**Case Numbers: 1805188/2018**
**1805579/2018**
**1808605/2018**
**1810450/2018**
**1811341/2018**
**1800882/2019**
**1800883/2019**

# EMPLOYMENT TRIBUNALS

| Claimant | | Respondents |
|---|---|---|
| **Mrs R Parkin** | v | **1. Leeds City Council**<br>**2. Ms A Britton**<br>**3. Mr A Wetherill**<br>**4. Ms S Hussain**<br>**6. Mr A Hodgkinson**<br>**7. Ms M Godsell**<br>**8. Ms C Gill**<br>**9. Ms L Musonza**<br>**10. Mr M Walker**<br>**11. Mr D Harper**<br>**12. Ms S Rockcliffe** |

**Heard at: Leeds** **On: 5 & 6 December 2019**

**Before: Regional Employment Judge Robertson (sitting alone)**

**Representation:**

**Claimant: Not in attendance, written representations**

**Respondents: 1-4, 6-9 & 12: Mrs S Matthews, solicitor**
**10 & 11: Not in attendance**

# RESERVED JUDGMENT

1. The application by the respondents (except respondents 10 & 11) for the claimant's claims to be struck out under rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013 on the ground of her unreasonable conduct of the proceedings is refused.

2. Case Management Orders for the continuing conduct of the proceedings will be given separately.

# REASONS

## Introduction

1. This has been the hearing of an application by nine of the 11 respondents in these proceedings for strike-out of the claimant Mrs Parkin's claims against them. The application is based on rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013, unreasonable conduct of the proceedings.

2. The claimant was employed by the first respondent, Leeds City Council, as a Housing Support Worker. She has presented nine separate claims to the Tribunal between April 2018 and May 2019. This hearing is concerned only with the first seven of the claims (which I shall identify as Claims 1-7). These claims are all now combined for case management purposes.

3. In broad terms, the claimant has presented the claims sequentially, as events in her employment progressed from beginning ill-health absence in November 2017 until her dismissal in November 2018 and her unsuccessful appeal in February 2019. Her main claims are unlawful direct sex and race discrimination, unlawful disability-related discrimination and failure to make reasonable adjustments, harassment related to sex, race and disability, victimisation, unlawful public interest disclosure detriment, unfair dismissal, unlawful part-time worker detriment and unauthorised deductions from wages in respect of holiday pay.

4. Whilst the claims concern events from November 2017, the claim forms reference earlier events from which it appears that the claimant has abiding and deep-seated grievances about earlier changes to her terms of employment, in part at least achieved by collective agreement between the council and two recognised trade unions, Unite the Union and Unison. She says these changes were unlawful and discriminatory and continued to affect her into the period from November 2017.

5. The claimant's claim forms are of a kind: inordinate length, diffuse, and difficult to understand. There is much overlap between claims, and repetition of information. They contain lengthy argument, legal submission and extracts from documents and emails. The Tribunal has repeatedly encouraged and directed the claimant, in case management, with limited success, to identify clearly, chronologically and coherently what each respondent did wrong and how what they did gives rise to identifiable legal claims.

6. There are 11 respondents to the claims before me. Not all the respondents are parties to all the claims. Leeds City Council, the first respondent, the claimant's former

employer, is the only party to Claims 1 & 2. All the respondents, except Mr Walker, Mr Harper and Ms Rockcliffe, are parties to Claims 3, 4 & 5[1]. Except for Ms Musonza, they are also respondents to Claims 6 & 7, as are Mr Walker, Mr Harper and Ms Rockcliffe. All the respondents, except Mr Harper and Mr Walker, are pursuing this strike-out application. Except Mr Walker and Mr Harper, who dealt with the claimant in their capacity as trade union officials, the individual respondents are all employees of the council who dealt with the claimant at various stages in the history of events.

7. I mentioned earlier that I am concerned only with Claims 1-7, but the claimant has issued nine claims in all. By judgment and reasons dated 14 October 2019, following a preliminary hearing on 27 September 2019, Employment Judge Davies struck out the claimant's claims in Claim 8 (case number 1802984/19) under rule 37(1)(c) for failure to comply with a Tribunal order. I will say a little more about Claim 8 later.

8. Finally, Claim 9 (case no 1801209/19) is a claim against Unite the Union and Mr Fieldhouse, Regional Officer of the union. The claim was originally part of Claim 4, but was separated out by order of Employment Judge Davies dated 11 March 2019 and given its own case number. Claim 9 has been separately case-managed by Employment Judge Little, it is not included in this strike-out application, and it is listed for hearing in March 2020[2].

**Preliminary hearing**

9. I heard the application on 5 December 2019. I reserved my decision, to allow time to read the voluminous documentation about the proceedings. The respondents were represented by Mrs S Matthews, solicitor. The claimant did not attend the hearing but provided written submissions and supporting documents.

**Factual background to the claims**

10. Before I consider the procedural history of the claims, which I must do in some detail as the application is based on the claimant's alleged unreasonable conduct of the proceedings, it may help to set out some factual background. I take this largely from the decisions of the Employment Appeal Tribunal in the claimant's appeal against the dismissal of some of her claims in Claim 1. This background does not make any findings of fact and simply gives a broad context to the claims and this application.

