



EMPLOYMENT TRIBUNALS

**Claimant**  
**Ms J Chambers**

**Respondent**  
v **Kent Community Health NHS**  
**Foundation Trust**

**OPEN PRELIMINARY HEARING**

**Heard at: London South**

**On: 15 March 2022**

**Before: Employment Judge Truscott QC**

**Appearances:**

**For the Claimant: In person**  
**For the Respondent: Mr S Keen of Counsel**

**JUDGMENT on PRELIMINARY HEARING**

The claim is struck out under Rule 37(1)(b) and ( e) on the grounds that the manner in which the proceedings have been conducted by the claimant has been vexatious and unreasonable and a fair trial is no longer possible. In consequence, the hearing fixed for 31 July to 8 August 2023 is discharged.

**REASONS**

**Preliminary**

1. The preliminary hearing was fixed to determine whether to strike out the Claimant's claim under rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules"). The Respondent applied for the Claimant's claims to be struck out under Rule 37(1)(b) and (e) and narrate that this is by reason of her conducting proceedings in a scandalous, unreasonable and/or vexatious manner.

2. The Claimant represented herself and gave evidence on her own behalf. She sought to lead the evidence of Mr Malcolm Glazier, her former representative, who was logged in to the proceedings earlier in the day but when the time came to hear his evidence, he was not able to log in. The Tribunal accepted his statement as his evidence but it was not subjected to cross examination. Mr S Keen, barrister, represented the Respondent and led the evidence of Mr Timothy Gooder of DAC Beachcroft, the Respondent's solicitors. Mr Gooder was the solicitor in charge of the conduct of the Claim from 15 October 2018, when Bevan Brittan was first instructed

to act for the Respondent until 22 October 2021, when he commenced a period of annual leave before he left the firm.

3. There were 3 bundles of documents, a claimant's bundle of 388 pages, a Respondent's bundle of 661 pages and a pleadings bundle. Reference in this judgment will be to the page numbers in the Respondent's Preliminary Hearing Bundle unless otherwise stated.

4. On 18 March 2022, the Claimant emailed the Tribunal with a link to a video in which Mr Michaels explained that he was providing further evidence regarding the format of the emails printed out by Martin Taylor and to prove that they were not forwarded to him and that the only way they could have been sent was as attachments, which the Claimant had confirmed she had not done. He said therefore the only way this could have been done was for him to have accessed her inbox to send himself a copy of those emails. He then proceeds to demonstrate how in his view this could have been done.

### **Tribunal Process**

1 The Claimant lodged the Claim against the Respondent on 16 September 2018 alleging discrimination arising from a disability, failure to make reasonable adjustments, harassment, victimisation and for breach of section 10 of the Employment Relations Act 1999. The Claimant at that time was represented by Mr Malcom Glazier of The Employment Law Service.

2 It took a number of months for the claim to be fully particularised [35 – 37 and 41 – 42]. After receiving the Claimant's further and better particulars on 2 August 2019, Mr Gooder provided a draft list of issues to Mr Glazier on 20 August 2019 [43 - 44], which he amended on instruction to concede that the Claimant was disabled [45].

3 On 4 September 2019, he sent the Respondent's disclosure documents to Mr Glazier [46 - 47]. Mr Glazier replied two days later to query why there was a "substantial difference from the original list of documents" and asked Mr Gooder to provide an explanation for this. Mr Gooder did not recall having sent another list and on further enquiry, he discovered that the "original list" Mr Glazier was referring to was not the Respondent's list. Mr Gooder asked Mr Glazier to send him his client's complete disclosure list and copy documents so that he could pull together the relevant parts [50 - 51]. On 25 September 2021, Mr Glazier sent through a number of emails with the Claimant's disclosure documents [56 – 67].

4 Between 30 September 2019 and 18 October 2019, Mr Gooder received various emails from Mr Glazier regarding disclosure and the Claimant continued to disclose documents that she considered relevant until Mr Gooder's colleague Ms Kaur emailed Mr Glazier on 18 October 2019 to confirm receipt of 20 emails containing the Claimant's disclosure. Ms Kaur requested confirmation from Mr Glazier that the exercise had been completed [85].

5 On 1 November 2019, Ms Kaur emailed Mr Glazier sharing a marked - up version of the Claimant's list of documents, detailing the documents that were disputed on the basis that they were not relevant. This was primarily due to the fact

that the Claimant had produced documents which post-dated the issue of her claim and detailed incidents which were not part of her claim as they had arisen after the claim was issued [88 - 89].

6 On 6 January 2020, Mr Glazier emailed Mr Gooder to inform him that he would be unavailable for the preliminary hearing which was listed for 9 January 2020 but that the only issues he considered that the Tribunal needed to address were deadlines for the bundle and witness statements [112]. Mr Gooder responded to note that that in addition, a hearing needed to be listed. Mr Gooder suggested five days on the basis that the Respondent had seven witnesses to call. He suggested to Mr Glazier that he could write to the Tribunal to cancel the preliminary hearing but he didn't think that would be successful and suggested that Counsel attend [111 - 112]. Mr Glazier proceeded to make an application [113 and pages 115 – 116] and Mr Gooder wrote to the Tribunal to confirm he agreed to the proposal [115 – 116]. However, the application was not granted and although the preliminary hearing went ahead, Mr Glazier did not attend. He emailed Mr Gooder later that day saying "all went well no doubt" to which Mr Gooder responded to confirm that the Tribunal had agreed to the dates he had proposed [118 – 119].

7 On the evening of 13 February 2020, the day before the Respondent was due to provide a copy of the bundle, Mr Glazier sent Mr Gooder nine CDs for inclusion in the bundle. Mr Gooder wrote to Mr Glazier to confirm that given the late disclosures, he would not be in a position to finalise the bundle that day. Mr Gooder reviewed the contents of the CDs and emailed Mr Glazier on 14 and 17 February 2020 to confirm that the contents either did not relate to the issues as they post-dated the claim, or that they were recordings of meetings, the minutes of which were already in the bundle. Mr Glazier did not reply so Mr Gooder proceeded to send a copy of the bundle to Mr Glazier [127 – 130].

8 On 6 April 2020, parties were notified that a hearing would be listed for 6 to 10 July 2020. Mr Gooder had sought an application for a postponement with the Claimant's agreement but received no response from the Tribunal [124 – 125 and pages 132a - 133]. The full merits hearing did not go ahead and parties were given further directions with a further hearing listed for 26 – 30 April 2021 [143].

### **The alleged hacking of the Claimant's email**

9 On 30 July 2019, Mr Gooder wrote to Mr Glazier to inform him that the Respondent had been receiving emails from the Claimant's personal email address which did not appear to have been sent by her. He informed Mr Glazier that the Respondent had discussed the emails with its IT department who had concluded that the Claimant's personal email may have been hacked. He was not aware that the Respondent had any further knowledge about what may have happened. However, as the email the Respondent had received did not appear to be from the Claimant, it was possible that a third party had accessed her email account and had sent the email the Respondent received. Mr Gooder advised Mr Glazier that he was passing on the message out of courtesy as he thought it would be helpful for her to be aware of this. Mr Glazier responded a short while later, thanking him for the "heads up" and informing him that the Claimant was already aware of the issue. Mr Glazier informed him that he had advised her to contact the Police to report it [38 - 40].

10 On 30 September 2019, when discussing disclosure documents, Mr Glazier emailed a message from the Claimant on the hacking of her personal email address [68 - 70]. The message stated:

“On going through my emails yesterday and trying to retrieve some sent messages I was greatly alarmed to find that on the day that my email was hacked this being 27th July 2019, every single one of my sent emails dating back to the start of me using emails had been deleted.

On further investigation the folders I had made up for each individual employee of the Trust had also been tampered with as the folder for Nicola Rutter and Martin Taylor had also been deleted.

Fortunately, I had already printed and copied these files and sent you a hard copy as well as keeping one for myself.”

