THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE BALOGUN**

BETWEEN:

Mr D Williams

Claimant

And

Commissioner of Police of the Metropolis

Respondent

ON: **25 and 26 February 2020**

Appearances:

For the Claimant: In Person
For the Respondent: Ms L Chudley, Counsel

RESERVED JUDGMENT ON PRELIMINARY ISSUE

All claims are struck out pursuant to Rule 37(i)(e) of the Employment Tribunal Procedural Rules 2013, on grounds that it is no longer possible to have a fair trial.

REASONS

1. The purpose of this hearing was to consider the Respondent's application to strike out the claims. The application is brought pursuant to section 37(1) of the Employment Tribunal Procedural Rules 2013 (the "Rules") and is made on the following grounds:

    a. That it is no longer possible to have a fair hearing

    b. Parts of the two claims have no reasonable prospects of success as they are out of time and there is no arguable basis to extend time.

Reasonable Adjustments for the hearing

2. As has been well documented in previous judgment and orders, the claimant has Autism Spectrum Disorder (ASD), PTSD and severe depressive disorder with marked anxiety. His ability to communicate is affected by these conditions. He therefore proposed 5 adjustments to this hearing, which were agreed. The first 3 adjustments were self-applied and were i) having a person accompany him to the tribunal; ii) bringing with him traffic light warning A3 cards coloured; green, amber and red with emoji-like images to be held up by him in order to signpost to the tribunal his current level of anxiety and; iii) An A3 card with the message: "One point at a time please" to indicate that Ms Chudley, counsel for the respondent, should pause while he responds to a particular issue as it arises, rather than at the end of the submissions. In addition to these adjustments, the tribunal agreed to a break of at least 5 minutes per hour and the agenda for the 2-day hearing was outlined for the claimant at the outset. These adjustments were effective, and the claimant was able to participate in the hearing.

3. There was no live evidence given at the hearing and it proceeded based on the parties' submissions. The parties presented detailed written submissions which were exchanged in advance. Ms Chudley spoke to her submissions. The claimant did not speak to his but responded verbally to the respondent's submissions, as he considered appropriate. At the end of the hearing, the claimant requested further time to present additional submissions to deal solely with the issue of whether it was reasonably practicable for him to have presented his detriment claims in time and on whether the tribunal should exercise its wider discretion under the Equality Act 2010 (EqA) to extend time in relation to his discrimination complaints. Although these matters should have been covered in the claimant's existing submissions, I considered this to be a reasonable adjustment and granted him leave until 2 March 2020 to provide his additional submissions. The Respondent was granted leave to file a reply by 9 March 2020, if so advised.

4. The parties provided separate bundles for the hearing. References in square brackets are to pages within the respondent's bundle unless prefixed with a "C" in which case they refer to the claimant's bundle.

Findings and Conclusions

5. I have considered the written and oral submissions of the parties and the relevant documents. I have also reviewed the authorities cited by the parties. My conclusions on the application are set out below.

No longer possible to have a fair trial

6. By claim forms presented on 19.7.16 and 31.7.18, the claimant claims protected disclosure (whistleblowing) detriment pursuant to section 48 of the Employment Rights Act 1996 (ERA); a claim of failure to make a reasonable adjustments pursuant to section 21 EqA and; a claim of discrimination arising in consequence of disability pursuant to section 15 EqA. The matter is listed for a full-merits hearing over 8 weeks (32 hearing days) from 11 January 2021.

7. The respondent contends that it is no longer possible to have a fair trial of any of the claims.

The Law

8. Rule 37(1) of the Employment Tribunal Procedural Rules 2013 provides that: "*At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds……*

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out)

9. Article 6 of the Human Rights Act 1998 (HRA) confers on parties to proceedings a right to "*a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*".

Claimant not able to self-advocate

10. Up until the end of November 2018 or thereabouts, the claimant was represented by solicitors and by leading counsel, Daphney Romney, QC. From November 18' the claimant became a litigant in person (LIP) and continues to be as his attempts to obtain alternative funding and legal representation have been unsuccessful to date and that is unlikely to change.

