RESERVED

Case Number: 2423827/2017
Code V

EMPLOYMENT TRIBUNALS

Claimant: Mr N Rouke

Respondent Diageo Plc

Heard at: Liverpool **On: 23 April 2021**

Before: Employment Judge Shotter (by CVP)

Members:

Mr J Murdie
Ms F Crane

Appearances
For the claimant: In person
For the respondent: Ms R Wedderspoon, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the claimant's claims of disability discrimination and unfair dismissal are struck out and dismissed in accordance with rule 37(1)(e) of the Employment Tribunal Rules of Procedure 2013 as it is no longer possible to have a fair trial.

REASONS

Introduction

1. This is a preliminary hearing to consider whether a fair hearing can take place in this case.

2. This has been a remote preliminary hearing by video which has been consented to by the parties. The form of remote hearing was Code V: Kinley CVP video fully remote. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

3. The final hearing in this matter was listed to take place before Employment Judge Shotter sitting with members over 6-days commencing on 23 April 2021,

however it became apparent that as a result of the claimant's mental health a fair hearing may not be possible, and the first day of the final hearing was converted to a preliminary hearing before the full panel to consider this matter.

4. The Tribunal was referred to a bundle consisting of 72 pages provided by the respondent that included a signed witness statement dated 8 April 2021 from Emma Harris, counsel date privacy and employment, employed by the respondent. The claimant provided the Tribunal with the following documents as screen shots attached to an email sent to the Tribunal. The Tribunal has recorded the documents relied upon by the claimant in chronological order as opposed to appendix numbers allocated by the claimant as follows:

   (i) Letter 21 December 2018 from the Central and Eastern Cheshire Early Intervention in Psychosis Service diagnosing the claimant with "unspecified non-organic psychosis" marked by the claimant appendix 3 pages 1, 2 and 3. The letter is written by Dr A Boardman, consultant psychiatrist and in the body of the letter at page 2 there is a clear reference to Dr Boardman reviewing the claimant in his home along with Abby Hughes, mental health practitioner. The letter goes into detail as to what the claimant said and did concerning his conspiracy theory, which the Tribunal does not need to repeat. The claimant was referred to in the following terms "Nicolas is completely consumed by these beliefs. He does not think there is time in a day that he does not think about the conspiracy theory. He is unable to go into his living room as it is 'full of evidence' and he does not feel he can face it…is struggling with his reading and he feels overwhelmed and cannot focus on the letters. He is 100% convinced this is all real and happening. Nicolas has poor insight and declined anti-psychotic medication…He was fixated on talking about the conspiracy theory and we were unable to change the subject with him…he is very paranoid. His concentration and attention are poor and he lacks insight." A care plan ("as discussed with Dr Boardman") was set out.

   (ii) A letter marked by the claimant appendix 4, dated 12 February 2019 from Central and Eastern Cheshire Early Intervention in Psychosis Service written by Abbey Hughes, registered mental health nurse who had visited the claimant with a trainee psychiatrist (under the supervision of Dr Boardman) in his home. The letter was sent to Dr Kershaw, the claimant's GP, referencing the fact the claimant had been offered "a NICE concordant package of care coordination…antipsychotic medication and CBT – unfortunately he has made an informed decision to decline both the offer of psychological therapy and psychotropic medication and not engaged with community care…has been offered outpatient review with our consultant psychiatrist and declined these as well. DNA'ing he initial appointment given and refusing the second offered appointment. A medical letter was sent by the surgery on the 18 December followed by a home visit by the psychiatry trainee who is supervised by our consultant working within the team…unless Nicholas decided he

would like to engage with the interventions outlined above which to date he has declined. We have therefore written to him informing him we are discharging him from our service however he can self-refer any time he would like to start treatment." The consultant psychiatrist referred to was Dr Boardman.

(iii) GP medical record dated 18 March 2019 printed 30 August 2019 marked by the claimant appendix 1 confirming a home visit had taken place, the note read as follows; "referred to psych back in Nov/Dec pt states has never seen a psychiatrist Note letter from Dr Boardman in December after a home visit pt says he has never met Dr Boardman…Owen (pts care coordinator) in attendance says there has been a typo mistake and agrees pt may not have seen a consultant pt…very angry about this I have asked Owen to clarify and correct this mistake if pt has not been seen by Dr Boardman pt has been diagnosed with psychosis but is not on treatment… I have asked Owen to discuss this case urgently with psych consultants as I feel pt needs MHA assessment Letter to Dr Boardman to make him aware of the possible mistake made in December 2018."

(iv) Letter marked appendix 2 page 1 and 2 undated (but presumable sent 18 March 2019) claimant's GP Dr Kershaw to Dr Boardman which referenced the fact the claimant had been referred "acutely to Psychiatric services…I will not repeat the history which is well known to you. We have a letter stating you saw him at home on 18 December 2018. The patient denies this, and I have briefly discussed this with Owen Hardy today (18 March 2019) when he accompanied Nicholas to his appointment…Owen felt there had been a mistake, that you hadn't actually seen the patient at home and this may have been one of your juniors. Either way he was diagnosed with non-organic psychosis and was started on Olanzapine 10mg at night. I am under the impression he refused to take this medication…I believe he has voiced ongoing fixed delusional beliefs regarding Cheshire Police and also health professionals working for the Mental Health team. Unfortunately, Nicholas has little insight into his mental health problems and today was the first time he started to raise his voice and act aggressively in my company. I am increasingly concerned regarding this gentleman and really feels he needs an urgent mental health assessment."

(v) Letter Sue Worthington to Dr Kershaw dated 21 March 2019 marked by the claimant appendix 5, enclosing the amended letter from 18 December 2018 when the claimant was seen by Dr Crawson, the doctor in training on placement with Dr Boardman "who checks her letters." Sue Worthington wrote "I wonder if this was the cause of confusion I have written to Nicholas with this amended letter." She confirmed the claimant did not wish to engage with mental health services.

(vi) Letter Sue Worthington to Dr Kershaw dated 3 May 2019 marked by the claimant appendix 6 confirming the claimant felt harassed by Early intervention.

(vii) GP record dated 29 May 2019 marked appendix 7 recording the following;" In view of ongoing paranoid views and lack of psych input will re-write to psych team to ask about consultant review." The claimant had inserted a handwritten alleging police harassment and fabricated evidence.

(viii) GP record dated 29 May 2019 marked appendix 8.

(ix) Hand written letter dated 30 January 2020 claimant to Sue Worthington requesting original letters and expressing the claimant's disagreement over medical documents.

(x) Letter Dr R Karim, consultant psychiatrist to Dr Walsh dated 20 July 2020.