The Claimant’s message continued to express her concern about the companies and individuals who had visited her LinkedIn page. She stated:

“I cannot see any reason for any such companies to be looking at my accounts and it is extremely alarming that this happened at the same time as the hacking and at such a crucial time for me as I prepare to complete my bundle.”

The Claimant stated that she had obtained further information that various web hosts that had been blocked showing the message “Server Transfer Prohibited”. She stated that her research had informed her that this occurred as “it is related to a Legal case”. She asked if the Respondent would “now make a move on this criminal activity as its clearly in the public interest and clearly a Police matter” [69 – 70].

11 Mr Gooder responded to Mr Glazier later that day to update him that he had raised the hacking concerns with the Respondent [68]. He raised the matter with the Respondent who passed the matter onto their IT specialist. On 3 October 2019, the Respondent sent Mr Gooder the response from their IT specialist, who did not find any evidence that the Trust had been involved in the hacking of the Claimant’s email [77 – 79].

12 On 4 November 2020, Mr Gooder received a communication from The Employment Service confirming that they were no longer acting for the Claimant [150]. Ms Kaur wrote to the Claimant confirming that she was no longer represented by The Employment Law Service and that she would communicate with her directly from that point onwards [156]. After some further correspondence, it was agreed that she would send the Claimant a hard copy of the bundle to her home address on 11 November 2020. On 1 December 2020, she asked the Claimant to confirm whether the bundle was safely received [154].

13 On 9 February 2021, Mr Gooder received an email from the Claimant asking questions about the disclosure exercise completed with Mr Glazier. She referred to the email sent by Mr Glazier on 30 September 2019 and asked “could you let me know what actions your client took” and “what steps you took Tim to protect the integrity of this case”. She also queried why Ms Kaur’s name was appearing at the top of some of the documents [153 – 154]. Mr Gooder explained to her that the Respondent investigated the hacking incident internally, discussed it with an IT specialist and received confirmation that it was not appropriate for the Trust to raise this matter with the Police. He explained to the Claimant that Ms Kaur’s name may appear on some documents as she had been working on the bundle so that those

documents that had been saved or printed by Ms Kaur would have had her name appear at the top of them. The Claimant was assured that this did not change the nature of the documents [152 - 154]. Mr Gooder proposed a timeline of deadlines for agreeing the bundle, adding further documents where the bundle could not be agreed and exchanging witness statements [152].

14 The Claimant responded the following day asking further questions relating to the alleged hacking. She specifically requested responses to the following points/queries:

- 14.1 "That I am provided with the full Investigation report
- 14.2 The name of the IT specialist that this crime was 'discussed with'
- 14.3 What member of staff discussed this with the IT specialist and who did they report to?
- 14.4 What was the conformation received to state that this was not appropriate to raise to the Police?
- 14.5 Whose decision was it that this criminal activity was not reported to the Police?
- 14.6 Is there a reasonable explanation as to why Malcolm at that time nor myself were informed of this investigation by yourself Tim given that it affects the integrity of this case?
- 14.7 I ask again Tim, what steps you took to protect the integrity of this case." [151 – 152]

The Claimant appeared dissatisfied with the explanation of Ms Kaur's name appearing on documents and asked if this could be clarified further and she found it "extremely disconcerting given the history of the documents and criminal activity i.e. Hacking of [her] documents and abuse of your systems". She proceeded to ask Mr Gooder further questions about how he had come to obtain copies of emails that had been sent to her private email address, who Richard Lewis was and why his name appeared on documents, and why he had only included documents that he felt were relevant. She asked him to confirm whether he had reported this incident to the Information Commissioners Office and alleged that the Respondent had withheld relevant documents from the bundle [151 – 152].

15 On 22 February 2021, the Claimant sent Mr Gooder five emails with further documents attached [158 – 162], she explained that:

- 15.1 In her view her former representative had to spend many weeks chasing me for large strings of emails that she believed the Respondent had not disclosed.
- 15.2 She had raised 71 grievances from the period of 6 November 2017 to 7 December 2017 and 41 grievances from 11 January 2019 to 27 May 2019. She stated that she could only identify three grievances in the bundle, none of which were complete.
- 15.3 She had identified 1,200 pages of paperwork which had not been disclosed by the Respondent.
- 15.4 The task had been made more difficult due to the "fact" that after Mr Gooder had "reported to Malcolm that [their] systems had been breached and [we] received malicious emails from [her] Outlook account," she went on to find that her sent items to the Respondent had been deleted as well as the entirety of her ET confidential documentation including one specific folder relating to the

HR Manager Nicola Rutter. The Claimant said “fortunately, I was prudent enough to retain paper copies for myself and a further copy saved digitally”.

15.5 The hacking had left her at a substantial disadvantage as she alleged that the hacker was trying to sabotage her case.

15.6 She had reported the case to the Home Secretary, after NHS England had declined to take further action.

15.7 She believed that an employee of the Respondent had got to “extreme and criminal lengths” of hacking into her Outlook account and removing substantial evidence and folders. She stated that she had “overwhelming evidence” to substantiate her claims and that no other material had been removed from her Outlook.

15.8 The Respondent and NHS England had wilfully failed to report “a serious breach of [its] systems”.

15.9 She understood that the hacking was not part of her claim in the employment tribunal, however, it was inextricably linked to “substantial evidence” which she had shared with NHS England, the Police, Action Fraud, her MP and the Home Secretary.

15.10 She had experienced difficulties in getting the Police and governing bodies to pick up the issue, but she did have a crime reference number and would be pursuing it.

15.11 She considered that it was in the interests of both parties to understand who had committed the “criminal offence” before the matter proceeded to a hearing. She would be asking the Home Secretary to conduct an internal investigation as to why this crime and breach of NHS systems was not reported as she considered the matter to be in the public interest [163 - 165].

The Claimant told Mr Gooder that the Respondent had breached the overriding objective by tampering with the bundle, failing to report the alleged tampering, failing to report a crime (the hacking of her outlook email account), allowing her to be placed at a substantial disadvantage, failing to protect the integrity of the case, failing to include documents in the bundle and failing to respond to requests for information. She then stated that the documents she had disclosed in the five emails she had sent him [149 – 153] were not the full extent of the missing disclosure as she was still trying to recover what had been hacked. She stated that she would be requesting a sanction against the Respondent for contempt of court [163 - 165].

16 The Claimant said that she believed that a member of Respondent staff had hacked her email account in order to delete the documents she had collated for her claim without providing any evidence. On 24 February 2021, Mr Gooder responded to the Claimant to make clear that the Respondent had nothing to do with the alleged hacking of her email account. He explained that he had forwarded Mr Glazier’s email to him on 30 September 2019 onto his client and asked them to check whether the Respondent’s IT department had any comments and whether they considered it to be a Police matter. He explained that his contact at the Respondent had done this and their IT specialist had been informed that there was no need to raise this matter with the Police. He explained that he considered it to be the end of the matter to avoid the need for any further protracted correspondence which was wasting time and costs for both parties. He explained that names of individuals were appearing on documents where they had printed the document. He explained that in order to collate the bundle of documents, it was necessary for Ms Kaur to print some of the documents as they had been sent as emails, rather than as hard copy documents.

He then explained that the documents that had been included in the bundle were those that were relevant to the agreed list of issues. He explained that as her claim had been issued on 16 September 2018, all the issues must by definition pre-date that. He encouraged her to seek legal advice again to progress her claim. He informed her that he would review the documents she had sent and add any new documents which were relevant to the list of issues [166 – 167].

### **Further preparation of the bundle and preparation for April 2021 hearing**

17 On 2 March 2021, Mr Gooder emailed the Claimant to advise her that he had reviewed her additional documents and considered that there were some new documents to be added to the bundle. He raised queries about the dates of certain documents and asked her to confirm when they were created and why [185]. He did not receive a substantive response and on 5 March 2021, he asked her to respond urgently to his email of 2 March 2021 as he needed to send her a final copy of the bundle for approval [183 - 184].