11. The claimant, Mrs Parkin, was employed by Leeds City Council as a Housing Support Worker. Her employment had begun on 2 June 2010 with West North West Homes, an arm's length organisation which managed the council's housing stock, and she transferred to the council's employment on 1 October 2013 when the council took

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[1] There is an application, not yet determined, by the claimant to add Unite the Union and Unison to Claims 3, 4 & 5.

[2] The claim concerns the union's decision in April 2018 to refuse the claimant's application for legal assistance for her claims.

the work back in-house. Following maternity leave, she returned to work part-time in early 2014. There were difficulties, and a grievance was partially upheld in April 2014 in relation to changes to her place of work and leave entitlement.

12. The recent history started in November 2017 when the claimant was working part-time, two days/16 hours a week. She became unwell; she describes herself as having a mental breakdown. She remained off work for a substantial period thereafter. In February 2018 an Occupational Health report found she was unfit to attend work in her existing role due to depression and recommended exploration of redeployment. There was a policy of attendance management which was activated. The claimant made at least two unsuccessful attempts to return to work. She raised grievances about her treatment, I understand at least 30 separate grievances.

13. There were efforts made to find alternative roles for the claimant, either temporarily or permanently through redeployment. These were unsuccessful. There is dispute about what efforts were made, what roles were available or offered to the claimant, and what processes were or should have been used. The claimant was eventually dismissed on 4 December 2018. Her appeal was heard and rejected on 28 February 2019. As I have mentioned, the claimant presented claims as the events progressed.

**Procedural history**

**Claims 1 & 2 (Case numbers 1805188/2018 and 1805579/2018)**

14. The claimant presented these claims, her first two claims, to the Tribunal on 18 April and 21 May 2018. Setting a pattern for the future, the claim forms were very long, 38 pages and 82 pages. The Employment Appeal Tribunal described the claim forms as:

> "…very lengthy…they made reference to many potential causes of action but they were generally unclear as to what precise facts were relied on and how the case was put; they are not at all easy to follow. The focus…appears to be the treatment from November 2017 onwards but there were many references to complaints years before."

15. There was a Case Management Hearing on 12 July 2018. Employment Judge Jones identified the complaints at paragraph 1 of his Case Management Orders. He commented that they concerned a long history of events going back to the claimant's maternity leave in October 2013. He refused the claimant's application to amend her claim to include a complaint of unlawful pregnancy or maternity discrimination. He dismissed two complaints which were not pursued, relating to flexible working and deductions from wages before November 2017. He directed the claimant, then legally represented, to file a Schedule of Allegations, identifying chronologically what events were complained about and what legal claims were made for each event. He listed the claims for a Preliminary Hearing on 28 August 2018 to consider whether the claims should be the subject of strike-out or deposit orders, time-limit issues, and case management generally.

16. The claimant duly filed a Schedule of Allegations on 8 August 2018. It was long and repetitive, extending to some 118 pages. The council then filed Particulars of Response, about 20 pages long. The Employment Appeal Tribunal said this about the Schedule of Allegations:

> "…each allegation has a date starting November 2017, many potential causes of action are mentioned but there are recurring themes; failure to support the claimant during sickness absence or to redeploy her, failure to provide her with policy documents or documents relating to her case despite repeated requests, failure to appoint her to various jobs for which she applied and failure to address her grievances."

17. The claims came before Employment Judge Lancaster at the Preliminary Hearing on 28 August 2018. Following that hearing, he produced two Judgments and Reasons (Lancaster Judgments 1 & 2), a Deposit Order under rule 39 of the Employment Tribunals Rules of Procedure 2013 and Case Management Orders.

18. In Lancaster Judgment 1, Employment Judge Lancaster:

18.1 found that the claimant's claims in the Allegation Schedule relating to her sickness absence from November 2017 were in time;

18.2 refused the claimant leave to amend the claim to introduce a claim of part-time worker detriment (as to holiday entitlement);

18.3 deferred a decision as to strike-out or deposit in respect of certain further claims (see below); and

18.4 struck out all remaining claims in the Allegation Schedule as having no reasonable prospect of success. These included complaints of failure to produce records about the National Minimum Wage; flexible working; parental leave; guarantee payments; fixed-term detriment; failure to provide information in connection with a transfer of undertaking; human rights; breach of contract; protection from harassment; data protection; and failure to comply with policies or codes of practice.

19. In Lancaster Judgment 2, sent to the parties on 11 September 2018, Employment Judge Lancaster:

19.1 struck out the claimant's claims of unlawful sex discrimination and harassment as having no reasonable prospect of success;

19.2 struck out the claimant's claims of indirect discrimination based on sex, race or disability as having no reasonable prospect of success; and

19.3 permitted the claimant's complaints of victimisation after 20 January 2018, race discrimination as to failure after 12 November 2017 to offer any

alternative posts for which she applied, and unauthorised deductions from wages as to holiday pay in May 2018 to proceed to full hearing.

20. At paragraphs 10-16 of his reasons, Employment Judge Lancaster summarised the broad basis for the claims (set out at paragraph 19.3 above) that he was permitting to proceed to hearing.