(xi) Letter from Dr F Walsh Knutsford Medical Partnership dated 20 July 2020 marked "in response to order pursuant to the employment tribunal rules of procedure for Mr Rouke" that set out the medical history and the diagnosis of nonorganic psychosis made in December 2018 "following an assessment by members of the mental health team…" She concluded the claimant's behaviour "could be consistent with someone who is experiencing delusional beliefs which could therefore be consistent with someone who is experiencing ongoing psychotic symptoms…" The Tribunal has referred to this report in greater detail below, and it notes the reference to the claimant not having seen Dr Boardman, as emphasised to it by the claimant who maintained that as he had been discharged it proves he was not unwell.

(xii) Letter dated 27 March 2020 Sue Worthington, NHS Cheshire and Wirral Partnership to the claimant concerning records.

5. The Tribunal has taken into account the documentation to which it was taken to by the parties including the Skeleton Argument provided by the respondent, heard oral submissions which has dealt with in its findings, but not repeated in their entirety.

6. The parties were informed and provided a link to a remote CVP hearing. The claimant attended at the Liverpool Employment Tribunal without notice to the Tribunal and it is fortunate a hearing room was available for him. The claimant was not prepared. The hearing was adjourned for one and a half hours in order the claimant, who said he had not seen the documents set out in the respondent's bundle before or the Skeleton Argument, could prepare. The Tribunal explored with the claimant the fact that the bulk of the documents set out within the respondent's bundle had been provided by him or the Tribunal, and he had seen them before and the statement that he had not, made in

support of an application to adjourn the hearing until Monday, could not have been the case. Further, the Tribunal was assured the claimant had been provided with copies of the bundle, witness statement and Skeleton Argument beforehand and he had time to read them. It is notable the claimant produced case law (dealt with by the Tribunal below) to counter the respondent's arguments, and it was not in accordance with the overriding objective for the hearing to be further delayed.

7. It became apparent to the Tribunal the claimant was not ready for the final hearing were it to have started today. He reported that his home had been burgled and papers concerning this case, including statements and notes taken by the claimant, had been stolen in December 2020. The claimant indicated he would need time to prepare his papers again, and it was clear from the vast array of documents on the desk in front of the claimant they were in disarray. Eventually, the judge arranged for a copy of the respondent's bundle to be provided tagged together to assist the claimant and ensure no documents were lost.

8. The Tribunal also took the view that had the reconvened final hearing taken place today it is likely the claimant would have been asked to give his evidence on cross-examination again given the lengthy period of time between the last hearing when the Tribunal heard the claimant's evidence, albeit detailed notes were taken. As today's hearing progressed it became increasingly clear that the claimant was preoccupied with his allegations of conspiracy, which also involved the respondent against whom the claimant made a number of serious allegations, not least, theft of documents. The observations of the medical professionals who described the claimant as "completely consumed" and "fixed" was clear for the Tribunal to see at this hearing. It was difficult to persuade the claimant to address the issues relating to a fair trial as his thought process revolved around the conspiratorial activities between the police, NHS trust, GP's and the respondent with the main concerning being to show the Tribunal that all of these agencies, including the consultant psychiatrist instructed and paid for by the claimant to provide a report to this Tribunal, were acting against him in this litigation. The Tribunal repeatedly brought the claimant back to the issue in hand, to give him the opportunity to address the arguments raised by the respondent in support of a strike out, and yet he remained convinced that the way forward was to "prove" the conspiracy and fabrication of documents, particularly Dr Boardman's letter dated 21 December 2018 to which the Tribunal was referred to by the claimant. The claimant was unable to comprehend the reference to Dr Boardman as signatory was a mistake; he had been informed of this and an amended letter provided confirming the writer it was the trainee psychiatrist, Dr Crawson, who attended the claimant in his home and wrote the letter which was then checked over by Br Boardman. The possibility that a mistake had been made could not be countenanced by the claimant, who repeatedly took the Tribunal to his conspiracy theories which included Dr Nazir who had "lied" as part of the conspiracy. The Tribunal has dealt with this further below.

9. This has been a difficult hearing for the Tribunal and the decision to strike out the claimant's claim was not an easy one to reach. The Tribunal has

considerable sympathy for the claimant; he has always been polite and respectful at hearings and has attempted to the best of his ability to assist the Tribunal. It is clear the claimant, through no fault of his own, is incapable from restraining himself when it comes to the conspiracy theories despite numerous indications from the Tribunal throughout this litigation that complaints against the police and other third-party agencies are outside its jurisdiction. The claimant's intense preoccupation with conspiracies make it very difficult for the Tribunal to envisage a fair hearing taking place, as the claimant appears to be unable to move on and address the matters in hand without conspiracy allegations raising their head which involves the respondent.

10. In order to assist its decision-making process, the Tribunal has reminded itself of the litigation history in this matter, which is as follows:

The history of this litigation

11. The claim form was presented on the 17 November 2017 when the claimant was still employed by the respondent. The claimant brought claims of disability discrimination claiming the respondent perceived he had a mental impairment and had been suspended for 12-months due to its misconceptions about his mental health. The claimant relies on asthma and perceived mental impairment as his disabilities under section 6 of the Equality Act 2010 ("the EqA").

12. The claim form was prepared by legal advisors, and the claims go back to July 2015, through to the claimant filing a personal injury claim on the 5 December 2015 and the claimant's fitness from work being called into question and suspension on the 9 November 2016. The claimant was placed on sickness absence where he remained until he was dismissed after the claim form was lodged. It is important to note that the events relied upon are almost six years old with the exception of the medical suspension.

13. At a preliminary hearing the held on the 27 February 2018 the claimant was given leave to amend his claim to include unfair dismissal and victimisation, the protected act being the issuing of the claim form and the detriment relied upon was the claimant's dismissal. It was agreed the effective date of termination was the 22 December 2017. The claimant had not physically worked for the respondent since 9 November 2016 due to the respondent's concerns over his mental health.

14. On the 16 April 2018 the claimant's solicitors came off record and new solicitors took over coming on record on 20 April 2018. On the 25 June 2018 the claimant emailed the Tribunal confirming he was a litigant in person and this has been the position since.

15. The final hearing was listed for the 12-21 November 2018.

16. In an email sent to the Tribunal on 21 September 2018 the claimant made allegations of "police money laundering which I believe are associated to this case." This was followed by similar emails alleging police conspiracy on the part of the respondent aimed at damaging the claimant's case.

17. On the 10 October 2018 a preliminary hearing took place and case management orders were agreed taking this matter to the listed trial as there had been slippage.

NHS Mid Cheshire Hospitals dated the 11 November 2018

18. NHS Mid Cheshire Hospitals on the 11 November 2018 provided a short report stating the claimant attended the emergency department in crisis on the 11 November 2018 "with anxiety related to the above court case. He has been treated and advised on further management but his health may deteriorate if he attends court." The Tribunal was not shown a copy of this letter until much later in the chronology.

The final hearing 12-21 November 2018

19. The hearing commenced before this panel who heard evidence on cross-examination from the claimant. Prior to the claimant undergoing cross-examination of the respondent's witnesses the hearing was adjourned part-heard due to the claimant having suffered an anxiety attack, he was shaking and by the third day of the hearing the claimant was still unwell and unable to continue.