18 He received an email from the Claimant on 10 March 2021, in which she responded to the email of 24 February 2021 by copying and pasting the email he had sent to her and the email he had forwarded from Ms Mair and provided lengthy comments on each paragraph [177 – 183]. In this email, she continued to make allegations of a criminal nature against the Respondent's staff. In relation to the alleged hacking of her Outlook, the Claimant said "it's very clear it's an employee of the Respondent who does not like me and involved with the internal procedure. Clearly such employees have taken it upon themselves to commit this criminal offence". She stated her belief that the Respondent did not want to take action to investigate her theory any further or take any disciplinary action as it did not want to bring the Respondent into disrepute. The Claimant stated further:

"This criminal activity has not been reported by the Trust even though it has affected their "kit" as reported by yourself to Malcolm. There were also over 350 malicious emails sent and it was Nicola Rutter (what a coincidence) that brought this to your attention, which was surprising, and she despised me which is demonstrated by her conduct and of the procedures against them and others that she was involved in with me, which is further evidenced in the recordings of the meetings."

The Claimant proceeded to list further complaints relating to Ms Rutter specifically before referring to one incident and stating "I was dismissed 7 days later, and my Outlook emails hacked, removing NR's folder and every email sent to her. This is more than a coincidence." The Claimant made further complaints regarding alleged "discrepancies" in the bundle and asked for a further explanation on why the names of other individuals (including Martin Taylor, an external investigator who conducted an investigation into one of the Claimant's grievances) were appearing on some of the documents [177 - 183].

19 On 16 March 2021, Ms Lyndsay Mair provided an updated version of the bundle to the Claimant via Mimecast, a secure file sharing platform for sending large files [175]. In addition, she provided an analysis document detailing each individual document that the Claimant had provided between 10 and 22 February 2021 with an explanation as to whether the document was already in the bundle, whether the

document was new and if it was considered irrelevant to the list of issues [483 to 489].

20 Ms Mair arranged for a hard copy of the bundle to be sent and emailed the Claimant on 18 and 30 March to check the Claimant had received the bundle [176]. As there was no response from the Claimant, on 1 April 2021, the Respondent made an application to the Tribunal for an Unless Order requesting that the claim was struck out unless the Claimant confirmed whether the bundle was agreed by 9 April 2021; and exchanged witness statements on 15 April 2021 [211 - 212].

21 On 2 April 2021, the Claimant sent an email to Ms Mair stating that she was “astonished” that the Respondent had make an application for an Unless Order. She stated that:

“The reasons for my delay were that I was waiting for my IT consultant to finalize his investigation to allow me to update the ongoing Crime Report that exists due to the unauthorized access of my Outlook email. This procedure is ongoing furthermore, if I had any responses from Tim in the emails that were sent to him in a bid to protect the integrity of this case, we would not find ourselves in the position we are in.” [193 - 196].

She stated that she had not received a copy of the second bundle, that it was taking her an extraordinary amount of time to relocate the hacked emails and that it would take her weeks to write her witness statement, which she considered to be an impossible task as she had not received a copy of the latest bundle. She therefore considered that it would not be possible to exchange witness statements on 15 April 2021. She proceeded to list various queries and concerns in relation to the analysis document provided on 16 March 2021 [193 - 196].

22 Ms Mair responded to the Claimant on 6 April 2021 advising that both a hard and soft copy of the bundle had been sent to her but another hard copy would be couriered to her and a further electronic copy would be sent by Mimecast. Ms Mair explained that as the hearing had been scheduled for 26 – 30 April 2021, it was reasonable and necessary to seek the Claimant’s agreement to exchange witness statements and that both parties would need sufficient time prior to the hearing to review the other side’s statement [192]. Ms Mair asked the Claimant to confirm that she would be in a position to exchange witness statements by 15 April 2021 and asked the Claimant to send copies of any additional bundle if she had chosen to prepare one. In relation to the Claimant’s other comments, Ms Mair explained that the Respondent had already responded to her concerns and with little time left before the scheduled hearing, she did not intend to engage further, but instead suggested that she created her own bundle of documents if she still disagreed with the version which had been prepared [192].

23 On 6 April 2021, the Claimant responded the application for an Unless Order by making an application for such order to be set aside. She explained that she considered there to be discrepancies within the bundle which needed to be resolved. The Claimant proceeded to make numerous complaints regarding Bevan Brittan’s handling of her case including:

23.1 that Mr Gooder had not responded to her queries in her emails (including her email of 10 March 2021) regarding discrepancies in the bundle;



23.2 that neither Mr Gooder nor Ms Mair had provided her with a reasonable explanation as to why other people's names were appearing on headers of "hacked documentation" and that I had refused to discuss this with her;

23.3 that Mr Gooder had refused to answer her questions and then "suddenly" transferred the case to Ms Mair;

23.4 that since her last email to Mr Gooder on 10 March 2021, she had informed him that she would be requesting a sanction for contempt of court as she considered his actions to be in direct contravention of the Employment Tribunal rules;

23.5 that she had not been informed that Mr Gooder had "removed [himself]" from this case and placed it in the hands of Ms Mair;

23.6 that Ms Mair had since conceded that 42 grievances in addition to other documents had been excluded from the bundle for "reasons only known to [themselves]";

23.7 that Ms Mair had been vague in her correspondence using words such as "unsure", "most" and "I think";

23.8 that Ms Mair should have checked the tracking record before making the Unless Order application at which point, she would have discovered that the Claimant had not yet received the bundle. The Claimant reported that she had been unable to open the electronic bundle so was awaiting the hard copy, although this was the first time, she had said this;

23.9 on 10 March 2021 she informed them that she was still gathering documents for the bundle due to the hacking of her Outlook;

23.10 that Mr Gooder had declined to respond to her observations that the Respondent's employment Tribunal bundle had the same documents missing that the hacker had removed from her Outlook;

23.11 that she felt bullied by the actions of the Respondent, notably making the Unless Order application. She explained that she had not been disputing the bundle, but merely pointing out errors and inconsistencies;

23.12 she had only, that day, received the revised bundle which was the third hearing bundle. She alleged that it was the Respondent that had caused these "ridiculous delays". In particular, she noted that due to the lateness of delivery of the bundle, it would be impossible for her to write a witness statement when she had over 1,822 pages to review [207 – 210].

She alleged that emails of hers within the bundle had been tampered with/hacked by two people who were brought into her case by the Respondent. One of these, she names as Martin Taylor, who she alleges destroyed records of their meetings.

24 Mr Gooder was in complete disagreement with the Claimant's various allegations in relation to the way in which Ms Mair and he had dealt with the hearing preparations.

25 On 12 April 2021, Ms Mair wrote to the Claimant to advise her that she had not received her schedule of loss and she had been ordered to send it in the Case Management Order dated 17 May 2019 [227]. In addition, Ms Mair also responded to the Claimant's email to the Tribunal of 6 April 2021 explaining that the Respondent disputed the points raised by the Claimant in her email and had explained to the Claimant that as the bundle could not be agreed, she should prepare her own separate bundle with any additional documents deemed missing and the documents could be addressed at the hearing [219].

26 The Claimant responded the following day stating that she was “aggrieved that [Ms Mair was] presenting this to [her] at this astonishingly late stage”. She stated that this evidenced that they had not taken due care in collation of the bundle as this information “would have been sent to [them] at the relevant time”. She proceeded to raise further concerns about Ms Mair’s failure to include this document in the bundle concluding that she was therefore disputing the Respondent’s own bundle. The Claimant stated that she considered Ms Mair had misled the Tribunal by stating that she had completed an in-depth analysis of the Claimant’s concerns which the Claimant said was “untrue”. The Claimant concluded by calling Ms Mair unprofessional, and that Ms Mair’s “astonishing behaviours” were “quite frankly pushing [her] over the edge” [226].