21 Employment Judge Lancaster made Deposit Orders for the claimant's remaining claims of race and disability discrimination and harassment, victimisation before 20 January 2018 and public interest disclosure detriment. In his reasons, Employment Judge Lancaster commented that it was virtually impossible to identify in the Schedule of Allegations what claims the claimant was pursuing; she had repeated her complaints in a lengthy narrative and appended a long list of potential complaints without explaining how they arose, for example unspecified assertions of failure to support or follow policies were said to give rise to 17 different claims; he recognised the claimant's feeling that the employer had badly treated her but she had failed to say what her claims were or how they were made out.

22. I have described at some length the issues with how the claimant put her case, as found by Employment Judge Jones and Employment Judge Lancaster, as similar issues arise in her later claims, and they underpin the respondents' case about what they say is the unreasonable way in which the claimant has conducted these proceedings.

23. The claimant did not pay the deposits ordered by Employment Judge Lancaster. Those claims were dismissed by judgment of Employment Judge Rogerson in November 2018.

24. The claimant applied, unsuccessfully, for reconsideration of the decisions made by Employment Judges Jones and Lancaster. She then appealed to the Employment Appeal Tribunal. There were, I think, seven separate appeals. Apart from in one respect, to which I will come, the appeals were dismissed under rule 3(10) by Mr Justice Choudhury P and HHJ Richardson following hearings on 16 January and 3 June 2019.

25. The Employment Appeal Tribunal, however, permitted one ground of appeal to progress to full hearing, and on 11 November 2019, allowed the claimant's appeal against Employment Judge Lancaster's strike-out of the sex discrimination and harassment claims, and remitted them to this Tribunal for case management. At paragraph 16 of his reasons, HHJ Shanks said this:

> "I cannot leave the case without acknowledging and sympathising with the position of this Employment Judge and other Employment Judges in this kind of case; it really is difficult to see how they can be managed in a way that does justice to both sides. However, I must say that it seems to me that sometimes with these cases the best answer may be to just list them for a Full Hearing at the earliest opportunity and not keep making interim orders that are appealed and cause endless delays and bewilderment, I suspect, to Claimants. That way the Claimant is

> able to give evidence, tell her story, facts are decided upon, and then the results of those can be adjudicated on."

I will return to these observations of HHJ Shanks later.

26. I also record an observation of HHJ Richardson at paragraph 39 of his rule 3(10) judgment:

> "At the heart of them were the complaints of race discrimination in respect of the alleged detriment of not being offered any alternative posts for which the claimant applied…. Before I heard the claimant, I was not quite sure why the Employment Judge had specifically singled out the complains of race discrimination relating to alternative posts. However, having heard her, I quite understand why he did so; that seems to me to be very much at the heart of the case. Likewise, the complaint relating to holiday leave, although a relatively small matter, is one about which she feels strongly."

27. At paragraph 10 of her Case Management Orders dated 5 February 2019, Employment Judge Davies summarised the remaining claims in Claims 1 & 2, as I have set them out at paragraph 19.3 above. To these must now be added the claimant's complaints of unlawful direct sex discrimination and harassment, remitted by the Employment Appeal Tribunal, which have not yet been subjected to identification of the relevant events and case management.

**Claims 3, 4 & 5 (Case numbers 1808605/2018, 1810450/2018, 1811341/2018)**

28. The claimant presented Claim 3 on 28 July 2018 and the respondents responded to it on 11 September 2018; Claim 4 on 12 September 2018 and the respondents responded on 17 October 2018, and Claim 5 on 17 December 2018. Employment Judge Davies combined these claims with Claims 1 & 2 at a Case Management Hearing on 5 February 2019.

29. The Case Management Hearing on 5 February 2019 was cut short as the claimant became ill. However, at paragraph 11 of her Case Management Summary, Employment Judge Davies identified Claim 3 as relating to a short period from 20 to 26 July 2018, concerning, in general terms, the claimant's attempt to return to work at that point. Notwithstanding that, the claim form extended to 66 pages, and Employment Judge Davies made clear that the Tribunal would want to discuss and identify what each respondent was alleged to have done wrong and what legal claims were being made.

30. At paragraph 12, Employment Judge Davies identified that Claim 4 appeared to concern matters between 14 June and 1 August 2018 but again, the Tribunal would want to identify what was background and what were claims, what each respondent was said to have done wrong, and what legal claims were being made. Claim 4 extended to 147 pages.

31. Then Employment Judge Davies indicated at paragraph 13 that she was unclear what Claim 5 (running to 77 pages, and supplemented on 9 January 2018 by a further

document of 75 pages) concerned, although she noted that the claimant told her that these were new matters and were not going over old ground.

32. Some progress was apparently made at the next Preliminary Hearing on 11 March 2019 in identifying what Claim 3 was about. The claimant confirmed it related to events in late July 2018. It was a claim of victimisation, based on her having brought Tribunal proceedings. It was also a complaint of public interest disclosure detriment, based on alleged disclosures in 2011 and 2013, disability-related harassment and part-time worker detriment. Employment Judge Davies attached to her Case Management Orders an annex containing the 20 allegations which she understood the claimant had identified. Looking at the document, it identifies an apparently coherent set of allegations relating to the claimant's absence management in July 2019, this being, as already said, at the heart of the claimant's case. "Apparently coherent" does not mean the claims have merit; simply that they are understandable.

33. There was insufficient time at the Case Management Hearing on 11 March 2019 to discuss Claims 4 & 5. The hearing was re-listed to resume on 21 March 2019. Employment Judge Davies attached to her Case Management Orders draft annexes setting out, for discussion with the claimant when the Preliminary Hearing resumed on 21 March 2019, what she understood the headline claims in Claims 4 & 5 to be.