20. The claimant submitted a FIT note confirming he was unfit for work due to "anxiety states" from 15 November to 29 November 2018. At the Tribunal's request the claimant submitted a letter from Dr Kershaw stating the claimant was unable to attend court due to his medical issues and "it will be at least four to six weeks before Mr Rouke is in a position to attend court."

21. The Tribunal attempted to get dates of availability from the parties to re-list the trial. The respondent provided dates on the 13 December 2018; the claimant was unable to do so due to his ill health.

22. On the 10 December 2018 the claimant emailed the Tribunal confirming he had seen Dr Kershaw and Dr Shaw who advised he was "currently unfit to attend court. Mr Rouke is suffering from stress and currently cannot read any paperwork…could you please advise the judge that Mr Rourke cannot complete any required tasks." It is notable the 21 December 2018 from the Central and Eastern Cheshire Early Intervention in Psychosis Service referred to above, also made reference to the claimant "struggling with his reading and he feels overwhelmed and cannot focus on the letters".

23. The claimant submitted a FIT note confirming "anxiety states 2 January to 4 February 2019 and emailed the Tribunal on the 3 January 2019 "Mr Rouke is still unable to attend court, this is likely to continue for the next few months. Mr Rouke is still struggling to read any documentation."

24. The claimant was directed to provide medical evidence indicating when he would be fit enough to attend a Tribunal hearing and to provide dates of availability on 31 January 2019.

25. The claimant responded on the 4 February 2019 that he was still suffering from "severe anxiety and stress" and was waiting an appointment with the IAPTS team and could not provide dates to the Tribunal.

26. In an email sent to the Tribunal on 4 March 2019 the claimant confirmed he was still struggling from stress and made serious allegations against the respondent stating at the previous liability hearing he was filmed on a laptop with the "defence barrister…fully aware…aiding and abetting this deception." The allegations had no substance; they were made approximately four-months after the event (and not at the hearing) and when put to the respondent and counsel, denied. The Tribunal consisting of a panel of three would have noticed if any person was filming the claimant at a public hearing. In the same letter the claimant also alleged his house had been burgled for documents relating to this litigation, and his spare copies were "stolen and documentation in the bundle changed."

27. In an email sent on the 21 March 2019 the claimant confirmed he was too unwell to attend court and produced a Med 3 citing anxiety stress for a 6-week period from 18 March and 24 April 2019.

28. A preliminary hearing was listed for 29 November 2019.

29. On the 23 May and 3 July 2019, the claimant sent emails to the Tribunal complaining about being "stalked and harassed" by the police, police cover ups by a police superintendent, the claimant's home burgled and documents relating to this case were "not only stolen but documents were exchanged for letter headed Diego documents…Mr Rouke believes these documents may have been emailed to a police officer…Mr Rouke was arrested…this was the day before his final employment hearing. Mr Rouke believes that this shows premeditated harassment by Cheshire police, possibly planned with Diego..." The claimant also alleged a GP had fabricated a letter and Cheshire Police also fabricated evidence, harassed him, and spiked his drink in the pub. There were references to illegal drugs being supplied, an individual being "bumped off" children being beaten up and a request that the employment judge investigates his allegations.

30. On the 17 July 2019 the claimant was informed that the Employment Tribunal was unable to take action and he should consider getting legal advice. The claimant ignored this communication.

31. On the 9 August 2019 in an email sent to the Tribunal the claimant complained about Cheshire Police and letter from Dr Smith which covered up "previous other false allegations about Mr Rouke" which the claimant believed supported the respondent's claim. Allegations were also raised about a government department, false statements and a request that the judge order an investigation into the police, government department and GP surgery.

32. Similar allegations were made again in an email sent 10 September 2019 about police harassment and the claimant being illegally filmed. In an email sent to the

Tribunal on 21 September 2019 the claimant was informed the Tribunal did not have the jurisdiction to deal with police complaints "unconnected to the claimant's claims against the respondent." This communication was ignored by the claimant.

33. On the 19 November 2019 the claimant was warned that his claim could be struck out.

34. In a completed agenda the claimant again made allegations of police and other "third parties" tampering with the evidence relating to the case.

Preliminary hearing case management held on 29 November 2019

35. At the case management hearing on 29 November 2019 the claimant was informed by EJ Shotter (a) the case has gone on too long and needs to be heard, and (b) he should not be sending emails to the Tribunal regarding allegations concerning outside agencies. The case was listed for reconvened final hearing on 6 August 2020 over a period of 7-days with the claimant's agreement.

36. The claimant ignored the judge's direction and on the 28 January 2020 emailed the Tribunal alleging a number of serious matters against the police including false arrest, attempted murder, theft, burglary, fabricated NHS records and stolen medical records, requesting a hearing. EJ Shotter in a letter dated 17 February 2019 reminded the claimant that the Tribunal did not have the jurisdiction "as explained to you at the last preliminary hearing." The claimant ignored the Tribunal's direction not to send in complaints about conspiracies and the emails continued as the claimant believed the respondent was behind the conspiracy with the assistance of the police.

37. On the 17 June 2029 the claimant wrote to the Tribunal reporting his GP had fabricated evidence, asking Judge Shotter to put a stop to this "…as I believe that there should now be proof Cheshire police are involved and trying to stop this case…I repeat I am well and have ongoing abuse. I believe run by the defendant with the help of police officers to try and stop this case."

Preliminary hearing case management 3 July 2020

38. An in-person case management discussion took place on the 3 July 2020 and both parties confirmed the case was ready for trial.

39. Concern was raised by the respondent and Tribunal with the claimant as to his health and capacity given his allegations about the respondent's relationship with the police and missing documents. At the hearing the claimant continued to make a number of serious allegations concerning evidence being removed from his home and mobile phone smashed with the respondent using the police and medical profession to fabricate evidence in this litigation, (allegations raised again at today's strike out hearing with the claimant's referring to photographs of his broken mobile phone). The claimant confirmed he was well and not taking any medication. He also stated he was under the care of a new GP, Dr Walsh

whom he trusted, and agreed to obtain a report from Dr Walsh confirming the claimant was capable of representing himself at the final hearing and making decisions in the litigation. It was made clear the final hearing would not proceed unless the claimant provided a medical report and he was informed the next available listing was in August 2021. A discussion also took place concerning the possibility of a law student assisting the claimant to prepare and present his case.

40. On the 4 July 2020 the claimant emailed the Tribunal reiterating his conspiracy allegations including documents going missing. Other emails followed that referenced abuse, organised crime, fabricated medical records by GP surgery and NHS, including the claimant's new GP fabricating records. The claimant was reminded of the order to provide a medical report dealing with litigation capacity, and the Tribunal became increasing concerned that as a result of his fixation with a conspiracy involving the respondent he was not managing the litigation, and whatever the Tribunal directed concerning these allegations was being consistently ignored.