27 Less than two hours later, the Claimant sent a further email which simply stated “Further to my previous email, I shall get the schedule of losses over to you as soon as possible today” [226]. The Claimant provided the schedule of loss later that day and Ms Mair responded, thanking her for providing the document and suggesting that it was simply added to the end of the bundle so that page numbers were not disrupted [228].

28 On 16 April 2021, Mr Gooder emailed the Claimant to request agreement to a witness statement exchange date. He noted that the proposed deadline of 15 April had been missed and noted the Tribunal now required copies of all electronic witness statements [231].

29 On the same day, the Claimant filed an application for a postponement of the hearing with the Tribunal. The Claimant stated that she was yet to receive a response from the Tribunal to her email dated 6 April 2021 reporting alleged criminal acts and alleged tampering of the bundle by Bevan Brittan. She stated that she had met all of the requirements of the Tribunal but was being “continually pressured” by Lyndsay Mair to make preparations for the hearing whilst failing to respond to her emails outlining the alleged criminal activity. She noted in particular Ms Mair’s request for the Claimant’s schedule of loss which “would have been sent to [them] at the relevant time”, which she considered Ms Mair was simply unable to find. She stated that whilst she did comply with this requirement, her document was not completed in its entirety as relevant information had been removed from her Outlook account as a result of the hacking incident [233 - 234].

30 In addition, on 16 April 2021, the Claimant wrote to Mr Gooder and Ms Mair to note her dissatisfaction at their “incredibly late request” at 6.01pm the previous day. She stated that “The bundle at present is not agreed and you are fully aware that I am unable to create the bundle due to the hacking therefore, for you to send another email today 16<sup>th</sup> April 2021 pressurising me to exchange witness statements is very unprofessional”. Furthermore, she stated that she was uncomfortable and extremely anxious in engaging with the firm due to the “criminal behaviours” of the staff [241 - 242].

31 Mr Gooder responded to the Claimant to explain that he would respond to her postponement application shortly. He asked her if she could respond to his question regarding exchange of witness statements [241]. The Claimant provided a further response, explaining

“I have today spoken on the phone to the Solicitors Regulation Authority as I raised this as a red alert due to the criminal activity of the Computer Misuse Act 2018 and the tampering of the Employment Tribunal bundle as this is professional misconduct and I am at present sending them over all of my evidence to substantiate my claims.” [ 240]

32 Later that day, Mr Gooder submitted a response to the Claimant’s application objecting to the proposal to postpone the hearing. He noted that the Claim had been issued on 16 September 2018 and had already been subject to significant delays. He explained that the Claimant had disagreed with the contents of the Respondent’s draft bundle on the basis that it did not contain a number of documents which the Respondent considered to be irrelevant. He explained further that the Respondent did not understand the Claimant’s allegations of breach of the Computer Misuse Act 2018 or the alleged tampering with the bundle. He stated that he had written to the Claimant to inform her that if she wished, she could submit a further of bundle of documents to the Tribunal [232].

33 On 18 April 2021, the Claimant provided a further lengthy response stating that she had been placed at a disadvantage due to Bevan Brittan’s administration of her claim including an alleged late delivery of the bundle on 6 April 2021. In particular, she alleged that there were outstanding discrepancies in the bundle and that Bevan Brittan had failed to explain why the names of individuals, including Ms Kaur, appeared on the top of documents. She referred to these emails as “hacked emails from the Claimant’s Outlook email account” and stated that she understood that her allegations of criminal conduct by Bevan Brittan employees were serious. She continued to explain that only information from her Outlook relating to her Employment Tribunal claim had been “hacked” and pointed out that only the Trust and Bevan Brittan knew about these documents. She stated that the issues had placed her at an enormous disadvantage and she was unable to prepare her witness statement until they were resolved. She the reiterated her request for the hearing to be postponed [246 - 249].

34 On 21 April 2021, Mr Gooder wrote to the Claimant to ask her to confirm as a matter of urgency, whether she was in a position to exchange witness statements, noting that it was, at that point, a week before the hearing was due to take place, as no postponement had been granted at that stage [278]. On 22 April 2021, the Tribunal wrote to say that the Claimant’s application to postpone the hearing had been refused [291 - 292].

35 On 23 April 2021, having received no response from the Claimant, Mr Gooder sent the Respondent’s witness statements to the Claimant, noting that she had been unwilling or unable to share her statement, but urging her to reconsider her position for the interests of both parties ahead of the listed hearing [280]. The Claimant responded to the email from the Tribunal the previous day, setting out reasons why she considered that the hearing should still be postponed. Some of her reasons included, “evidenced criminality and abuse of process tampering with the Employment Tribunal bundle”, “fraud and undue influence”, “manipulation of procedures”, “the conduct of Bevan Brittan”, “acute omissions of the Trust’s nondisclosure of 1,022 documents” and “making false representations, refusing to disclose information”. She proceeded to make further allegations that the Respondent and Bevan Brittan had concealed, destroyed or otherwise disposed of

documents knowing they are relevant. She specifically alleged that Mr Gooder's conduct had been dishonest and had fallen below the standards of honesty required for solicitors and that the Respondent's conduct of its case had breached her human rights [287 – 291]. The Claimant then provided a copy of her witness statement [287]. The hearing was later postponed on the morning of the first day due to lack of judicial resource.

### **Strike out application**

36 On 11 May 2021, Mr Gooder filed an application for strike out on the grounds that the manner in which the proceedings have been conducted by the Claimant had been vexatious and unreasonable noting that this was demonstrated by the voluminous correspondence from the Claimant which included a number of extreme, poorly particularised and unsubstantiated allegations of fraud and criminal behaviour against the Respondent, its witnesses and the Respondent's representatives [301 - 303].

37 The Claimant responded on 14 May 2021, stating that she had reported both the unauthorised access to her Outlook account and Bevan Brittan's alleged tampering of evidence to the Police. Furthermore, the Claimant noted that she had also made reports to the Solicitors Regulation Authority on the Fraud Red Alert hotline and also to the Bar Standards Council. The Claimant stated that she was aware of the seriousness of these allegations, however, "the facts clearly speak for themselves". The Claimant stated that she considered the Respondent's application for strike out to be a bid to avoid further investigation or criminal prosecution [304 - 305].

### **Police investigation and the Claimant's IT Consultant's report**

38 In June 2021, the Respondent was asked for information from Ms Isobel Rabot, a Police officer who had been assigned to investigate the Claimant's complaints. The Respondent was asked to provide information to explain how certain documents had come into its possession as the Claimant had asked the Police to investigate this. On 24 June 2021, the Respondent provided a response to Ms Rabot detailing where a number of documents the Claimant was disputing had originated from [490 - 492]. The relevant extracts are as follows:

- 2018-01-29 Email from Jacqueline Chambers to Karen O'Sullivan Re: RE; Requested Information [139] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 13:45 (Email at page 548) as part of Claimant's disclosure. The first page of the email is on page 9 of the pdf which was attached to Mr Glazier's email [557];
- 2018-01-29 Email from Jacqueline Chambers to Karen O'Sullivan Re: Investigation [142] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 13:45 [548] as part of Claimant's disclosure. The email is on pages 10 and 11 of the pdf which was attached to Mr Glazier's email [558 and 559];
- 2018-02-01 Email from Jacqueline Chambers to Karen O'Sullivan Re: RE; Meeting 5th February [144] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 15:43 [573] as part of Claimant's disclosure. The email is on page 1 of the JC 2 2019-09-25\_144821 pdf attached to Mr Glazier's email [574];
- 2018-02-01 Email from Jacqueline Chambers to Karen O'Sullivan Fw: RE; Meeting 5th February [145] was sent to Mr Gooder by Mr Glazier on 25 Sept