34. Sadly, matters did not proceed smoothly. Directly contrary to Employment Judge Davies's direction that there should be no intervening contact with the Tribunal, the claimant sent almost 200 pages of correspondence to the Tribunal. She rejected the draft Claim 3 annex and disputed that she had agreed any of it. At the resumed Preliminary Hearing on 21 March 2019, Employment Judge Davies set a timetable for agreeing what the claims were about. Some progress was made with Claim 3, but the claimant indicated that she felt pressured and could not continue. Following the hearing, Employment Judge Davies sent a revised version of the Claim 3 annex. As to Claims 4 & 5, she ordered the claimant, by 2 May 2019, to file, in a precise form, completed annexes to the claims, setting out what she was complaining about in each claim.

35. On 2 May 2019 the claimant filed her proposed annexes to Claims 4 and 5. The annex to Claim 4 was four pages long and identified six very broad heads of allegation:

> 35.1 imposing medical redeployment policy without her knowledge and agreement;
>
> 35.2 at a meeting in July 2018, refusing to redeploy her within shared services and insisting on medical redeployment, and imposing a trade union representative not of her choice;
>
> 35.3 Unite the Union denying her legal representation in April 2018;

35.4 requiring her case to be handled by the HR department rather than by her line manager;

35.5 refusing to send her details of vacancies, suspending her on medical grounds, leaving her with no place of work, and subjecting her to a stage 1 sickness absence meeting; and

35.6 refusing her requests for parental leave and annual leave and placing her in the "talent pool".

36. It then set out, under the heading of type of legal claims, a lengthy list of asserted claims; for allegation 1 it identified no fewer than 33 separate legal claims, broadly asserting breach of contract, direct and indirect sex, race and disability discrimination, public interest disclosure detriment, health and safety detriment, unauthorised deductions from wages, failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2016, failure to comply with collective agreements and failure to pay holiday pay.

37. For Claim 5, the claimant's annex listed 11 separate heads of allegations, broadly as follows:

37.1 unlawful variation of terms of employment and imposition of medical redeployment, denying her sick leave and holiday;

37.2 refusing to resolve her grievances and imposing medical redeployment rather than transferring her within shared services;

37.3 delaying payment of salary and failing to deal with her request for flexible working;

37.4 failing to explain what she said was her less favourable treatment as a part-time worker than comparable full-time, non-disabled or white colleagues;

37.5 bullying and harassment by Mr Hodgkinson and unlawful suspension from work;

37.6 manipulation of the record of a grievance meeting;

37.7 ignoring her request for an appraisal, for equipment and interfering in her phone and email accounts;

37.8 interfering in her sick leave and changing it to annual leave;

37.9 failing to keep a record of annual leave and refusing her request to carry forward leave;

37.10 sending her only details of jobs available through medical redeployment;

37.11 refusing to provide her with terms of employment as agreed by collective bargaining.

38. The claimant set out in support of these allegations a similarly lengthy list of asserted legal claims.

39. The respondents filed their response to Claim 5 on 1 July 2019. Since then, because of the events concerning Claim 8, and the listing of this application for hearing, there has been no further case management of these claims.

**Claims 6 & 7 (Case numbers 180882/2019 and 180883/2019)**

40. The claimant presented these claims on 13 and 22 February 2019. The claim forms extended, respectively, to 325 and 606 pages. On 4 March 2019 I rejected the claims under rule 12(1)(b) as being incapable of being sensibly responded to.

41. At a hearing on 29 March 2019 I reconsidered and revoked my decision to reject the claims, upon the claimant's agreement to limit the claims to the contents of the first 100 and 130 pages of the claim forms, which she agreed contained the substance of her complaints. Whilst I commented that even as so limited, the claim forms contained much unnecessary material, were muddled and excessively lengthy, they were just capable of being understood to relate to identifiable events (including her dismissal in November 2018) and therefore of being responded to. I anticipated that the claims would then be case managed with the claimant's existing claims.

41 On 2 May 2019 the respondents served their response to the claims, including (as I had requested) a chronological history of events in the period October to December 2018. On 4 June 2019 the respondents were ordered to respond to the claimant's claim for notice pay (which they did). The claimant's lengthy and discursive application for the respondents to provide further particulars of their response was refused, pending clarification of the basis of her claims.

42. Again largely because of the intervention of Claim 8, and the listing of this application for hearing, no further case management of these claims has taken place since then.

**Claim 8 (Case number 1802984/2019)**

43. Although this claim was struck out by the Tribunal on 27 September 2019, and does not fall within this application for strike-out, I need to say something about it within the overall narrative history of the proceedings.

44. The claimant presented this, her final, claim on 24 May 2019. It was said to relate to events from January to April 2019 (a period when, although her appeal was heard in

February 2019, the claimant was no longer in the council's employment). It included a 156-page annex and a table of claims almost 50 pages long. Employment Judge Davies described it as "wholly unclear". The column identifying the type of legal claims being advanced identified 63 different legal causes of action.