11. The respondent submits that because of his disability, the claimant will not be able self-advocate. In particular, he will not be able to cross examine the respondent's witnesses, currently estimated at 60 in number, or cope with being cross examined for 3 weeks, which is the respondent's current estimate.

12. In making this submission, the respondent relies on both medical evidence disclosed in these proceedings and on the claimant's conduct at preliminary hearings in 2019.

13. Dealing firstly with the medical evidence, the claimant instructed Dr Julie Crocombe, Consultant Forensic Psychiatrist in Neurodevelopmental Psychiatry, to give an opinion on the impact of his mental disorder on his ability to appear and participate in proceedings as a LIP and to self-advocate. This was in relation to employment tribunal proceedings brought by the claimant against The Police Federation, which were due to be heard over 28 days from 22.1.18. The claimant was seeking a postponement of that hearing on the basis that if he was forced to self-advocate he would not be able to cope and would be deprived of a fair trial. [303].

14. Dr Crocombe is an established expert in the field of ASD, including Asperger Syndrome in adults. In her report dated 28.1.18, she opined that by virtue of his mental disorder, the claimant would not be able to self-advocate at his final ET hearing and that his condition was such that he would never be able to self-advocate and would only receive a fair hearing if he had a well-briefed legal advocate. She went on to say that if he were forced to self-advocate, it would have a detrimental effect on his health, causing increased distress and anxiety such that he would become unfit to attend or continue with the hearing [303-304]. The report was updated on 2.2.18 to cover other matters but the opinion on the claimant's ability to self-advocate remained unchanged. [C622]

15. The claimant submitted at this hearing that he could participate in hearings provided there were reasonable adjustments and he did not have to deal with things on the hoof as that would cause him anxiety. He said that the reason for his non engagement at earlier hearings was because matters were complicated and baffled him and if things are too complicated, he cannot deal with them.

16. What the medical reports say about the claimant's ability to self-advocate is clear and what he says about being able to self-advocate with adjustments is contrary to the medical advice, which has not been updated. A number of adjustments had already been agreed in these proceedings one of which was the provision of Ms Chudley's written submissions well in advance of the hearing. That happened for the January 2019 preliminary hearing yet the claimant still felt unable to participate in the hearing on that occasion and again, when the hearing resumed in September 2019. On both occasions, it was the fact that he had no legal representation that was given as the reason.

17. While some adjustments may assist, there are aspects of the process that are not conducive to the type of adjustments that the claimant sought. For example, his previous request for cross examination questions to be provided in advance was refused as impracticable for the reasons set out in my Amended Case Management Order of 11.1.19. [162-172] Other than information in writing in advance, rest breaks and a traffic light system, the claimant has not identified what other adjustments would overcome the disadvantage caused by his mental condition, which would allow him to self advocate.

18. At paragraph 2 of his written submissions, the claimant gives examples of occasions when he has acted as a LIP. However, these are not comparable to what he will face here. It is clear to me that the claimant is highly articulate in writing and for a layperson, is able to set out legal arguments very well. Hence, in court proceedings that rely largely on written submissions rather than oral testimony, which I suspect was the case in the examples given, I can imagine that the claimant would be able to cope, provided the hearing was relatively short and not overly adversarial. That is a far cry from the final hearing in this case, which will be extremely lengthy and highly adversarial.

19. Subsequent to the hearing, the claimant sent in, as part of his further submissions, a document headed: "*Record of Discussion and Statement of Agreement and Disagreement"*. This document purports to be a record of a video conference meeting between the claimant and 3 medics on 17 February 2020. However, on the final page is a statement of truth signed by those medics, two of whom have dated it 19 February 2019 and the other one has dated it 20 February 2019. It is highly unlikely that all 3 of them got the year wrong. Further, if this was a meeting that took place in February 2020, I would have expected there to have been some reference to the issues that arose in the preliminary hearings in January 2019 and September 2019. It is more probable than not

that the meeting occurred in 2019 and that the reference to February 2020 is, at best, a typographical error.