41. The claimant wrote to the Tribunal on the 22 July 2010 repeating his conspiracy allegations and stating Dr Walsh had advised a "full CWP medical report as she is not a psychiatrist."

Medical report

42. A 2-page of a medical report prepared by Dr Walsh dated 20 July 2020 was provided to the Tribunal that confirmed a diagnosis of non-organic psychosis had been made in 2018 described as a "likely untreated delusion disorder…Mr Rouke did not speak or meet with the consultant psychiatrist…as he did not attend his appointment and refused subsequent requests that were offered." Dr Walsh's conclusion was the claimant's behaviour "could be consistent with someone experiencing delusional beliefs, which could therefore be consistent with someone experiencing ongoing psychotic symptoms…I do not have the expertise in psychiatric or legal matters to form an opinion as to his capacity…he has consented for me to refer him to the mental health team…for psychiatric assessment."

43. In emails sent to the Tribunal on the 24 and 27 July 2020 the claimant alleged Dr Walsh "is quoting notes on my medical records I believe fabricated by Cheshire police" and that he was well and able to attend the final hearing.

44. On the 1 August 2020 the Tribunal wrote to the parties converting the first day of the final hearing to a telephone case management hearing as a result of the COVID19 pandemic and the need for the claimant to be assessed by a psychiatrist. Clearly, this adjournment took place through no fault of the parties. The claimant had not provided a medical report establishing he was fit to proceed as ordered.

The preliminary hearing on 6 August 2020

45. The Summary sent to the parties recorded the following matters:

(1) There remains a concern with the claimant's mental health and capacity to conduct this litigation. The case management summary recorded that "the claimant has been always helpful and polite with the Tribunal; however, he believes that doctors (including various GP's), the CWP, NHS, Liverpool Ambulance Service (recently called by the police who stated the claimant was having a mental breakdown, according to the claimant) and Social Services, are all conspiring with a private investigator employed by the respondent to prevent the claimant's case from coming to trial. I have assured the claimant today that no outside agency or individual will be able to stop the trial and it is the Tribunal judges, including myself, who have the power to case manage and deal with the final hearing to such an extent that the claimant should not unduly concern himself with other organisations or individuals when it comes to his case being heard."

(2) The claimant's new GP, Dr Walsh, was according to the claimant, conspiring against him in respect of medical records. Dr Walsh has referred the claimant for a psychiatric assessment and the claimant informed the Tribunal he had been in touch with the mental health team and told they would not make an appointment for him. The claimant agreed that he would approach Dr Walsh in order that she could deal with the referral on his behalf. It was noted that what was required is a short report confirming the claimant's litigation capacity (i.e. was the claimant incapable of making decisions/acting in respect of his case including at trial) with reference to the Equal Treatment Benchbook at chapter 5 and the Mental Capacity Act 2005. At paragraph 17 there is a reference to guidance jointly proceeded by the Law Society and BMA "Assessment of Mental Capacity: Guidance for Doctors and Lawyers" 4th edition, 2015.

(3) The claimant indicated he intends to represent himself at the final hearing, and would make contact with Salford University to see if he could get some help with his case. The Summary recorded that "Given the contents of Dr Walsh's report we also discussed the possibility of the claimant being represented by a "litigation friend" …There are a number of possibilities but all have drawbacks. First, the claimant's son is a trainee accountant and has helped the claimant with this litigation in the past, including the preparation of the ET1…It was agreed the claimant would produce the recent case management orders for his son to read, the medical reports and correspondence with a view to his son, who the claimant described to be very bright, making a decision as to whether he could take on the role of litigation friend by acting on behalf of his father and supporting him in this case in order that a fair trial can take place. The claimant's daughter is a lawyer, she has also assisted him in the past but is now too busy. The same applies to a friend (who has recently had a heart operation) and his wife, experienced in HR matters. The claimant may wish to approach family and friends to see if any can provide him with the support he seems to need. In the meantime, I have attached a list of

advisors and advice centres who may be able to assist the claimant when his trial reconvenes next year".

46. A number of case management orders were agreed including:

    (i) The claimant will inform the respondent and Tribunal when he is referred for the psychiatric assessment and a short report will be prepared by the doctor/consultant confirming the state of his health and litigation capacity no later than 6-weeks before the first day of the reconvened liability hearing on 23 April 2020.

    (ii) As indicated on numerous occasions the claimant will refrain from writing to the Tribunal detailing his complaints of conspiracy in respect of a number of agencies and individuals in the knowledge that the Tribunal does not have the jurisdiction to consider them.

47. On the 26 August 2020 the claimant emailed the Tribunal attaching a letter dated 24 June 2020 from Dr Walsh to the Mental Health Team referencing the claimant's "fixed" beliefs regarding a conspiracy between police, social services, GP's and the mental health team, "he has no insight" and cancelled his appointment with the psychiatrist "last week." The claimant confirmed he did not need a mental health assessment and social services together with the police have fabricated records, were involved in organised crime and "this is now a case of 'guilty until I prove myself innocent'."

48. Notwithstanding the Tribunal's direction, emails continued to be sent to the Tribunal by the claimant alleging conspiracy and fabricated records, for example on 5 and 6 October 2020, the claimant alleged "Cheshire Police, doctors and CWP are trying to close down my employment tribunal with judge Shotter in Liverpool. My claim is for 1.3 million." In an email sent on 21 October the claimant referenced a report to his GP that he had been "drugged over a number of years" and in a second email attached evidence of organised crime sent by the claimant to various members of parliament.

Dr R Nazir consultant psychiatrist report dated 7 October 2020.

49. The claimant on a private basis instructed Dr Nazir, consultant psychiatrist BSC (Hons) MBBCH MRCPSYCH and director of Expert TMS to prepare a report on his behalf for the Employment Tribunal which the claimant paid for.

50. On the 10 November 2020 the claimant provided Dr Nazire's report attached to an email in which he alleged Dr Nazir had "made a mistake. He clearly has contact with CWP or Cheshire police in order to write this. I believe that he is clearly covering for fabricated medical records. This I believe shows that Cheshire police, CWP are trying to intercept doctors getting them to cover for the organised crime by Cheshire police…I totally disagree with Dr Nazire's diagnosis, treatment plan…I wish to appeal the order to supply a doctor's report." The claimant indicated that he did not believe he would get an "honest" doctor's report, and this was the basis of his appeal. At the hearing the claimant submitted he was unable to instruct any psychiatric expert to produce a report

on the basis that no one would take on his case, and he was being either ignored or fobbed off. The relevant paragraphs in the report are as follows:

(i) Under the heading "Thought" Dr Nazir's opinion was the claimant had "persecutory delusions, conspiracy, fixed delusional beliefs. Some of them although based in reality" which was a reference to problems surrounding the claimant's divorce.

(ii) Under the heading "insight" Dr Nazir's opinion was the claimant had "lack of insight".