45. Employment Judge Davies ordered the claimant to provide, by 2 July 2019, further particulars of the claim, in tabular form, in like manner to that required for claims 3, 4 & 5. The claimant purported to comply, but the particulars did not do what was required, as Employment Judge Davies recorded at paragraph 1.10 of her subsequent written reasons following the hearing on 27 September 2019.

46. Although the claimant's table of claims was much shorter, it still contained wide-ranging allegations and complaints, and long lists of causes of actions. It remained impossible to understand what the claimant was saying had been said or done between January and April 2019, by whom, and what her legal complaints about such matters were. By way of example, the first entry was:

> *Jan to April 2019 on several occasions, LCC & Trade Unions refusing to give me or allow access to documents either saying they do not exist or refusing to keep record/allow me access & refusing to give me copies of my personal data (including leave record, appraisals, one to one, T&C which they said remains same when they claimed they approved my flexi working request etc) as well as refusing to give me a copy of my individual T&C of employment with any variation as well as refusing to give me T&C of employment agreed by collective bargaining and a copy of the variation of my T&C of employment done in 2016 & on 19/03/19 LCC claimed they approved my flexi working request from 16 hours to 8 hours and lied about meaningful work & flexibility protocol to justify paying me less than NMW and not paying me pay in lieu of notice.*

47. Alongside that and the immediately following entry, the claimant identified 50 separately-numbered types of legal claim, including breach of contract, unfair dismissal, whistleblowing detriment, direct and indirect race, sex and disability discrimination, right to guarantee payment, duty to inform and consult under TUPE Regulations, detriment as a trade union member, liability of union in certain proceedings in tort, detriment for pensions entitlement, and breach of human rights. These purported claims bore a remarkable resemblance to those the claimant had asserted in support of previous claims.

48. On 4 July 2019 Employment Judge Davies issued the claimant with a strike-out warning on the ground of her unreasonable conduct or failure to comply with the order for further particulars, prompting the claimant to serve a revised schedule on 12 July 2019. Employment Judge Davies at paragraph 1.14 described the litany of claims now asserted by the claimant in the following terms:

> "Against that entry the column containing the Claimant's list of legal claims or statutory provisions ran to 2½ pages. It included under the Equality Act claims of direct and indirect race,

disability and sex discrimination; harassment on those grounds; victimisation; breach of the duty to make reasonable adjustments; unfavourable treatment because of disability; and breach of a sex equality clause. The Claimant also referred to provisions in parts 8 and 10 of that Act. In addition, she referred to breaches of the National Minimum Wage Act, Working Time Regulations, Part-Time Workers (Prevention of Less Favourable Treatment) Regulations, TUPE Regulations, Employment Rights Act and Public Interest Disclosure Act. The provisions identified in the Employment Rights Act included the right to a statement of changes to employment particulars, the right not to suffer unauthorised deductions from wages, the right to a guarantee payment, and the right not to be subjected to detriment in health and safety, working time, protected disclosure, and flexible working cases".

49. The case came before Employment Judge Davies on 27 September 2019. Her decision was to strike out the claimant's claim in its entirety, because she had not complied with the order to properly particularise the claim. Relevantly, she said this:

"1.32 Applying those principles, I have decided that claim 8 should be struck out. First, I find that the Claimant has failed to comply with my order of 4 June 2019. As set out above, in her revised annexes, sent on 2 and 12 July 2019, she has not said who did what and on what date. Much of what she says is still at the level of general assertion or deals with events over a long period. The Respondents cannot properly respond to that. Further, she has not properly specified what kind of legal complaint she is making about each thing. She has listed numerous different types of complaint. Some of those obviously cannot be relevant. When I identified one example at the preliminary hearing, she said that she had mistakenly cut and pasted that one in. This was just one example.

1.33 I have considered all the documents she presented at the hearing on 27 September 2019. As set out above, none of those provides a coherent explanation of claim 8 either.

1.34 I therefore have to decide whether claim 8 should be struck out, taking into account the factors identified in the *Weirs Valves* case and the question of proportionality.

1.35 I recognise that the Claimant tried to comply with my order on 2 and 12 July 2019. She had more than two months during which she could have produced a revised document, having regard to my clear explanations of what was required. I realise that she does not have legal representation and that her poor mental health affects her ability to comply. However, that is why I gave such a long period before listing the preliminary hearing. The Claimant did not use it.

1.36 The lack of proper particulars of claim 8 causes real unfairness, because the Respondents need to know what the claims against them are and they do not. That brings me on to the question of whether a fair hearing of claim 8 remains possible.

1.37 As it stands, I find that a fair hearing of claim 8 would not be possible. Firstly, it is unfair if a party does not know what the claim against it is. Secondly, the Tribunal cannot decide a case when it does not know what the claims are. Thirdly, as indicated above, fairness includes fairness to both parties, and fair allocation of Tribunal resources more broadly. It would not be fair for the Respondents to have to respond to claim 8 as it currently stands, and then prepare for and participate in a hearing of that claim. That would require excessive time and expense on their part, even if it were possible in principle to respond to the claims in their current format. It would also not be fair to other parties with Tribunal claims for the further significant administrative and judicial resources that would be required to be devoted to this claim.

1.38 Consideration of whether a fair hearing of claim 8 would be possible includes consideration of whether striking out claim 8 would be proportionate, and whether there is some step short of striking the claim out, that would enable a fair hearing to go ahead. I have been unable to identify any step short of striking the claim out that would achieve that aim.