20. That aside, the document focuses on the claimant's ability to participate in his crown court trial. There is no reference at all to his ability to self-advocate in the employment tribunal proceedings. It is also unclear from the document how comparable the two proceedings are. For example, the medics agree that the appointment of an intermediary to assist the claimant throughout the criminal trial would be of benefit to the claimant. There are no facilities for such an intermediary in our proceedings. The status of the document is also unclear. It appears to be an attendance note (whose authorship is unknown) of a 4-way discussion. It is not a formal medical report.

21. The medical opinion of Dr Crocombe, referred to above is clear and unambiguous and I am more persuaded by what is said in her reports than I am by the claimant's subjective view of his abilities to self advocate or by the "Record of Discussion" document referred to above. The medical opinion is also borne out by the claimant's behaviour at the hearings in January 19' and September 19'. At the hearing in January, he became visibly agitated and non responsive at the prospect of his application to adjourn the hearing not being granted. It was adjourned on that occasion but his request for a further adjournment of the reconvened hearing in September was refused. As a result, the claimant made a conscious decision to attend the hearing wearing earphones throughout in order to block out sound and he refused to speak or respond when spoken to. He contended that these measures were necessary to manage the risks posed to his health and safety. [259e]

22. Based on the medical evidence and my own observations of the claimant, I do not consider that the claimant capable of self-advocating in these proceedings.

23. The question that arises from this is what effect it has on the possibility of a fair trial. In Riley v The Crown Prosecution Service [2013] IRLR 966 CA, claims of race discrimination; disability discrimination, whistleblowing detriment and unfair dismissal were struck out on grounds that a fair trial could not be had. This was in circumstances where the claimant was medically unfit to attend the hearing, listed for 4 weeks, and was unlikely to be fit enough to attend a hearing in 12 months and, on the balance of probabilities, not before the expiry of 2 years.

24. At 475-476, the court of appeal held:

"It is important to remember that the overriding objective in ordinary civil cases (and employment cases are in this respect ordinary civil cases) is to deal with cases justly and expeditiously without unreasonable expense. Article 6 of the European Convention on Human Rights emphasises that every litigant is entitled to "a fair trial within a reasonable time". That is an entitlement of both parties to litigation. It is also an entitlement of other litigants that they should not be compelled to wait for justice more than a reasonable time. It would be wrong to expect tribunals to adjourn heavy cases, which are fixed for a substantial amount of court time many months before they are due to start, merely in the hope that the claimant's medical condition will improve. If doctors cannot give any realistic prognosis of sufficient improvement within a reasonable time and the case itself deals with matters that are already in the distant past, striking out must be an option available to a tribunal".

25. In our case, there is no prognosis for recovery at all. The medical evidence is that the claimant will never be able to self-advocate. Neither is there any expectation that he will be legally represented at the hearing. The hearing in our case is listed for 8 weeks (twice the length of the Riley hearing) and is due to commence on 21 January 2021, 5½ years after the claimant's first ET1 was presented.

26. The issue of a fair trial has to be looked at from the perspective of both parties. Some of the events relied on as protected disclosure detriments date back to 2009. A number of the respondent's witnesses have since retired from the police force so there is a real risk that memories will have faded and that the cogency of the evidence will be affected.

27. The preliminary hearing in September 19 (adjourned from January) dealt with discreet issues and was listed for 2 days. The final hearing will deal with multiple issues (the draft List of Issues currently runs to 30 pages) and will be heard over 32 days. As the claimant's LIP status is unlikely to have changed by the final hearing it is highly probable that the hearing will not be effective because he will not be able to self-advocate. In the meantime, the respondent will have incurred significant cost in preparing for the hearing. I'm told that the respondent's costs to date are approaching £300,000 and the expectation is that they will have risen to £400,000 by the end of the 8-week trial. The respondent is a public body and these are costs that will be borne by the public purse.

28. Continuing with these proceedings will be highly prejudicial to the respondent. Although the claimant will no doubt disagree, continuing with the case will also be detrimental to him as well. The medical evidence makes clear that that self-advocating will have a detrimental effect on the claimant's mental health.