(iii) Under the heading "Diagnosis" Dr Nazir's opinion was "I believe he is suffering from persistent delusional disorder…it has come to the extent that this is now affecting his life. It has become delusional in intensity, and there is a wider conspiracy. Even the fact my letter took time to be typed he sent an email suggesting a conspiratorial explanation."

(iv) Under the heading "Treatment Plan" a treatment plan with anti-psychotic medication was required "although the prognosis is poor. I don't think he will engage. I have advised him to speak to his solicitors to fight Diageo in the Employment Tribunal if he represents himself it could go against him…I am unable to do a report for the Court to say that he is fit as I do believe he is ill, just like previous psychiatrists…He has also disengaged from the Early Intervention team as he does not believe that he has got a mental illness and has been discharged as he felt that he was being harassed by them."

51. In oral submissions today, the claimant informed the Tribunal that he had provided Dr Nazir with evidence, including medical records that had been fabricated by the mental health team identical to the appendices the claimant provided the Tribunal. The claimant maintained it was clear he had never seen a psychiatrist before Dr Nazir, and both Owen Harding and Abby Hughes worked for Cheshire Police. Essentially, the claimant's oral submissions today centred around the fact he had not been seen by Dr Boardman, Dr Walsh was aware of this and yet Dr Nazir had "lied" in his report when he concluded under the heading "diagnosis" "I believe he is suffering from Persistent Delusional disorder" and was ill "just like previous psychiatrists". The claimant submitted Dr Nazir was "lying" on the basis that the claimant is referring to events which are real, it is the reality, and this is what Dr Nazir meant in his report having seen the claimant's evidence.

52. The claimant submitted Dr Nazir's conclusion that "I am unable to do a report for the Court to say that he is fit as I do believe he is ill, just like previous psychiatrists" was also a "lie" as the claimant had not been any other psychiatrist and Dr Nazir would have known this from the evidence he supplied. The claimant confirmed Dr Nazir was conspiring against him when he described under the heading "History of Presenting Complaint" the claimant had lost his keys, when the claimant maintains a police officer had stolen his keys. At today's hearing the claimant explained Dr Nazir could not have concluded he

lacked insight because he did not, and Dr Nazir was not prepared to say anything against the other doctors. Finally, the claimant argued Cheshire Police had contacted Dr Nazir which accounts for his report and the Tribunal should not rely on it. The Tribunal has dealt with this submission below under the heading conclusion.

53. In an email sent by the claimant on 8 December 2020 to the Employment Tribunal allegations of fabricated documents and "continued abuse" continued to be made.

Case Management Order and Reasons dated 21 December 2020

54. On the 22 December an order and reasons were sent to the parties by Regional Employment Judge Franey. The relevant paragraphs are as follows:

(1) The claimant was to produce medical evidence that he was fit to attend the resumed hearing due to recommence on the 23 April 20221 failing which the 6-day hearing will be converted in to a one-day hearing to determine whether the claimant should be struck out under 37(1)(e) of the Employment Tribunal Rules because the Tribunal considers that it is no longer possible to have a fair trial.

(2) Under the heading "Discussion" at paragraphs 20 and 21, reference was made to the fact the claimant had not produced a medical report confirming his fitness to attend and participate in the resumed final hearing and the medical evidence indicated he was unfit to do so. It was recorded "There cannot be a fair hearing if the claimant is not well enough to participate properly and the concerns "about his ability to do so are based on firm foundations; including;

1. An unfounded allegation that he was being secretly filmed by one of the respondent's witnesses at the first part of the final hearing in November 2018;

2. The manner in which he conducted the litigation, regularly making sweeping allegations involving the respondent,

3. The opinion of Dr Nazir."

(3) At paragraph 22 the parties were warned if the hearing could not proceed in April there would be a substantial delay before it could be relisted, and at paragraph 23 REJ Franey stated; "perhaps most concerning is the fact that the claimant appears unwilling to engage with the treatment, because he does not accept the accuracy of the diagnosis, and therefore there seems to be little prospect of recovery within a reasonable period which will enable there to be a fair hearing."

(4) At paragraph 25 reference was made to applicable case law as follows; "I note the observations…in of **Riley v The Crown Prosecution Service [2013] IRLR 996.** Striking a claim out must be an option available to a

Tribunal if the 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."

(5) The claimant was given time to engage with the treatment plan and obtain the required medical evidence.

55. The claimant's response was to email judge Shotter on the 24 December 2020 referring to his belief that this was "the actions of the defendant's contact that worked with the CWP, social services and Cheshire Police. I would also like this information to be brought too and added to the hearing."

56. On the 3 February 2021 the claimant emailed the Tribunal attaching a MED3 Fit Note referencing occupational asthma, and alleging the respondent used ex police officers to investigate "this I believe is to cover for the video evidence that I have" which was to be submitted in evidence and "the current fit note overturned any previous fabricated medical records."

57. On the 16 February 2021 in an email sent to the Employment Tribunal the claimant alleged he had been burgled and requested documents and witness statements which had been taken together with the video evidence "as I believe this is one of the main reasons my home is being broken into." A similar point was made in subsequent emails, for example one sent on 22 February 2021 when the claimant maintained the MED3 citing asthma was the GP's "way to backtrack out of fabricated medical records."

58. The respondent refused to accept the MED3 relied upon by the claimant was sufficient medical evidence to show the claimant was fit to attend the final hearing in April, expressing in an email to the Tribunal that it "has serious concerns about the final hearing proceeding and the claimant's fitness to attend…in light of his unsubstantiated allegations of criminal activity involving the respondent."

59. In a letter dated 11 March 2020 sent to the claimant Regional Employment Judge Franey wrote "The information provided by the claimant does not amount to medical evidence confirming he is fit to attend the resumed final hearing. The issue relates to his mental health not asthma. The order of 21 December 2020 still stands, and unless such evidence is provided by 26 March the hearing will be converted into a one-day hearing…to decide whether the claim should be struck out because a fair trial is no longer possible."

<u>Synopsis of the oral submissions made by the parties.</u>

60. Ms Wedderspoon on behalf of the respondent referred to the written statement of Emma Harris submitted as a written representation given Emma Harris was not present at the hearing. Emma Harris notes the delay in this litigation, maintaining the allegations are historic and stale as they go back to July 2015. She refers to recollections fading over time but provides no specific as to which witness now has difficulties recollecting the events in 2015.

61. Emma Harris also refers to Roy Ashley, who investigated the claimant's grievance, having left the business which does not overly concern the Tribunal as a witness order can be made ensuring Mr Ashley's attendance. More concerning is the undisputed fact that Stephen McConnell, a key witness who was directly involved including placing the claimant on paid absence and referred him to occupational health, has left the business and is unwell, possibly with a heart problem. The Tribunal is unaware if Stephen McConnell is too unwell to appear as a witness.