1.39 I considered whether, as the Claimant suggested, the use of an Igbo interpreter would enable the claims to be properly clarified. I decided that it would not. The fundamental task is not to put claim 8 in clearer language. It is to identify, in a focussed and succinct way, what things people said or did that the Claimant is complaining about, when, and what type of legal complaint she is making about each thing. At a hearing, all that an interpreter can do is translate word for word what the Claimant says. The interpreter cannot tell her what her claims are. Making allowances for the Claimant's mental health difficulties and the fact that English is not her first language, I therefore allowed a lengthy period before the preliminary hearing on 27 September 2019 for her to provide proper clarification of claim 8 in writing. She did not do so. I do not consider that holding a preliminary hearing with an Igbo interpreter would in those circumstances lead to proper clarification of claim 8.

1.40 The Claimant suggested that I should order disclosure, in particular of her contract of employment, but also more generally. She said that this would enable her properly to clarify claim 8. I do not believe that it would. When I asked her how disclosure of her contract would enable her to explain her claims, she was not able to say. I do not accept that disclosure of documents would lead to the Claimant setting out her complaints in a succinct and focussed way. There is also a further difficulty with this suggestion. I have repeatedly explained to the Claimant that part of the reason for being clear about what her complaints are, is so that when the Tribunal orders disclosure of relevant documents, the Respondents (and if necessary the Tribunal) can assess whether documents are relevant and disclosable. It is necessary to know what the claims are in order to decide what is relevant.

1.41 The Claimant also suggested that the Respondents should go through her annex for claim 8 and identify the claims that were obviously wrong, which could then be struck out. That would not be a proportionate approach. It would entail very substantial work by the Respondents and then a further, lengthy hearing giving the Claimant the chance to respond. This must be seen in the context of the Claimant's litigation more generally and the overriding objective. In any event, it is not for the Respondents to say what the Claimant's complaints are. She must do so.

1.42 The Claimant also suggested that, even if other claims were unclear, there was clearly a complaint about dismissal, which should go ahead. However, claim 8 does not include a complaint about her dismissal. That is dealt with in claim 1800882/2019, which includes an unfair dismissal complaint. She was dismissed on 5 December 2018. I do not consider that there are clear parts of claim 8 that can be separated out and proceeded with.

1.43 I considered whether it would be possible to clarify claim 8 in discussion with the Claimant at a preliminary hearing, or by the preparation of a discussion draft by me in advance. However, I have tried both those approaches in claims 3, 4 and 5 and they proved unsuccessful. In those circumstances, it would not be consistent with the overriding objective to use further judicial and Tribunal resources in that way.

1.44 I have not therefore been able to identify any step short of striking out claim 8 that would enable a fair hearing to take place. Fundamentally, the claim needs properly clarifying for a fair hearing to take place, and no step that would lead to such proper clarification has been identified by the parties or me."

**Claim 9 (Case no 1801209/2109)**

50. As I indicated earlier, this claim is proceeding against Unite the Union and Mr Fieldhouse, Regional Organiser. It concerns their decision in April 2018 not to grant the claimant legal representation for her claims. Neither Unite nor Mr Fieldhouse apply for strike out of the claim, and I need say no more about it.

**The claimant's behaviour generally**

51. Throughout the course of these proceedings since April 2018, the claimant has deluged the Tribunal with an extraordinary number of letters, emails and applications. Many of these have been very lengthy, and accompanied by numerous attachments. Each has required the Tribunal to read and respond to them. By way of typical example, in the short period from 20 October to 8 November 2019 the claimant sent no fewer than 20 separate emails, many of them with lengthy attachments. Few, if any, genuinely required the Tribunal's attention, particularly given the clear, focused case management already taking place. Repeated requests by the Tribunal for the claimant to limit her correspondence have been ignored.

52. The claimant's correspondence has been leavened with repeated applications, often in intemperate and offensive terms, for Employment Judge Davies, who has been case-managing the proceedings, to recuse herself on the ground of racism, bias and favouritism towards the respondents. These applications have without exception lacked any merit whatsoever, based only on the claimant's disagreement with any decision of the Tribunal which she does not like. Almost every decision made by the Tribunal, however routine, has generated correspondence and/or applications for reconsideration. The time expended by the Tribunal in dealing with the claimant's correspondence has been wholly disproportionate and has interfered with the Tribunal's ability to deal with the many other matters before it. The claimant has lodged 29 appeals to the Employment Appeal Tribunal, only one of which has reached full hearing. The others have not survived the sift.

53. I mentioned at paragraph 25 above the observations of HHJ Shanks at paragraph 16 of his judgment dated 11 November 2019. In his judgment dated 24 September 2019, rejecting under rule 3(7ZA) of the Employment Appeal Tribunal Rules nine pending appeals by the claimant as wholly without merit, HHJ Barklem said this:

> "It has taken many hours of administrative time to prepare the many bundles of documents arising from these appeals, which involve much duplication. A day and a half of judicial time has been spent reading through a mass of documentation to understand the basis of the appeals, ensuring that all points raised have been taken on board, and writing these reasons. This is utterly disproportionate to the issues raised. The amount of administrative and judicial time spent at the Employment Tribunal must have been many times that employed at the EAT.
>
> As mentioned above, the claimant has been warned that it is necessary to put her claims in a manageable format which could be responded to by the respondent and progressed to a hearing. She was further warned that, if this proved impossible, a time could come when

> consideration to striking out her claims as a hearing was not possible. I would underline those warnings. She should seek to engage with the process and follow the helpful guidance which has been provided to her by Employment Judges involved in her claims".