29. Taking all of the above matters into account, I have concluded that a fair trial can no longer be had. Accordingly, and with regret, I am left with no option but to strike out the claim in its entirety.

Time Limit arguments

30. Notwithstanding my conclusion above, in case I am wrong on the fair trial point, I have gone on to consider the respondent's secondary application, to strike out some of the allegations on grounds that they are out of time.

31. The respondent applies to have a number of the allegations dismissed as out of time. All of the claims and allegations are set out in the Agreed List of Issues document at pages 187-217 of the bundle. The respondent applies to have the following allegations struck out:

    a. Protected Disclosure detriments 1-13
    b. Failure to make Reasonable Adjustments 1-5
    c. Discrimination arising from disability detriments 1-9

Protected Disclosure Detriments

32. Section 48(3) ERA provides that "An employment tribunal shall not consider a complaint under this section unless it is presented unless it is presented:

a. Before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where the act or failure is part of a series of similar acts or failures, the last of them, or

b. Within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

33. In the case of Arthur v London Eastern Railway Limited [2007] IRLR 58, Mummery LJ, held:

> **30. "*The provision in section 48(3) regarding complaint of an act which is part of a series of similar acts is also aimed at allowing employees to complain about acts (or failures) occurring outside the 3 month period. There must be an act (or failure) within the 3 month period, but the complaint is not confined to that act (or failure). The last act (or failure) within the 3 month may be treated as part of a series of similar acts (or failures) occurring outside the period. If it is, a complaint about the whole series of similar acts (or failures) will be treated as in time.***
>
> ***31. The provision can therefore cover a case where, as here, the complainant alleges a number of acts of detriment, some inside the 3 month period and some outside it. The acts occurring in the 3 month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case. There must be some relevant connection between the acts in the 3 month period and those outside it. The necessary connections were correctly identified by HHJ Reid as (a) being part of a 'series' and (b) being acts which are 'similar' to one another.***

34. The claimant relies on 19 separate disclosures, the first dating back to December 2009, and the last 16 May 2013 [188-196].

35. There are now 22 detriments relied upon (others have been previously struck out). The first of these occurred on 27 January 2011 and the last in December 2017.

36. The respondent has divided the detriments into 5 groups, more or less in chronological order, with each group reflecting common circumstances pertaining to them. The respondent accepts that the detriments in Group 5 are in time. However, it contends that those in Groups 1-4 do not form part of a series of similar acts or failures with Group 5 or indeed with each other.

Group 1

37. Detriments 1-4 are within this group. They all occurred in 2011 when the claimant was working in the Flying Squad in Barnes. The alleged perpetrators were Detective Inspector (DI) Prins; DS (Detective Sargent) Carmichael; DCI (Detective Chief Inspector)

Whorwood and DCI Mace. The acts complained of are summarised in the list of issues [203-204]

38. Detriments 1-2 are said to be as a result of protected disclosures made about police Operations Arnulf, Chaumerky, Furze and Hemah. Detriments 3-4 are said to result from disclosures about Operation Arnulf.

39. In May 2011, the clamant transferred from the Flying Squad to Wandsworth Borough, a new location with new managers.

40. None of the individuals in Group 1 appear in any other complaints.

Group 2

41. Detriments 5 and 6 are within this group and are complaints about how the claimant was managed at Wandsworth Borough. The acts complained of are summarised at 204-205. There are 15 alleged perpetrators in relation to detriment 5. There are 2 for detriment 6, DCI Foley, who appears in detriment 5, and Commander (Cmdr) Gibson.

42. The detriments are said to have arisen as a result of disclosures about Operations Baliene, Hibou, Souris, Cafard and Lapin.

Group 3

43. Detriments 7, 8, 10 & 11 are within this group. Detriments 7, 8 & 11 relate to 2 separate misconduct investigations against the claimant in May 2013. [205-206]. The first investigation arose out of a complaint by the CPS about the claimant. The second was about an unauthorised custodian visit the claimant was said to have made to a suspect and breach of PACE.