62. The fundamental issue for the Tribunal is the claimant's health and its effect on his ability to sensibly take part in a final hearing without going off track repeatedly in an attempt to explore the conspiracies involving the respondent which the claimant is convinced has prejudiced him to such an extent that he is no longer ready for a trial on the basis that his paperwork has been stolen. The Tribunal is not in a position to arrive at a medical diagnosis; it does not have the expertise in psychiatry and there is no reason why the report provided by Dr Nazir with the Tribunal and a final hearing in mind cannot be accepted. Dr Nazir's conclusions set out are reiterated in one way or another by other medical professionals as reflected above, and there is no basis for questioning them in the light of the claimant's objections that Dr Nazir has joined to conspiracy and is "lying."

63. The Tribunal finds the respondent is right to be concerned that there is no real prospect of the claimant being fit to represent himself at the final hearing within a reasonable time, given the fact he has been given the opportunity since the final hearing went part-heard on the 15 November 2018 to obtain medical evidence confirming he was well enough to attend a final hearing and by 13 April 2021 the Tribunal had still not received this confirmation.

64. Dr Nazir's report is clear; the claimant is ill, he is not fit for a trial and it appears from the factual matrix set out above, the claimant's mental health has not improved either before or since the letter dated 21 December 2018 from the Central and Eastern Cheshire Early Intervention in Psychosis Service referencing the claimant was completely "consumed by these beliefs. He does not think there is time in a day that he does not think about the conspiracy theory. He is unable to go into his living room as it is 'full of evidence' and he does not feel he can face it…is struggling with his reading and he feels overwhelmed and cannot focus on the letters. He is 100% convinced this is all real and happening. Nicolas has poor insight and declined anti-psychotic medication…He was fixated on talking about the conspiracy theory and we were unable to change the subject with him…he is very paranoid. His concentration and attention are poor and he lacks insight." The day before the final hearing NHS Mid Cheshire Hospitals in the 11 November 2018 report described how the claimant attended the emergency department in crisis on the 11 November 2018 "with anxiety related to the above court case. He has been treated and advised on further management but his health may deteriorate if he attends court." Dr Walsh's conclusion dated 20 July 2020 was the claimant's behaviour "could be consistent with someone experiencing delusional beliefs, which could therefore be consistent with someone experiencing ongoing psychotic symptoms…I do not have the expertise in psychiatric or legal matters

to form an opinion as to his capacity…he has consented for me to refer him to the mental health team…for psychiatric assessment." This report takes the Tribunal full circle to Dr Nazir.

65. It is against this medical backdrop the claimant repeatedly wrote to the Tribunal requesting a resolution to his conspiracy theories, despite being told not to do so. In response to the clear order that he provide medical evidence to confirming his fitness to attend the trial and participate, the claimant's response was to send the Tribunal a MED3 referencing occupational asthma and the reasonable adjustment necessary for it.

66. In oral closing submissions the claimant argued (a) the Tribunal should not rely on Dr Nazir's report for the reasons already explored above, i.e. he was a liar and part of the conspiracy, (b) the Tribunal could not rely on any of the medical evidence given the records were fabricated and the claimant had never been seen by Dr Boardman, (c) the claimant had insight and it is not his fault his house was burgled with mobile phone smashed when it contained video footage of the respondent pumping gasses into the factory which caused the claimant's asthma, (d) the MED3 refencing occupational asthma was relevant because it reflects his doctor saying he did not want to get involved and issue the MED3 fit note instead saying he did not need to see a doctor and (e), the claimant argued that he had represented himself today and explained about the medical evidence "clear proof" that there are no mental health issues and "this is all fabricated" including Dr Nazir "writing the opposite of what he has been told…Cheshire Police are involved in changing the medical records and contacting Dr Nazir" with the result that his report was a "continuation of the incorrect evidence" described by the claimant as a continuing act in support of which he produced 2019 extracts from Harvey and case law dealing with time limits.

67. It is notable that when the Judge put to the claimant Dr Boardman may have made a mistake when he signed the letter that appeared to have been written by Dr Crawson as per Sue Worthington's letter of 21 March 2019 and Dr Nazir may also have made a mistake and/or misinterpreted the information provided by the claimant, he remained convinced they were deliberate mistakes.

Relevant law

68. Rule 2 of the Employment Tribunal Rules of Procedure 2013 establishes the overriding objective, which is defined as follows:

> (1) The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense.

(2) A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

69. Rule 37(1) provides:

(1) At any stage of the proceedings, … on the application of a party, a Tribunal may strike out all or part of a claim… on any of the following grounds-…

(c) for non-compliance with… an order of the Tribunal;

…

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim…

70. A claim cannot be struck out unless the claimant has been given a reasonable opportunity to make representations either in writing or at a hearing: see rule 37(2).

71. The general rule is that complaints of discrimination in a diverse society are to be tried on their merits and should not be struck out where the facts are in dispute: Anyanwu v. South Bank Student's Union [2001] UKHL 14.

72. When considering whether or not to strike out a claim, a tribunal must apply a two-stage test. First, the tribunal must consider whether any of the grounds in rule 37(1)(a) to (e) have been established. If so, the tribunal must go on to decide whether or not to exercise its discretionary power to strike out the claim: Hasan v. Tesco Stores Limited UKEAT 0098/16.

73. A tribunal may strike out a claim where the claimant's health prevents him from attending a hearing and there is no realistic prospect of sufficient improvement within a reasonable time. In the respondent's Skeleton Argument, the Tribunal was referred to the Court of Appeal decision in Riley v. Crown Prosecution Service [2013] EWCA Civ 951, Longmore LJ said at para 28:

"It would, in my judgment, 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 a 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."

74. When deciding whether the claimant will be fit to attend a hearing within a reasonable time, the tribunal must take into account relevant medical evidence, but such evidence is not conclusive. It is open to the tribunal to disagree with a doctor's predictions on the basis that previous predictions have been proved wrong: Peixoto v. British Telecommunications plc UKEAT 0222/07

Equal Treatment Benchbook

75. The February 2021 edition of the Equal Treatment Benchbook provides guidance to judges, and emphasises fair treatment and equality is fundamental, and treating people fairly requires awareness of their different circumstances to address any equality or disadvantage – paragraph 1 and 4 of the Introduction. The concept of fair treatment is particularly important in relation to Mr Rouke, who through no fault of his own, faces his complaints of unfair dismissal and disability discrimination being struck out and dismissed.

76. The parties have been referred to the Equal Treatment Benchbook throughout this litigation, and a link was provided in the summary of Case Management.

77. In relation to mental health, one of the reasonable adjustments suggested in allowing a postponement if there is medical evidence that the person is not fit on a occasion to attend court, holding more than one case management hearing, and deal with the claimant's evidence first if a person becomes progressively unwell as the hearing progresses. All of these options have taken place during this litigation, and the Tribunal has been acutely aware that reasonable adjustments were necessary for the claimant.

