourteenth Respondents, being Mr Thomas, Ms Barker and Mr Linn. I should say as I mention the Respondents that there are sixteen remaining Respondents and of those, there is a mandatory stay of the claim against the First Respondent which is in administration. The Second Respondent is in liquidation, the Third Respondent has been dissolved and there has been no response from them. The

claim against the Fourth Respondent Mr Burrell was struck out by Employment Judge Gay.

35 I find that I should approach the matter by considering the proposed amended grounds of claim as suggested by Counsel as that it where the claims are most clearly put and where there is the best prospect of discerning a complaint or complaints with real prospects of success. The principles that I should apply are that I should approach the question of striking out with caution. In **Ahir v British Airways [2017] EWCA Civil 1392.** In that case Underhill LJ gave the following guidance,

"Employment Tribunals should not be deterred in striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, but also provided that they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment and I am not sure that that exercise is assisted by attempting to gloss the well understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between exceptional and most exceptional circumstances, or other such phrases as made by found in the authorities. Nevertheless, it remains the case that the threshold is high and specifically that it is higher than the test for making a deposit order which is that there should be little reasonable prospect of success."

36 Mr Devonshire QC drew my attention to three further points made by Underhill LJ as follows:

36.1 In a case of this kind where there is an ostensibly innocent sequence of events leading to the act complained of there must be some burden on a Claimant to say what reason he or she has to suppose that things are not what they seem and to identify what he or she believes was or at least may have been the real story albeit that they are not yet in a position to prove it.

36.2 That even where an explanation was advanced, this would not defeat strike out application if it were not only speculative but highly implausible and/or the Claimant can point to no evidence that might support it.

36.3 Where there is on the face of it a straightforward and well documented innocent explanation of what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation, without the Claimant being able to advance some basis, even if not yet provable, for that being so.

37 I turn then to the particular Respondents. The first to be considered are the Fifth and Sixth Respondents, who are the administrators of the First Respondent. The detriments pleaded against them relate to the Claimant's dismissal and failure to respond to his grievance. The administrators have put forward a witness statement from Mr Wall which is a page 385 onwards of the bundle. Mr Wall says that he is a director of the firm for which the administrators work and that he is a

qualified insolvency practitioner with about fifteen years' experience in administrations and other insolvencies. He says in particular at page 385 that the Claimant's role was included in the list of those roles which were likely to be made redundant and was not considered to be required at any stage. He adds that a company secretary is not ordinarily required in insolvency situations and explained why that was so.

38 On page 386, paragraph 26, Mr Wall said that he knew that the Claimant had made alleged protected disclosures and so he wanted to check if he was entitled to receive any special protection before he was considered for redundancy. Mr Wall stated that he made that check and was told that there was no particular prohibition on making a role redundant because there had been protected disclosures. He said then in paragraph 29 that there was no requirement for a company secretary in the circumstances. In paragraph 30 Mr Wall said that there was no company employee or member of management that instructed the administrators to make the Claimant redundant and then in paragraph 34 he said that it was true that no steps had been taken to investigate the past grievances. He said that "in practice we often do not incur unnecessary time and expense dealing with many of the potential outstanding day to day issues in relation to former employees of the company" and then later in paragraph 34 he said that this is simply the general approach that insolvency practitioners have to take in order to prioritise issues relating to the administration, and do the job properly and efficiently.

39 Ultimately, Mr Wall stated that the decision to make the Claimant redundant was an entirely normal business decision. In the light of this witness statement (and allowing for the fact that there has not been any cross-examination of Mr Wall) I have to say that I agree with Mr Devonshire's submission that to the effect that it is inherently implausible that the administrators would victimise the Claimant for previous protected disclosures. There really is no reason why they should. There is no pleaded case of conspiracy or anything similar with the First Respondent's remaining management, and I find that the Claimant's case in this regard is indeed speculative and highly implausible and I find that it has no reasonable prospect of success.