- 2019 at 15:43 [573] as part of Claimant's disclosure. The email is on page 1 of the JC 2019-09-25\_124221 pdf attached to Mr Glazier's email [590]; 2018-03-17 Email from Jacqueline Chambers to Karen O'Sullivan FW: Formal Grievance [156] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 15:43 [573] as part of Claimant's disclosure. The email is on page 16 of the JC 2019-09-25\_124221 pdf attached to Mr Glazier's email [605]; 2018-03-17 Email from Jacqueline Chambers to Karen O'Sullivan FW: Grievance Acknowledgement [158] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 15:43 [573] as part of Claimant's disclosure. The email is on page 12 of the JC 2019-09-25\_124221 pdf attached to Mr Glazier's email [601];
- 2018-06-11 Email from Jacqueline Chambers to Karen O'Sullivan Re: RE; Reschedule [175] was sent to Mr Gooder by Mr Glazier on 02 Oct 2019 at 09:21 [616]) as part of Claimant's disclosure. The email is attached to the email and called 'Re schedule' [621];
- 2018-03-17 Email from Jacqueline Chambers to Karen O'Sullivan FW: Further detail requested [178] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 12:54 [521] as part of Claimant's disclosure. The email is on pages 22, 23 and 24 of the pdf which was attached to Mr Glazier's email [544 – 546]; 2018-02-05 Email from Jacqueline Chambers to Karen O'Sullivan Fw: RE; Grievance; Dawn Levett [181] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 13:45 [548] as part of Claimant's disclosure. The email is on page 24 of the pdf which was attached to Mr Glazier's email;
  - 2018-03-18 Email from Jacqueline Chambers to Karen O'Sullivan FW: RE;; Grievance Pam Couchman [182] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 13:45 [548] as part of Claimant's disclosure. The email is on page 23 of the pdf which was attached to Mr Glazier's email [571]; 2018-03-17 Email from Jacqueline Chambers to Karen O'Sullivan FW: Appointment ID 957831 for Jacqueline Chambers – Booking Confirmed [183] was sent to Mr Gooder by Mr Glazier on 25 Sept at 12:54 as part of Claimant's disclosure [521]. The email is on pages 3 and 4 of the pdf attached to Mr Glazier's email [524 and 525];
  - 2018-02-06 Email from Jane Kendal to Jinny Robinson FW: Investigation Investigatory Telephone Call [185] was sent to Mr Gooder by the Trust and then printed off by a trainee solicitor Richard Lewis. The Trust had this document included as an appendix embedded into Jinny Robinson's investigation report dated 21 March 2018 [ 503, email at 519]. 2018-02-06 Email from Jacqueline Chambers to Karen O'Sullivan Fw: Extension to suspension [187] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 15:43 [573] as part of Claimant's disclosure. The first page of the email is on page 7 of the JC 3 2019-09-25\_144821 pdf which was attached to Mr Glazier's email [580]; 2018-03-17 Email from Jacqueline Chambers to Karen O'Sullivan FW: Correspondence Grievance Mina Sohrabe 2nd February 2018 [236] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 15:43 [573] as part of Claimant's disclosure. The first page of the email is on page 12 of the JC 3 2019-09-25\_144821 pdf which was attached to Mr Glazier's email;
  - 2018-03-17 Email from Jacqueline Chambers to Karen O'Sullivan FW: Grievance – Ill Health Capability Hearing – 6th December 2017 [256] was sent to Mr Gooder by Mr Glazier on 25 Sept 2019 at 13:45 [548] as part of Claimant's disclosure. The email is on pages 19 and 20 of the pdf attached to Mr Glazier's email [567 – 568];

- 2018-06-12 Email from Jacqueline Chambers to Karen O'Sullivan Fw: Grievance – Ill Health Capability Hearing – 6th December 2017 [354] [616] was sent to Mr Gooder by Mr Glazier on 02 Oct 2019 at 09:21 as part of Claimant's disclosure. The email is attached to this email as 'Fw: Grievance – Ill Health Capability Hearing - 6 December 2017' [617];
- 2018-06-12 Email from Jacqueline Chambers to Karen O'Sullivan Fw: Grievance – re Grievance placed on 1st March 2018 [395] was sent to Mr Gooder by Mr Glazier on 02 Oct 2019 at 09:21 as part of Claimant's disclosure [616]. The email is attached and called 'Fw grievance grievance placed 1 march 2018' [620]; and
- 2018-05-14 Email from Jacqueline Chambers to crossed out name Fw: Grievance Suspension [401] was sent to Mr Gooder by the Claimant, Ms Chambers, on 22 February 2021 at 09:10 [625]. The email was found in the pdf called 'Martin Taylor – Investigator' which is attached to Ms Chambers' email [626].

39 In summary, there is one email attached where Mr Gooder did not receive it from Mr Glazier. He received the email directly from the Claimant, Ms Chambers, herself. The email dated 17 March 2018 [567-568] has a handwritten annotation on it. The equivalent in the Claimant's bundle [11] does not.

40 The Respondent also sent copies of the relevant documents to the Police. Upon receipt of the email from the Respondent explaining the situation and the relevant attachments, the Police ended its investigation.

41 On 24 August 2021, the Claimant emailed Mr Gooder sending a report from a Computer Consultant [314 and the report at 494 – 496]. The “report” was an email from an individual called Russ Michaels, whose email signature described him as an “IT Jedi Master”. Mr Michaels’s email explained to the Claimant that the name of an individual can appear at the top of an email when they print the email and someone would need to have access to the email from either the sender or the recipient. Without further explanation, Mr Michaels concluded “based on what you have told me, I would agree that it certainly looks as though your email on your computer had been compromised, especially since all your [emails have] been deleted” [494 - 496].

42 The Claimant's email of 24 August 2021 stated that the attachment (Mr Michaels's email), explained how Martin Taylor and Ms Kaur's names had appeared on her Outlook emails. She stated that she would now involve the ICO to explore this further. She stated that she and her team had tried to reproduce the paperwork in the court bundle but had concluded that this was impossible and therefore, we had breached the Computer Misuse Act 2018 [314].

43 Mr Gooder responded to the Claimant that day informing her that he did not consider that the email from Russ Michaels was evidence that her email account was compromised. By way of example, he explained to the Claimant that Malcom Glazier had sent a series of attachments which had Karen O'Sullivan's name at the top of the document. This this may have been because Ms O'Sullivan had printed the documents before they were passed to Mr Glazier. On occasion, his firm printed some emails that had been sent to them which was why Ms Kaur and Richard Lewis's names appeared at the top. On other occasions, the firm was sent emails by Malcom Glazier which Karen O'Sullivan had printed off. Mr Gooder informed her that

she would be sent a copy of the documents that had been provided to Isobel Rabot as part of the investigation, which Eve Mikhael then provided. He explained that he considered her allegations to be vexatious and unreasonable, particularly as the documents referred to in the Police Investigation had been provided by her or her representative (with the exception of one document contained in an investigation report) [312 - 313].

44 The Claimant proceeded to email the Respondent on 25 August 2021 stating: “On looking over the information that you sent to Isabelle Rabott it is evident that you did not send the correct evidence that being the emails that I have been questioning which have Martin Taylor’s and Kirandeep Kaur’s names on the documents. I cannot understand why you would fail in this task in sending the correct documentation.” [316]

45 Mr Gooder responded to the Claimant on the same day to confirm that the documents had been sent on 24 June 2021 and confirmed the page numbers from the bundle that the Respondent had been asked to explain [315].

46 On 26 August 2021, the Claimant sent Mr Gooder a lengthy response objecting to the conclusions in his email. She stated that she had consulted with three other IT experts and concluded that it was impossible to replicate the documents in the format that they appeared in in the bundle unless someone is either in the sender or the recipient’s email account. She explained that in her view, he was disregarding the circumstantial evidence surrounding this case which she had brought to his attention on numerous occasions (i.e., who would have known about the information in her Outlook and who would have benefitted from it being removed). She stated that “we were all in agreement to the fact that the person’s whose name appears on the top of the printout is the person that has printed out the document. The point you are missing Mr Gooder is that the documents printed by Martin Taylor and Ms Kaur could not be presented in the format that they are unless you were in the person’s email account.” She said that she considered that it was now a matter for Ms Kaur and Martin Taylor to explain. She repeated her concerns that the Respondent had not provided the correct documents for the Police investigation, as these did not show Kirandeep Kaur and Martin Taylor’s names. She stated that she would be contacting the cybercrime unit to inform them that we had sent incorrect documents and had been misleading the Police. She also stated that in her view, he had fallen below the standards required of solicitors by the SRA [323 - 325].