78. Paragraph 13 of the Presidential Guidance on Case management provides for reasonable adjustments to be made at the request of a party. Guidance note 8 at paragraph 8 and 10 set out the following in relation to strike out:

> "(8) Under rule 37 the Tribunal may strike out all or part of a claim or response on a number of grounds at any stage of the proceedings, either on its own initiative, or on the application of a party. These include that it is scandalous or vexatious or has no reasonable prospect of success, or the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious.
>
> (10) The fact that it is no longer possible to have a fair hearing is also ground for striking out. In some cases, the progress of the claim to hearing is delayed over a lengthy period. Ill health may be a reason why this happens. This means that the evidence becomes more distant from the events in the case. Eventually a point may be reached where a fair hearing is no longer possible. The Tribunal took the view that unfortunately that point had been reached in Mr Rouke's case; a conclusion not lightly reached taking into account the overriding objective applicable to both parties.

(11) Before a strike out on any of these grounds a party will be given a reasonable opportunity to make representations in writing or request a hearing. The Tribunal does not use these powers lightly. It will often hold a preliminary hearing before taking this action.

(12) In exercising these powers, the Tribunal follows the overriding objective in seeking to deal with cases justly and expeditiously and in proportion to the matters in dispute".

Conclusion: applying the law to the facts

79. The key issue before the Tribunal is whether a fair hearing can take place, and the Tribunal reluctantly found that it could not taking into account the overriding objective and Ms Wedderspoon's submission that the Tribunal can take judicial note that cases involving discrimination must be heard promptly because by their very nature that are fact sensitive.

80. This hearing was listed for 6-days; had the claimant's claims been allowed to proceed the likelihood of it being listed earlier than mid to late 2022 is slim, bearing in mind the lack of judicial resources and listing opportunities for multi-day trials. There is the added complication that the estimated length of hearing would be longer than 6-days bearing in mind this Tribunal heard evidence from the claimant in November 2018 and by 2022 a period of approximately 4-years would have passed since hearing from the claimant. To reconvene a final hearing with the Tribunal picking up where it had left off may in itself amount to an unfair trial for the parties, and it likely a longer time estimate than 6-days was required, including reading time in order that the Tribunal can refresh itself with the evidence, or in the alternative, a completely different panel hears the case from the start .Either way, there will be further delay with recollections becoming less reliably the more distant the evidence is from the events of the case which are in dispute.

81. The claims go back to July 2015, almost six years ago and by 2022 the period will exceed seven years. It is notable the claimant was placed on sickness absence until his dismissal on 22 December 2017 and a key witness for the respondent, Stephen McConnell who deals with the paid suspension, is unwell and according to Ms Wedderspoon, the respondent would be reluctant to apply for a witness order due to his ill-health. The claimant's response was that he was aware Stephen McConnell was ill and had heart problems, and informed the Tribunal that "I don't need Mr Ashley or Mr McConnell, so need to issue them" which was a referral to the witness order, the claimant missing the point that both witnesses were to give evidence on behalf of the respondent and be cross-examined by him.

82. The Tribunal is aware that memories dim over a period of time, and people move on especially when they retire (as was the case with Stephen McConnell) or move jobs (as was the case for Roy Ashley who heard the claimant's grievance) and there may well be evidential difficulties which will increase with time and any further delay in the final hearing taking place.

83. Ms Wedderspoon invited the Tribunal to consider the following factors set out by the Employment Judge in Riley (see above, who the Court of Appeal upheld) considered: -

    (a) the mounting costs;

    (b) the dimming of recollections of the respondent's witnesses;

    (c) the fact that some witnesses had left the respondent's employment which the judge did not regard as presenting an insuperable difficulty;

    (d) the absence of any definite prognosis of any recovery sufficient to take part in the proceedings in the foreseeable future.

84. In Riley, a case whose facts are not dissimilar to those in Mr Rouke's case, the proceedings were struck out because, in the light of the medical evidence, it was regrettably not possible to have a fair trial of those proceedings in the foreseeable future. The same could be said of Mr Rouke based on the medical evidence set out above. Ms Riley was depressed and the medical opinion was the doctor who attended the hearing at the Employment Tribunal could not say with any certainty when Ms Riley would recover sufficiently to participate in her proceedings, she was not well enough to conduct the trial and it was found based on the medical evidence Ms Riley would not be well enough in the future and the following "contentions" were set out as to why a fair trial was not achievable in the circumstances of the case:

    (i) the mounting costs;

    (ii) the dimming of recollections of the respondent's witnesses, which the judge thought had some substance;

    (iii) the worry and stresses of the respondent's merits, which, to some extent, the judge thought had merit;

    (iv) the fact that some witnesses had left the respondent's employment, which the judge did not regard as presenting an insuperable difficulty; and;

    (v) the absence of any definite prognosis of any recovery sufficient to take part in the proceedings in the foreseeable future.

85. Lord Justice Longmore at paragraph 7 stated; "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 ECHR 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. Judge Hall-Smith correctly found assistance in remarks of Peter Gibson LJ in Andreou

v The Lord Chancellors Department which are as relevant today as they were 11 years ago: —

> 'The Tribunal in deciding whether to refuse an adjournment had to balance a number of factors. They included not merely fairness to Mrs Andreou (of course an extremely important matter made more so by the incorporation into our law of the European Convention on Human Rights , having regard to the terms of Article 6): they had to include fairness to the respondent. All accusations of racial discrimination are serious. They are serious for the victim. They are serious for those accused of those allegations, who must take very seriously what is alleged against them. It is rightly considered that a complaint such as this must be investigated, and disputes determined, promptly; hence the short limitation period allowed. This case concerned events which took place very many years ago, well outside the normal three months limitation period. The Tribunal also had to take into account the fact that other litigants are waiting to have their cases heard. It is notorious how heavily burdened Employment Tribunals are these days.'"

86. The observations made by Lord Justice Longmore and approved by Lord Justice Rimer and Lord Justice Mummery are as relevant to the claimant's case in April 2021 as they were in 2013. Accusations of disability discrimination are also serious both for the claimant and the individuals concerned, such as Stephen McConnell who is ill and has retired. Mr Rouke's case also goes back many years to 2015, and the alleged discriminatory act attributed to Stephen McConnell, namely, suspending the claimant, took place on 9 November 2016 over 4-years ago and Stephen McConnell has had to deal with the stress of this litigation over this period, with no apparent end to it as a result of the claimant's ill health.

87. The words of Lord Justice Longmore at paragraph 28 are particularly relevant; "It would, in my judgment, 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 a 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." The medical evidence in Mr Rouke's case points to there being no realistic prognosis of sufficient improvement in the claimant's mental health, a condition into which the claimant "lacks insight" and refuses to take part in the treatment plan, rejecting all efforts by the mental health team, his GP and Dr Nazir whose expert opinion with this Tribunal hearing in mind was that "I am unable to do a report for the Court to say that he is fit as I do believe he is ill" and the manner in which the claimant has approached this litigation reinforces that view, including his preoccupation with conspiracies involving the respondent and other organisations, and inability to think of nothing else.