44. The alleged perpetrators in relation to detriment 7 are from the Department of Professional Standards – a special unit within the police for investigating misconduct. They do not appear in earlier or later allegations. This detriment relates to disclosures about Operation Souris.

45. Detriments 8 and 11 are said to be because of disclosures about Operation Oison and Operation Arana. These Operations do not appear in either Group 1 or 2.

46. Detriment 10 is also said to be because of Operation Souris but the alleged Perpetrator, DS Bird, is different and not said to be connected to those at Detriment 7.

47. It was submitted by the respondent that there is no common thread running from the detriments in Groups 1 or 2 to those in Group 3

Group 4

48. This Group covers allegations 9, 12 and 13 and relate to the alleged treatment the claimant received at Wandsworth Borough once the allegations of misconduct had been raised against him [205-206]. There is some cross over with Group 3 in that Superintendent (Supt) Banham is one of the alleged perpetrators for detriments 8 and 13 There is also some cross over with Group 2 as DI Blackshaw is an alleged perpetrator in

respect of allegations 5 and 13. However, they do not appear in Group 5, neither do any of the other alleged perpetrators in Group 4.

49. The alleged detriments in Group 4 took place between 2013 and 2014. The last in time is detriment 13, which is a complaint about ostracization by colleagues. The claimant was suspended from work from 9 October 2014 and has not returned to the workplace since. it was submitted by the respondent that this is the point at which the detriments in this group ended.

Group 5

50. This group covers the remaining detriments 15 through to 23 [207-209]. As already stated, the respondent accepts that these are in time. The single disclosure relied on in relation to this group is a disclosure made to Sadiq Khan MP in January 2015. The first detriment in this group is said to have occurred on 4 June 2015 – 8 months after the end of the detriments in Group 4. The claimant does not rely on any of the alleged perpetrators from Group 4. The only officer who appears in the group from an earlier group is DAC Taylor (detriment 11 – Group 3).

Conclusion on protected disclosure detriments

51. I am satisfied that there is no common thread between the detriments and perpetrators in groups 1 to 4 such as to give rise to a series of similar acts or failures.

52. In his additional submissions, sent after the hearing, the claimant submitted that he believed that there was a link between the Wandsworth matters (i.e. groups 2-4) and group 5 because the "dossier" he disclosed to Sadiq Khan detailed those matters. However, the claimant's "act" in disclosing the "dossier" cannot form part of the series of acts of the respondent.

53. Even if I am wrong about groups 1-4, I find that there is no series of similar acts or failures between groups 4 and 5. Not only does group 5 relate to a completely different set of circumstances (Sadiq Khan issue) there is an 8 month gap between the last allegation in Group 4 and the first allegation in Group 5, which in my view breaks the chain of events, such as they were.

54. The ET1 in relation to the detriments in Groups 1- 4 was presented on 19 July 2016. The last detriment in Group 4 occurred no later than 9 October 2014. Even if the detriments in Group 4 form part of a series, a claim in respect of them should have been presented by 8 January 2015. The complaints in Group 4 are out of time and it follows that those in Group 1-3, which are older, are also out of time.

Discrimination time limits

55. Section 123 EqA provides that a discrimination complaint must be presented after the end of 3 months starting with the act complained of or such other period as the tribunal considers just and equitable.

56. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it.

57. The approach to time limits in discrimination cases has been the subject of extensive consideration in the appellate courts. The starting point is the guidance provided by Mummery LJ in Hendricks v The Commissioner of Police for the Metropolis [2003] IRLR 96: At paragraph 52 it was held that:

> ***"The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period.' I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a 'policy' could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."***

58. In Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548 the Court of Appeal held that the correct test to apply, in relation to a series of separate allegations, some of which would be out of time, that were alleged to constitute an act extending over a period was whether the allegations suggested a continuing discriminatory state of affairs.

Failure to make reasonable adjustments

59. The claimant relies on 6 allegations, which are set out at 210-213 of the bundle. Allegation 6 is in time. The respondent only seeks strike out of allegations 1-5. Allegations 1-5 cover the period 17 January 2011 to September 2014. In order for these to be in time, they must form part of acts extending over a period with allegation 6.