47 In July 2022, the Claimant made a complaint to the SRA regarding Bevan Brittan’s handling of her computer hacking allegations. This complaint was handled by Bevan Brittan’s Risk and Best Practice team, who liaised with Mr Gooder to gather information and provide a response to the SRA. On 3 August 2021, he was notified that the SRA would not be taking any further action [437 – 455].

48 On 26 August 2021, Mr Gooder sent the Claimant a further explanation that the documents that had been sent to the firm were actual emails, which was why Ms Kaur had been able to print the email without retrieving it from the inbox of the original sender or recipient. He also explained that in relation to the documents that Martin Taylor obtained, they had no knowledge as to where these had come from, as

he had been appointed to compile a grievance investigation report and was external to the Respondent. He suggested that she asked him directly. He stated that he considered her allegations against Bevan Brittan and the Respondent to be vexatious and unreasonable [322 - 323].

49 He followed up with the Claimant later that day to point out to her that the alleged hacked emails from Martin Taylor pre-dated the alleged hacking of her outlook by almost a year. He advised the Claimant that he did not think she needed to pursue this matter with Mr Taylor any further [321 - 322].

50 On 13 September 2021, Mr Gooder received a further email from the Claimant. In this she stated that his two emails of 26 August 2021 had been contradictory, one said that she should contact Martin Taylor and the other said that she should not as the document referred to have been embedded in a report. She stated that he “must have spoken to Mr Martin Taylor to have been given this information”. She alleged that he had made various assumptions about how documents had been obtained and said that she thought it was for the Respondent to contact Martin Taylor to ask him how he had obtained documents. She went on to clarify that she was challenging “the printouts that had been obtained by being in my Outlook email account,” not copies of these documents. She included various screenshots of what she was referring to by way of evidence [333 - 338].

51 Mr Gooder replied to the Claimant to simply explain that he had already made the position clear and he did not intend to do so again [322].

52 On 15 September 2021, the Claimant sent an email directly to the firm’s paralegal, Ms Kaur, copying in Mr Glazier, and Karen O’Sullivan (who had been providing her with support) but not Mr Gooder to ask her how she had obtained a number of documents which had her name at the top. She explained that she had been trying to understand from Mr Gooder how Ms Kaur had come to obtain the documents but that he had been “unable” to explain how they had been obtained. The Claimant explained to Ms Kaur that she considered that Ms Kaur could not have printed the documents unless she was in the sender or the recipient’s email account and asked Ms Kaur to explain how she had come to obtain the documents. The Claimant stated that she understood that she was making very serious allegations [330]. Ms Kaur forwarded the email to Mr Gooder [330]. He forwarded the email chain back to the Claimant reiterating that he had already explained where the emails with Ms Kaur’s name had come from and he did not understand how this was still being disputed. He said that the Claimant could call him directly or ask her computer consultant to call him if she wanted to discuss this [329].

53 On 28 September 2021, Mr Gooder received an email from Karen O’Sullivan on behalf of the Claimant, this time copying Martin Taylor, making further complaints that he had not taken steps to investigate the hacking allegations, stating that the Claimant had been trying to obtain this information from him for a period of 6 months. The email stated that he had been rejecting the irrefutable evidence of an “expert in hacking” and that the cybercrime team (in the Police) had not investigated the matter further “due to the fact that you Mr Gooder along with Nicola Rutter chose to send in the incorrect evidence”. She then included a link to a 17-minute video in which Mr Michaels explains how he considered the Claimant’s computer had been hacked [331 - 332].



54 On 5 October 2021, the Claimant raised her complaints directly with the Tribunal, stating that Bevan Brittan had continually disregarded her requests for information. The Claimant requested that the Tribunal made an order for Bevan Brittan to provide responses to 10 questions she listed. These all related to the source of the disputed documents, the Claimant's ongoing hacking allegations and information that had been provided to the Police [360 - 362].

55 On 6 October 2021, Mr Gooder responded to the Claimant's application noting that the Claimant was challenging how documents had been obtained, not the relevance of the emails themselves. He confirmed that the emails the Claimant referred to were relevant because they were embedded into a grievance investigation report which was relevant to issues 1.9, 2.1, 3.1 and 3.2 of the list of issues. He explained further that he considered the Claimant's allegations against the Respondent and Bevan Brittan to be vexatious. He noted that the Claimant had initially alleged that a number of documents from the bundle had been "hacked" including documents that had been sent by the Claimant's representative and the Claimant herself and she had raised complaints with the police and the SRA, which had subsequently been closed. He explained that these original allegations were therefore proved false, but the Claimant had not retracted them or apologised for making them. He explained that the Claimant was now making similar allegations in relation to documents which have Martin Taylor's name at the top of them. He explained that he had informed the Claimant that these documents had been embedded into his investigation report and the firm did not know how these had been obtained by Mr Taylor. He explained that the Claimant was alleging these documents were evidencing that the Respondent and Bevan Brittan had hacked into her email account. He pointed out that this was both incorrect and illogical and that the Claimant's allegations continued to waste time for the Respondent, the Police, the SRA and now the Tribunal [341 - 343].

56 On 15 October 2021, the Claimant wrote a further application to the Tribunal for disclosure of documents from the Respondent and for a Witness Order to summons Mr Taylor. In this application she made further complaints about Mr Gooder's alleged failure to assist with gathering documents for disclosure and refusal to engage further in the hacking allegations. The Claimant alleged that the strike out application was an attempt by the Respondent and Bevan Brittan to avoid answering questions about the hacking allegations. Furthermore, the Claimant alleged that "There is a clear manipulation of procedures in this case which is an abuse of the process because on the facts on the conduct evidenced by the claimant with regards to the Respondent and Bevan Brittan." The Claimant stated that she had not made accusations against anyone except for Martin Taylor and had been asking for a "reasonable explanation" as to how the documents had been obtained. The Claimant went on to state "Mr Gooder's constant refusal to not accept the irrefutable and compelling evidence placed before him is a blatant disregard and disrespect for the Employment Tribunal's time given that the Employment Tribunal is already under enormous pressure and leaves the Claimant with no alternative but to seek Employment Tribunal Orders". The Claimant made further allegations stating that Bevan Brittan had failed to send the correct documents to the Police, which did not fill her with confidence [350 - 353].

57 On the same day, Mr Gooder provided a response to the Claimant's application, noting that the Respondent did not object to the Tribunal issuing a witness order in relation to Mr Taylor as he is a potentially relevant witness due to his involvement in the Claimant's grievance investigation [356].

58 Mr Gooder left Bevan Brittan on 22 October 2021 but the Claimant continued to demand responses on the allegations of hacking from Ms Bennett-Odlum [391], Ms Sinclair [386] and Ms Rhodes [399 - 402] of Bevan Brittan to which they have informed the Claimant that her concerns regarding hacking have already been addressed. However, the Claimant has continued to accuse Bevan Brittan of failing to engage with her [433 - 436].

## Submissions

59 The Tribunal heard oral and considered written submissions on behalf of both parties.

## Law

### STRIKING OUT

60 Rule 37 provides:

#### Striking out

(1) 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—

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

61 The grounds relied on in this case are, the manner in which the proceedings have been conducted, rule 37(1)(b),

62 It has been held that there are two 'cardinal conditions' for the exercise of the power under [SI 2013/1237 Sch 1 r 37(1)(b)], namely, that the unreasonable conduct has taken the form of a deliberate and persistent disregard of required procedural steps, or it has made a fair trial impossible (see **Blockbuster Entertainment Ltd v. James** [2006] IRLR 630, at para 5, per Sedley LJ). Where these conditions are fulfilled, it is necessary for a tribunal to go on to consider whether striking out is a proportionate response to the misconduct in question. As Sedley LJ put it, the power

to strike out under [r 37(1)(b)] is 'a Draconic power, not to be readily exercised'. At paragraph 23, he said:

“The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike-out power exists. The answer has to take into account the fact – if it is a fact – that the tribunal is ready to try the claims; or – as the case may be – that there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exist.”