**The relevant legal principles**

54. I can state these quite briefly. The power to strike out a claim is contained in rule 37 of the Employment Tribunal Rules of Procedure 2013. Under rule 37(1)(b) claims may be struck out on the ground that the manner in which the proceedings have been conducted by a party has been unreasonable. This is the ground relied on by the respondents in this application.

55. In exercising the power, the Tribunal must have regard to the overriding objective of seeking to deal with cases fairly and justly. Justice is more than reaching a decision that is fair between the parties in the sense of fairly resolving the issues. It involves doing so within a reasonable time and having regard to cost. It involves being just and fair to all parties. Further, overall justice means that each case must be dealt with in a way that ensures that other cases are not deprived of their own fair share of the resources of the Tribunal: see **Harris v Academies Enterprise Trust** UKEAT/0097/14.

56. The principles to be applied when deciding whether to strike out a claim for unreasonable conduct of proceedings were set out in **Blockbuster Entertainment Limited v James** [2006] IRLR 630. The power to strike out should be exercised only in the most extreme cases. The impugned conduct must involve deliberate and persistent disregard of required procedural steps or must be such that a fair trial is no longer possible. In either case, strike out must be a proportionate response, requiring balancing of the conduct with the effect of striking out, and consideration of whether a lesser sanction would be appropriate. The first object of any system of justice is to get triable cases heard. The Tribunal is there for difficult as well as compliant parties, so long as they do not conduct their cases unreasonably. Questions of proportionality require the Tribunal to spell out why striking out is the only proportionate and fair course.

**Submissions**

57. Mrs Matthews says that the way in which the claimant has conducted the proceedings means that a fair trial is not possible. She says that despite case management and guidance given by the Tribunal to the claimant at hearings in August 2018 and in February, March and May 2019, the respondents still do not know what is being alleged, they cannot prepare for the hearing or know what documents to disclose. There is a real risk of prejudice, particularly when there are individual respondents, council employees, who do not know what they are accused of doing.

58. Mrs Matthews directs me to the claimant's proposed annex to Claim 4, which whilst relatively short, includes no fewer than 33 separate heads of legal claim. For Claim 3, she says, the claimant agreed the proposed schedule of claims but then resiled and is seeking to reintroduce all the claims in her claim form. She accepts that Claims 1 & 2 were clarified by Employment Judges Jones and Lancaster, but the claimant's allegations of sex discrimination and harassment have been restored following the decision of the Employment Appeal Tribunal and the respondents again do not know what they are facing. Mrs Matthews says that from the history of the claims, there is no likelihood that the claimant will ever clarify the claims in a way that the respondents can understand.

59. Finally, Mrs Matthews directs me to the way in which the claimant has conducted the proceedings, involving excessive correspondence, repeated allegations of racism and bias, ignoring Tribunal orders and directions, which she says amounts to sustained and unreasonable conduct of the proceedings.

60. The claimant's submissions extend to 27 pages, supported by numerous documents. I have read the submissions carefully. I summarise her case, in broad terms, as follows:

60.1 In Claims 1 & 2, Employment Judges Jones and Lancaster, and the Employment Appeal Tribunal, understood what she was claiming about;

60.2 She has done her best, as a litigant in person, to clarify her claims (I infer, in Claims 3, 4 & 5);

60.3 The respondents have refused to disclose documents relating to collective agreements, redeployment policies, calculation of leave and holiday pay and transfer of undertakings, which would have assisted her to clarify the claims and resolve them;

60.4 In particular, she says that the respondents have failed to provide her with documents concerning changes to her terms of employment following her TUPE transfer in 2013 or under a collective agreement between the council and its recognised trade unions, which she says were discriminatory, but which if disclosed, would assist her to clarify what claims to pursue;

60.5 Whilst much of what she says is very difficult to follow, she has set out, at paragraphs 8-11 of the submissions, a summary of her main contentions, covering the calculation of holiday pay, failure to deal with grievances, failure to redeploy her within shared services when white colleagues were redeployed, requiring her to follow medical redeployment, falsifying or concealing her personal data, unfairly dismissing her on capability grounds, unfairly suspending her for minor misconduct and excluding her from the workplace;

60.6 She directs me to the relevant caselaw, and says it would be disproportionate and not in the interests of justice to strike out her claims.

**Discussion and conclusions**

61. The respondents apply for strike out of Claims 1-7 as a whole, under rule 37(1)(b), unreasonable conduct of the proceedings, despite the different stages reached in case management of those claims.

62. I must first decide whether the claimant's conduct of the proceedings overall has been unreasonable. I find that it has.

63. I recognise that the claimant is unrepresented. I recognise also the possibility that the claimant's poor mental health, anxiety and depression may have impacted to some degree on her ability to focus on the issues. However, looking at the proceedings overall, the same features appear throughout, and in my judgment amount to unreasonable conduct of them: (1) the excessive length of the claims; (2) the lack of any clarity in the claims, even after the Tribunal has explained to her what is required and why it is necessary; (3) the failure to specify exactly what each respondent has done wrong and what legal claims that gives rise to; (4) the volume of correspondence with the Tribunal; (5) the challenges to any decisions made by the Tribunal, however minor; and (6) the repeated allegations of bias against the Tribunal.