40 I turn then to the Seventh Respondent, Mr Virani. Here the allegation is that he deliberately restricted the Claimant's basic salary, PSP awards and bonuses during a period from June 2013 to the end of 2014. Mr Virani has also produced a witness statement. In it he says that he was an associate director only, he says that he did not attend any meetings where the Claimant's remuneration or anyone's remuneration was fixed. He says that the Claimant was never a member of the team that he managed and he, Mr Virani had no control of, responsibility for, or influence over, the Claimant's remuneration.

41 I find that there is nothing pleaded by the Claimant to suggest that Mr Virani did exercise any such control etc. The pleading is an assertion only that Mr Virani subjected the Claimant to the detriments alleged. I find that to be insufficient to raise a case with any reasonable prospect of success. What is more, the complaint is clearly out of time because the effect of the rules about early conciliation is that the cut-off date for limitation purposes is 30 July 2015, and anything that occurred by way of detriment before that is on the face of the matter out of time. The Claimant has not pleaded or advanced any argument as to why an extension of time should be granted. Taking all of those matter together, I find that there is no reasonable prospect of the claim against Mr Virani, the Seventh

Respondent succeeding.

42 I now deal with the Respondents represented by Fox Williams Solicitors and Mr Halliday of Counsel. The Eighth, Thirteenth and Fourteenth Respondents, Mr Thomas, Ms Barker and Mr Linn do not rely on this ground for striking out and so I have to consider the other Respondents represented by Mr Halliday, the Ninth, Tenth, Eleventh and Seventeenth Respondents, Mr Comyn, Ms Vallely, Mr Gupta and Mr Frauman, I can consider together. There was in this regard at pages 804-805 a letter from Fox Williams of 5 February 2019 to Mr Ukwu in which they enclosed short witness statements from each of the four Respondents that I have referred to and Mr I McLaren the Sixteenth Respondent, in which effectively they denied the complaints against them. Fox Williams referred to having sent those in advance of the previous hearing, having asked the Claimant to confirm whether he disputed the evidence in the witness statements, and said that he did not respond to that letter.

43 I have already referred to the Claimant's email of 6 February in which he said that he disputed the assertions in the witness statements and in which he said that they had been made to mislead the Tribunal, but the significant point in my judgment is that Fox Williams had also asked the Claimant to produce any evidence that he wished to rely on to support any dispute of that evidence. He has not produce anything more than his assertion that he does indeed dispute the statement. The main thrust of these four Respondents' argument is that the Claimant has no reasonable prospect of success in contending that they were responsible for decisions made by the administrators. They say this in the light of their own witness statements and the absence of any evidence from the Claimant.

44 I find that the submission there is no reasonable prospect of success is well founded. This is first, for the reasons that I have already given in relation to the Fifth and Sixth Respondents, in there being an absence of any pleading of conspiracy or anything of that nature or collusion between management and the administrators. Secondly, the Claimant has been asked for any evidence in support of his claims and has not supplied any. I find that this was a reasonable and proportionate request to make. It is not the same as asking for disclosure of everything that the Claimant might have, but it is a sensible request in the light of the nature of this preliminary hearing that has been on foot to ask the Claimant if he has anything that he could put forward to support the claims that he makes against those Respondents.

45 There is the additional point that any detriments said to have occurred before 13 July 2015 are on the face of it out of time and I repeat my earlier observations about that issue. I find, taking all those matters together, that there is no reasonable prospect of success.

46 I move then to the Fifteenth Respondent, Mr Bingham. The latest detriment that is pleaded against him is said to have occurred on 21 October 2014. The complaint against him therefore is wholly out of time. I will not repeat what I have said about the time point, but the same factors apply here and I find that here that there is no reasonable prospect of success.

47 With regard to the Sixteenth Respondent, Mr McLaren, all but one of the detriments put against him are out of time except for the latest, but that has the difficulty that it does not appear in the original claim form; it appears only in the proposed amended pleading. The Claimant is not here in order to support any

application for the amendment and so I find that this latest detriment is not in issue before the Tribunal. It follows that everything that is pleaded is out of time and for the reasons that I have already given there is therefore no reasonable prospect of success.