63 The scope of the rule was examined in some detail by the Court of Appeal in **Bennett v. London Borough of Southwark** [2002] IRLR 407. He considered the meaning of "scandalous" in Rule 37 and held that its meaning was narrower than its meaning in ordinary colloquial use. At para. 27 Sedley LJ stated:

“Without seeking to be prescriptive, the word "scandalous" in its present context seems to me to embrace two somewhat narrower meanings: one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process. Each meaning has lexicographical and legal support, the first in the principal Oxford English Dictionary definitions of "scandal" and "scandalous", which have to do with harm and discredit; the second in "scandalising the court", a historical form of contempt; and both in Daniel's entry in Byrne Dictionary of English Law (1923) cited by Ward LJ in his judgment at paragraph 53. These considerations are not of course exhaustive, but they are enough to make it plain that "scandalous" in the rule is not a synonym for "shocking". It is a word, like its sibling "frivolous", with unfortunate colloquial overtones which distract from its legal purpose: see the remarks of Lord Bingham of Cornhill CJ in *R v Mildenhall Magistrates Court, Ex p Forest Heath District Council* (1997) 161 JP 401.”

64 In **Attorney General v. Barker** [2000] EWHC 453, Bingham LJ considered the meaning of vexatious. He held that:

“Vexatious is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.”

65 In a summary of what is required to be decided by an employment tribunal before making a striking out order under what is now SI 2013/1237 Such 1 r 37(1)(b), Burton J, giving judgment in **Bolch v. Chipman** [2004] IRLR 140 EAT, stated that there are four matters to be addressed (see para 55). First, there must be a conclusion by the tribunal not simply that a party has behaved scandalously, unreasonably or vexatiously but that the proceedings have been conducted by or on his behalf in such a manner. As Burton J stated: 'If there is to be a finding in respect of [rule 37(1)(b)] ... there must be a finding with appropriate reasons, that the conduct in question was conduct of the proceedings and, in the circumstances and context, amounted to scandalous, unreasonable or vexatious conduct.' Such conduct

is not confined to matters taking place within the curtilage of the tribunal, and could comprise, for example, the making of threats as to possible consequences if the proceedings are not withdrawn. Second, even if such conduct is found to exist, the tribunal must reach a conclusion as to whether a fair trial is still possible. In exceptional circumstances (such as where there is wilful disobedience of an order) it may be possible to make a striking out order without such an investigation (see *De Keyser*), but ordinarily it is a necessary step to take. Third, even if a fair trial is not considered possible, the tribunal must still examine what remedy is appropriate, which is proportionate to its conclusion. It may be possible to impose a lesser penalty than one which leads to a party being debarred from the case in its entirety. Fourth, even if the tribunal decides to make a striking out order, it must consider the consequences of the debarring order.

66 The importance of tribunals adopting a structured approach when considering whether to strike out a pleading, and carrying out a careful and dispassionate analysis of the factors indicating whether a fair trial is or is not still possible and whether a strike out is or is not a proportionate penalty, has been stressed in a number of cases. For example, in **Arriva London North Ltd v. Maseya** UKEAT/0096/16 (12 July 2016, *unreported*) Simler J (as she then was) stated:

'There is nothing automatic about a decision to strike out. Rather, a tribunal is required to exercise a judicial discretion by reference to the appropriate principles' (para 27).

That case concerned a tribunal's decision to strike out a response to a disability discrimination claim on the grounds that the respondents had conducted the proceedings in a scandalous and unreasonable manner by pursuing a 'false defence' and deliberately failing to disclose documents. Allowing the respondents' appeal, Simler J held that, on the facts, there was no justification for categorising the response as 'false', and no basis for concluding that there had been a deliberate failure to disclose relevant documents. In reaching these conclusions, the tribunal had failed to analyse the facts properly and had fundamentally misunderstood the nature of the cases put forward by the claimant and the respondent. Moreover, it had crucially failed to consider the authorities on striking out and the principles to be applied. It did not properly investigate whether a fair trial was still possible and did not consider the question of proportionality. Simler J found that the problems regarding amendments to the response and the disclosure of documents, which were at the heart of the decision to strike out, were all capable of resolution without causing undue delay, so that there was nothing to prevent a fair trial from taking place. Further, and in any event, she held that the draconian sanction of strike out was disproportionate in the circumstances. The case was accordingly remitted to a fresh tribunal for a full hearing on the merits. Again, in **Baber v. Royal Bank of Scotland plc** UKEAT/0301/15 (18 January 2018, *unreported*), Simler J expressed similar views on the draconian nature of striking out orders when setting aside an order striking out the claimant's unfair dismissal claim for non-compliance with case management orders. Pointing out that such orders are neither automatic nor punitive, she held that not only did the tribunal fail to identify the extent and magnitude of the claimant's non-compliance with the order, merely stating that there had been non-compliance, but it had not examined whether a fair trial was still possible or whether a lesser sanction could be imposed (see para 56).

67 The consideration of whether a fair trial is still possible is still an important factor under Rule 37(1)(b) even though Rule 37(1)(e) provides that this factor can also be considered on its own (see **De Keyser Ltd v. Wilson** [2001] IRLR 324).

## **DISCUSSION and DECISION**

68 The conduct of the Claimant upon which the Respondent relies is set out in the evidence of Mr Gooder which was accepted by the Tribunal. Throughout his handling of the matter, which appeared to the Tribunal to be exemplary, the Claimant became completely preoccupied with making allegations against Bevan Brittan and the Respondent (including personally against Mr Gooder, Ms Mair, Ms Kaur and Ms Rutter who she implied was trying to sabotage her case).

69 The Claimant's allegations of the hacking of her Outlook email account were first raised on 30 September 2019 when her representative stated that her sent items (up to 27 July 2019) had been deleted along with folders she had created to file emails relating to Nicola Rutter and Martin Taylor [68 - 70]. Bevan Brittan were aware the Claimant had experienced some issues with her outlook and had notified her representative on 30 July 2019 that the Respondent had received an email which did not appear to be from her [37 – 38].

70 On 9 February 2021, the Claimant raised concerns that Ms Kaur's name was appearing at the top of some documents in the bundle and on 10 February 2021, she raised further questions about the steps that the Respondent and Bevan Brittan had taken to investigate her concerns that her personal email address had been hacked [142 – 146].

71 Mr Gooder initially explained to the Claimant on 9 February 2021 that Ms Kaur's name may appear on a document because she had been working on the bundle and may have needed to print or separate out the documents to ensure they were in chronological order [151-155]. The Claimant did not accept this response and continued to allege that her documents had been hacked. In June 2021, the Claimant's concerns were investigated by the Police. The Respondent provided a full explanation of how it had acquired the documents that the Police had detailed [490 - 491], along with copies of the emails in which the documents were sent to the Respondent [503 – 631].

72 Since the Police investigation, the Claimant has alleged that the Respondent has not sent the correct evidence to the Police as the documents provided did not include Ms Kaur or Martin Taylor's name at the top [316]. Mr Gooder explained to the Claimant that it is the process of printing a document which can lead to the name of the individual printing the document to appear at the top [166]. Printing documents can be necessary when creating a bundle where for example the document is an email file rather than a PDF. Bundling software converts all files to PDFs when creating a bundle and it is usual for names to appear on the header of an email which was originally an email file. It does not evidence that the individual printing the document or creating the bundle has hacked the email account of the recipient in order to access the document. The documents that the Claimant alleges were "hacked" had been sent to the Respondent by the Claimant's representative and by the Claimant herself, with one document originating from Martin Taylor's investigation report. In relation to other documents which had Martin Taylor's name

at the top, Mr Gooder explained to the Claimant that these documents were embedded into Mr Taylor's grievance investigation report and questions regarding how he came to obtain those documents would need to be directed to him. The Claimant continues to allege that the Respondent and Bevan Brittan have failed to respond to her concerns that outlook has been hacked [433 - 436].