64. Then I must consider what I will call the **Blockbuster** factors, which I set out at paragraph 56 above. The power to strike out should be exercised only in the most extreme cases. The claimant's conduct must have involved deliberate and persistent disregard of required procedural steps or must be such that a fair trial is no longer possible. In either case, strike out must be a proportionate response, requiring balancing of the conduct with the effect of striking out, and consideration of whether a lesser sanction would be appropriate. I recognise that the first object of any system of justice is to get triable cases heard.

65. It is essential to a fair trial that the respondents know what the case against them actually is: what are they said to have done wrong, and what legal claims that gives rise to. In the context of multiple claims of this mature and complexity, of inordinate length and lack of focus, against multiple respondents, some of whom are individual employees, it is unrealistic to suggest that the Tribunal should just get on and list the claims for hearing and see what emerges at trial. No respondent can fairly be expected to prepare for or enter into the hearing of complex discrimination claims on that basis.

66. I ask myself whether, from the previous history of the claims, I have any confidence that the claimant will set out her claims in a way that the respondents can be expected to meet, and which the Tribunal can fairly hear?

67. I set out the history in some detail above. I note that after robust case management by Employment Judges Jones and Lancaster in August and September 2018, Claims 1 & 2 were sufficiently clarified that they could proceed to hearing. The claims were pared down, by identifying the broad themes and striking out claims that had no reasonable prospect of success. There is no suggestion that the claimant has disregarded any Case Management Orders made in Claims 1 & 2. The claimant has not yet been required, following the decision of the Employment Appeal Tribunal, to clarify what she says amounted to unlawful sex discrimination and harassment against her.

68. I endorse the case management approach of Employment Judge Davies in Claims 3, 4 & 5. That has produced focused annexes setting out the allegations the claimant makes in each case. There are real issues with the claimant's list of legal claims, not least as some of the asserted claims seem to have little relationship to the described events or the Tribunal has no power to consider them. But it seems to me that the claimant has made efforts to comply with the Tribunal's Case Management Orders, and that with robust case management and pruning of claims, a fair trial based on the three annexes remains possible.

69. I recognise that in Claims 6 & 7, the claim forms, even as pared down, extend to 230 pages in all. But I have already referred to the continuum between the claimant's claims, and a casual glance at the claim forms reveals repetition of the same matters already alleged by the claimant in previous claims, but covering different periods in her employment, up to and including dismissal. I note that as yet, there has not yet been any attempt to clarify the claims, and it seems to me that it is proportionate, in the interests of a fair trial, to follow a similar case management approach to that adopted in Claims 3, 4 & 5.

70. It is clear to me that there are common themes in the claimant's successive claims. Not all of them, in my view, give rise to claims which the Tribunal can hear or have any reasonable prospect of success. But essentially, the claims are about how the respondents dealt with the claimant's sickness absence and possible redeployment and ultimately dismissed her. With focused case management, these matters, in my view, are still capable of being brought into a coherent and triable form.

71. This is the approach, broadly speaking, taken by Employment Judge Davies in Claims 3, 4, 5 and 8. But the claimant must now clearly understand that if she will not co-operate with this process of defining her claims and case-managing them, her claims may be struck out on the ground of her unreasonable conduct of them as a fair trial will never be possible, or for failure to comply with what will be focused and clear case management orders, as happened in Claim 8.

72. I turn finally to the claimant's behaviour during the proceedings generally, as set out at paragraphs 51 and 52 above. In what should be straightforward proceedings, involving the themes I have identified, the number, length and repetitiveness of the claimant's letters and applications to the Tribunal has been staggering. Regrettably,

there is no sign that the claimant will modify her behaviour; in the period 19 to 29 December 2019, she has sent a further nine lengthy emails (and many pages of attachments) to the Tribunal about matters with which the Tribunal has already dealt, including specific disclosure of documents, her claims against Union and Unite the Union, and seeking Employment Judge Davies's recusal. These applications follow the pattern narrated in paragraphs 51 and 52; they raise nothing new, and they reflect nothing more than the claimant's inability or unwillingness to accept any case management decisions of the Tribunal.

73. This behaviour of the claimant so far has not been, in my judgment, such as to merit striking out her claims. Her applications for recusal have been wholly unmeritorious but Employment Judges must have broad shoulders. Whilst the claimant's repeated challenges to case management have been profoundly unreasonable, and have occupied an excessive amount of the Tribunal's time, they have not made a fair trial impossible or reached the stage where they might be said to amount to sustained and deliberate disregard of orders or directions of the Tribunal.

74. However, the claimant must understand that the Tribunal can no longer devote to her claims the disproportionate time given to them so far. The Tribunal will no longer entertain the kind of correspondence which the claimant has engaged in until now. The Tribunal has already made, and will now make, clear Case Management Orders with which she must comply. Otherwise the time may come when the Tribunal must decide that enough is enough. I hope the claimant will heed this advice.

75. The result, therefore, is that the respondents' application for strike out is refused. I am making separate case management orders for the further conduct of the proceedings, on the principles in this judgment.

Regional Employment Judge Robertson

3 January 2020