88. Turning to Dr Nazir's approach and the claimant's submission that it should

not be relied upon because Dr Nazir was telling lies and conspiring with the police and thus the respondent, the Tribunal is aware that when deciding whether the claimant will be fit to attend a hearing within a reasonable time, it must take into account relevant medical evidence, but such evidence is not conclusive. It is open to the tribunal to disagree with a doctor's predictions on the basis that previous predictions have been proved wrong: Peixoto. The problem for the claimant is that Dr Nazir was instructed by him and not the respondent, and his report is reflected in the medical opinions held by other doctors. The claimant's MED3 fit note referencing industrial asthma does not assist him, and his insistence that it was sufficient underlines the fact that he regularly ignored guidance and orders from the Tribunal throughout this litigation. He was clearly informed the MED3 would not suffice and yet the Tribunal heard arguments today as to why it is evidence of the claimant being well enough to take part in the trial. The claimant's insistence and his conduct at this hearing only serves to underline the fact that Dr Nazir's report can be relied upon.

89. The fact Dr Nair may or may not have understood the claimant and made a mistake in his report, for example, recording the claimant had lost his keys as opposed to them being stolen by the police, does not go to the heart of his prognosis. It may also be the case Dr Nazir was confused as to whether the claimant was seen by Dr Broadman or not. It is uncontroversial the claimant was seen by someone from the mental health team and that person was likely to be Dr Crawson who produced the letter that was read and signed off by Dr Broadman because Dr Crawson was in training. These are all matters raised by the claimant today, numerous times, as he is fixed with a conspiracy involving fabricated documents in this litigation. Dr Nazir's conclusions are straightforward, and there is no reason why it could not be relied upon taking into account the claimant's belief that Dr Nazir was lying because the police had made contact and therefore an unfavourable report produced confirming the claimant was not fit to attend a final hearing.

90. It is notable that at the outset of today's hearing when the issue to be decided was discussed with the claimant to make sure he understood these proceedings (and repeated numerous of times throughout the day) the claimant continued raising the conspiracy allegations, including the bundle issue as he believed the police, instructed by the respondent, had gone in to his house in December 2020 and stolen papers relating to this litigation. The claimant was unable to grasp the fact that there was no benefit to the respondent given the fact the Tribunal had copies of the bundles and witness statements which the claimant could have requested copies of, and chose not to do so which would have resulted in the final hearing being delayed had it started today.

91. As indicated earlier, the claimant referred the Tribunal to an extract from Harvey's and case law on time limits arguing that Dr Nazir's reliance on the incorrect medical evidence was a continuing act, which made no sense as Dr Nazir was not linked to the respondent although according to the claimant he was, hence the "lies" in his report. This is the nub of the issue insofar as the

claimant is unable to have a realistic view of this litigation viewing it through a lens of subterfuge and conspiracy, making serious allegations of criminal activity against the respondent, the medical profession and the police. The factual matrix reflected in the Tribunal file as recorded above, supported by the oral submissions we heard from the claimant today, when he repeated wild allegations of conspiracy, supports Dr Nazir's medical opinion. It would be difficult for the claimant to conduct his case at a final hearing, evidenced by a fresh allegation made today to the Tribunal that when purchasing a new key on entering the key cutting shop the claimant determined that the shopkeeper was talking about him on the phone, which he then left off the hook in order that the third party could listen in to the conversation, actions apparently linked to this litigation.

92. Turning to the factors set out in Riley and relied upon by the respondent the Tribunal was satisfied that:

(a) There were mounting costs which increased with the delay, the necessity for case management and not least, the respondent having to deal with the repeated claimant's allegations, for example, that he was filmed at the adjourned final hearing.

(b) The dimming of recollection of the respondent's witnesses; this is self-evident but not always fatal to a fair hearing depending on the extent of the delay. In Mr Rouke's case it likely the final hearing would be delayed until mid to late 2022, which is a substantial delay bearing in mind the chronology referred to above.

(c) The fact that some witnesses had left the respondent's employment which the judge did not regard as presenting an insuperable difficulty; and the Tribunal found this to be so in Mr Rouke's case, with the exception of the key witness who had retired and was unwell with a heart problem.

(d) The absence of any definite prognosis of any recovery sufficient to take part in the proceedings in the foreseeable future; this is a key issue as the claimant has produced no evidence, despite countless opportunities to do so, confirming he was well enough to attend a final hearing. A MED3 citing asthma is not indicative of the claimant's fitness to participate properly, and all of the medical evidence including the more recent report prepared by Dr Nazir at the claimant's instruction, confirm the claimant was unfit from the adjournment of the final hearing in November 2018 through to today, a period of some 29 months with no prospect of the claimant being well enough in the future. The claimant was aware from the preliminary hearings which he attended, particularly that of 6 August 2020 and the case management order dated 21 December 2020, that he was being given time to engage with the treatment plan and obtain the required medical evidence. Three months down the line the claimant had not engaged and had not produced the medical evidence that he was fit to

attend the reconvened hearing, despite a clear indication in the letter dated 11 March 2020 that the MED3 did not amount to medical evidence confirming the claimant was fit and yet the claimant still argued today the MED3 citing asthma was proof of his fitness.

93. Finally, taking into account the remarks of Peter Gibson LJ in Andreou cited above, the Tribunal in deciding whether to strike out the claimant's claim is required to balance a number of factors including fairness to Mr Rouke European Convention on Human Rights having regard to the terms of Article 6 and to the respondent, whose witnesses have been waiting to deal with serious allegations of disability discrimination over a number of years concerning allegations which took place well outside "the normal three months limitation period".

94. Taking into account the words of Lord Justice Longmore at paragraph 28 referred to above, it would be wrong to adjourn Mr Rouke's case until 2022 in the hope that by then he will have undergone treatment and obtain the necessary medical confirmation that he is well enough for a trial, given the fact Mr Rouke has already had this opportunity over a lengthy period of time and there is no sign that his medical condition will ever improve in the future. According to Dr Nazir the prognosis is "poor…I don't think he will engage," a view repeatedly touched upon by the medical profession with references to the claimant's lack of engagement, failing to attend appointments and lack of insight into his mental health issue. Lord Justice Longmore stated; "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." The claimant remains preoccupied with conspiracies involving the respondent, police and medical profession and it appears to the Tribunal, taking into account the overriding objective and its observations above, reluctantly striking out the claimant's claim is the only realistic option open to it having the balance of prejudice to the parties in mind and the unlikelihood that this case will ever get to trial at any time in the future.

95. In conclusion, the claimant's claims of disability discrimination and unfair dismissal are struck out and dismissed in accordance with rule 37(1)(e) of the Employment Tribunal Rules of Procedure 2013 as it is no longer possible to have a fair trial.

_____

Employment Judge Shotter

DATE: 04.05.2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON 18 June 2021

FOR THE TRIBUNAL OFFICE