48 There remains the Twelfth Respondent, Mr Shahenshah, who has had written submissions sent in from Ms Russell of Counsel. I have noted that it is said and there does not seem to be any reason to doubt it, that Mr Shahenshah left the First Respondent's employment on 31 July 2014. Any detriments before 30 July 2015 are out of time and given Mr Shahenshah's departure a year before that I find that there is no reasonable prospect of the claim against him succeeding because of the limitation point.

49 There remains the exercise of discretion because the very fact that there is no reasonable prospect of success does not automatically mean that the claim must be struck out. For the reasons that I have given already in relation to the exercise of the discretion earlier, I find that I should strike out those complaints against those Respondents.

50 Finally, there is the question of costs, and there is an application on behalf of four "groups" of Respondents (one being a "group" of one Respondent only). Rule 76(1) of the Rules provides that a Tribunal may make a costs order and shall consider whether to do so where it considers that, among other things, a party has acted unreasonably in either the bringing of the proceedings or the way that the proceedings have been conducted.

51 I have found that the proceedings have been conducted in an unreasonable way by the Claimant. Rule 77 then provides that a party may apply for a costs order at any stage up to twenty eight days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations in writing or at a hearing, as the Tribunal may order, in response to the application. The Claimant is not present, but I consider that he has had a reasonable opportunity to make representations at a hearing because he could have attended. It is the case that there is a degree of difference between the parties as to whether this application has been notified to the Claimant. Mr Devonshire and Mr Halliday's Respondents have not indicated an application for a costs order; Mr Isaacs' Respondent has indicated that costs would be sought in a more general way, and Ms Russell's Respondent has indicated an application for a costs order in this hearing in the written submissions that were sent in advance.

52 I would in any event find that if a party fails to appear at a hearing then it is open to the successful party to make an application for costs at the conclusion of that, even though this had not been specifically indicated in advance. The more so in the present case because given in particular the notification in Ms Russell's written submissions, the Claimant has been made aware that the questions of costs would potentially be on the agenda at this hearing.

53 Rule 84 states that in deciding whether to make a costs order and if so in what amount the Tribunal may have regard to the paying party's ability to pay. There is in Rule 78 a limit to the amount the Tribunal may summarily order of £20,000, which I understand as £20,000 per receiving party, although that does not come into play given the order that I have decided to make.

54 I have found that there has been unreasonable conduct. That does not mean that a costs order follows automatically, I have to consider whether to make such an order and there is a discretion. I consider that I should make such an order in this case. I find that the conduct concerned has been at the higher end of unreasonable and that not only has the way in which the Claimant has conducted and pleaded his case been unreasonable, but there has also been an unreasonable failure or refusal to take note of guidance evidently given by his own Counsel about refining and simplifying the case, but also given by Judge Snelson and Judge Gay.

55 I do not have any specific information as to the Claimant's ability to pay other than that he is apparently not working. I assume him to be of no more than average means, at best. That is a factor that I may have regard to and I will say that whatever the situation about the Claimant's means might be I would in any event make a costs order because of the factors I have already identified.

56 All three Counsel present today asked me to make a summary assessment of any order for costs, and the amounts that they have put forward vary, Mr Halliday was asking in total for £9,000, Mr Devonshire and Mr Isaacs suggesting figures between £2,000 and £5,000. Ms Russell was not specific in the cost application, but I will assume that if she had been here then the approach would have been similar. I say that because it is clear that the approach that is proposed is a pragmatic one, the costs that any of these parties must have occurred would far exceed £20,000 each on any view, and what is being asked is effectively a nominal order rather than one that reflects the amount of costs that anyone has actually expended.

57 I have come to the conclusion that I should order payment by the Claimant of £2,500 in respect of each group of Respondents. In other words, and this will be properly set out in my order, this means four x £2,500. In saying this, no one has asked me to attempt to work out which of the Respondents might have incurred more costs than which others.

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Employment Judge Glennie

Date 19 July 2019

JUDGMENT SENT TO THE PARTIES ON

22 July 2019

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FOR THE TRIBUNAL OFFICE