60. Reasonable Adjustments (RA) allegations 1-3 cover the period January to April 2011, and relate to the claimant's time at the Flying Squad, which he left in May 2011 on his transfer to Wandsworth Borough. The alleged perpetrators – DS Carmichael, DI Prins and DC Mace, do not appear in allegations 4-6.

61. RA allegation 4 relates to the disciplinary investigation arising from the CPS complaint, referred to at paragraph 43 above. RA allegation 5 relates to the second misconduct investigation also referred to at paragraph 43. Although both allegations 4 and 5 relate to misconduct investigations, the individuals alleged to be involved are different. Even if the acts are continuous with each other, they are not continuous with RA allegation 6. That is because allegation 5 ends in September 2014 and allegation 6 begins on 4 June 2015 over 8 months later, thereby breaking the chain of causation.

Discrimination Arising

62. The claimant makes 10 allegation under this head. The respondent only seeks strike out of allegations 1-9 as it accepts that allegation 10 is in time.

63. The unwanted conduct under allegations 1-9, mirrors the PID detriment allegations above and involves the same individuals and timeline.

64. For the same reasons as for the protected disclosure detriments, I find that allegations 1-9 are not continuous acts with allegation 10.

65. I find that all allegations arising on or before 9 October 2014 are out of time.

Extension of time

66. I have considered whether there are reasons to extend time for any of the above out of time allegations.

67. In respect of the PID detriment claims, the relevant test is reasonable practicability. That has been interpreted in case law as reasonably feasible and is a strict test. For the discrimination complaints, the tribunal's discretion is wider. However, it is still necessary for the claimant to show that there are reasons justifying the exercise of the tribunal's discretion.

68. The claimant was given an opportunity to submit further submissions dealing solely with the extension of time point. Those were received on 2 March 2020. Unfortunately, rather than address this issue, they focus mainly on the "fair trial" point, for which the claimant had previously presented a 24-page submission. All he says in relation to the time point is that he believed there was a lawful link between the 2011-2014 allegations and the Sadiq Khan related allegations arising from June 2015. In my view, that explanation without more provides insufficient reason why it was not reasonably practicable to present the protected disclosure detriment claim in time. It also does not discharge the burden of showing that there are just and equitable reasons to extend time in respect of the discrimination allegations.

Conclusion on time point

69. Had I not struck out all the claims, I would have struck out the pre-June 2015 complaints on jurisdictional grounds, on the basis that they are out of time and there are no reasons to extend time.

Postscript

70. Given that the claim would be much reduced on my secondary conclusion, I've asked myself whether this changes the position on whether a fair trial can be had. I do not believe it does. The matter was set down for 8 weeks at a time when the claimant had legal representation and it was anticipated that the representation would continue to trial. Given that the claimant is now a LIP with a number of mental health issues, the hearing would most likely have required additional hearing days.

71. The claims that are in time are still significant and would require multiple hearing days. There is also a real possibility that the claimant would have relied on some, if not all, of the struck out matters as background facts, in which case the evidence would still have needed to be heard resulting in little time saving. Even if the remaining claims could be

done in 15 days, as suggested in the claimant's additional submissions, it would still be a complex and lengthy hearing and the claimant would still not be able to self advocate.

72. The claimant submitted that the case could be reduced to a few issues with the co-operation of the respondent. However, in order for the claim to be reduced as he suggests, he would have to voluntarily withdraw a large number of his allegations, something which he has so far declined to do. Instead, he places the onus on the respondent and at the hearing he made the unrealistic suggestion that the claim could be reduced by the respondent conceding all of his alleged protected disclosures, which it made clear it was not prepared to do.

Judgment on Preliminary Issue

73. My overall conclusion is that a fair trial can no longer be had in this case and that, accordingly, it is struck out pursuant to rule 37(1)(e) of the Rules.

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Employment Judge Balogun
Date: 29 April 2020