73 The Claimant alleged, in her email of 22 February 2021, that Bevan Brittan had been "tampering with the bundle by removing disclosed information from [her], the Claimant, in excess of 1,000 pages" [163-165]. The details of her alleged discrepancies are contained within two spreadsheets that she attached to her email [456 - 482]. Mr Gooder explained to the Claimant on 24 February 2021, he had only included documents that she had disclosed which were relevant to the list of issues. He pointed out that that as her claim had been issued on 16 September 2018 (with no application made for an amendment), all of the issues in the case pre-dated that date [166 - 167]. On 16 March 2021, he sent the Claimant an analysis document in which he detailed the documents that he did not propose to include and explained why they were not relevant [email 177, analysis document 483 - 489]. The Claimant continues to allege that Bevan Brittan have deliberately omitted relevant documents from the bundle and has failed to act on its recommendation to provide her own separate bundle of missing documents.

74 The Claimant refused to accept any of the explanations offered her and continued to repeat her allegations. This meant that the Claim could not progress. Simple parts of the case management such as asking for the Claimant's schedule of loss or updating the bundle became an opportunity for the Claimant to seek to criticise Bevan Brittan and she would fail to engage with straight forward requests, such as acknowledging receipt of the bundle. Bevan Brittan has continually sought to engage with the Claimant to address her concerns but this has resulted in considerable cost for the Respondent, and as a public body, this is a considerable waste of public money.

75 It is difficult to identify which emails the Claimant alleges were "hacked." During her conduct of the proceedings, the Claimant has made a substantial number of unjustified allegations. For example:

- a) the initial tranche of emails that the Claimant alleged had been "hacked" were those between the Claimant and Ms O'Sullivan. It later transpired that the only reason the Respondent had these emails was that the Claimant's representative had disclosed them to the Respondent, The Respondent explained this to the Claimant on 24 August 2021. An examination of the documents shows that these emails are scans of the hard copy documents that were then sent in a pdf format to the Respondent.
- b) the Claimant targets Mr Taylor. The Claimant alleged that private emails with her name on the top demonstrated "hacking". On her own account, her emails were "hacked" in July 2019. The emails provided by Mr Taylor were sent to the Respondent more than a year earlier, in April 2018. This was pointed out to the Claimant in August/Sept 2021 but, the Claimant persists with the allegation.
- c) the Claimant has also attempted to broaden the allegation that the Respondent is dishonestly dealing with documents by accusing it of "tampering" with the bundle. This allegation arises out of an everyday

disagreement about the contents of the bundle. The Respondent disagreed about which documents were relevant and refused to include documents that created post dismissal. The Respondent suggested to the Claimant that she include those additional documents in an additional bundle. The Claimant refused to do this and instead alleged that the Respondent was "tampering" with the bundle.

75 The Claimant's conduct has persisted to such an extent that the Respondent's case management has been almost entirely consumed with responding to the Claimant's allegations and her attempts to introduce them into the proceedings. The Claimant has made no serious attempt to progress the issues in the case but has concentrated on attacking the Respondent's employees, repeating her entirely unfounded allegations to this Tribunal, to the Solicitor's Regulation Authority and to the Police. They establish a clear case of a person misusing the privilege of legal process in order to vilify others. The Claimant's behaviour is vexatious and unreasonable. It is not scandalous.

### **De Keyser Ltd v. Wilson**

76 The Respondent's application to strike out the Claimant's claim was made in May 2021, and the Respondent provided details of the application in October 2021. The Respondent set out clearly why it said that the allegations the Claimant is making are scandalous, unreasonable and vexatious. She has made no attempt to produce any evidence that would lend credibility to her allegations. The Claimant indicated in April 2021 that she would ask Martin Taylor to attend but does not appear to have pursued this. The Claimant has not explained what she means when she asserts that her email was "hacked". She has not provided the basic details of what computer she alleges was infected or how she accessed the emails in the relevant account or whether the account or the computer was infected. The Claimant's description sounds as like a computer virus but it is simply not possible, from the information she has produced, to draw any sensible conclusion at all. It is not possible to identify what emails she alleges have been deleted or removed. The emails from the alleged "experts" say nothing of any significance, and the Tribunal has no information about the instructions that they were provided, or their qualifications or experience.

77 The final hearing is set down for July/August 2023. Most of the preparations have been put in place for the hearing. Even the hacking issue seems to have diminished as, regardless of any alleged activities of Mr Taylor, the Claimant has hard copies of the hacked/deleted files for her own records according to Mr Glazier [163]. The issue may even be as narrow as the origin of the email of 17 March 2018 described in paragraph 39 hereof. But for the Claimant's fixation on "hacking" and baseless allegations against the Respondents, a fair trial would be possible. The Tribunal considers that it is highly unlikely that the Claimant will concentrate on relevant issues and any trial will be de-railed from the relevant issues into the areas with which the Claimant is determined to have a decision. Mr Martin Taylor will likely be a witness for the respondent in relation to his investigation, but the Claimant will not confine herself a relevant area of cross examination.

78 For the purposes of this hearing, she has produced a new allegation in the witness statement from Mr Glazier which alleges that Mr Gooder somehow misled

the Tribunal during a preliminary hearing on 09 January 2020 because he refused to inform the Tribunal that Mr Glazier was in fact in attendance. The Tribunal has emails exchanged between Mr Gooder and Mr Glazier a few hours after this hearing, on the evening of the 9 January 2020 which show that this allegation is incorrect. For the purposes of this hearing, she has produced a new allegation in the witness statement from Mr Glazier which alleges that Mr Gooder somehow misled the Tribunal during a preliminary hearing on 09 January 2020 because he refused to inform the Tribunal that Mr Glazier was in fact in attendance. The Tribunal has emails exchanged between Mr Gooder and Mr Glazier a few hours after this hearing, on the evening of the 9 January 2020 which show that this allegation is incorrect. While Mr Gooder is no longer with the firm, the Claimant is likely to continue to make allegations against the firm through its current representatives.

79 The Tribunal is satisfied that a fair trial is not possible.

### **Is strike out proportionate?**

80 The Tribunal must examine whether strike-out is a proportionate response, or whether other steps, such as “firm case management” (see **Bennett** at paragraph 29) could provide a better solution.

81 The Tribunal noted that the Respondent had attempted, on several occasions, to draw a line under these issues so that the case can be progressed, but the Claimant had steadfastly refused to change course.

82 The Tribunal itself explained the nature of its jurisdiction and that the claim in her ET1 falls within that jurisdiction. The Tribunal explained that it has no contempt of court powers nor jurisdiction in judicial review and that it does not have the jurisdiction to determine the hacking issue. The Claimant demonstrated no intention of asserting her statutory rights which are within the jurisdiction of the Tribunal. She was clear that the hacking issue had to be determined in advance of anything else. As a further indication of the perceived importance of that issue, reference is made to preliminary paragraph 4 hereof. The Claimant gave no indication that she will not continue to conduct the campaign of complaint against all who she perceives have wronged her, including the Respondent and the Respondent’s legal representatives.

83 The Tribunal acknowledges, as per paragraph 5 of **Blockbuster Entertainment Limited v. James** that rule 37 is a “draconic power, not to be readily exercised”. The Tribunal is satisfied, having regard to the history of the claim and the Claimant’s likely future conduct of it, that a strike out of the claim is proportionate and appropriate.

**Employment Judge Truscott QC**

**Date 28 March 2022**