Case Number: 1307323/2019, 1803652/2021, 2207639/2021, 1301134/2021, 1802630/2021, 1301442/2021, 2500156/2022 and 2207086/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr McKenzie Uruakpa

Respondent: Department for Education and others

Heard at: Birmingham by CVP on 3 and 4 July 2023

Before: Employment Judge Hindmarch

Appearances
For the claimant: Did not attend
For the respondent: Mr Lewis – Counsel

JUDGMENT

1. The claims are struck out under Rule 37.

REASONS

2. This Public Preliminary Hearing came before me to hear the Respondents applications to strike out the claims. The hearing was listed to take place by CVP over 2 days on 3 and 4 July 2023.

3. The Respondents were represented by Counsel, Mr Lewis. The Claimant did not attend.

4. I was provided with documentation by the Respondents as follows:

    I. A main bundle (referred to herein as MB) comprising 1695 pages.
    II. A supplementary bundle (referred to herein as SB) comprising 220 pages.
    III. A recent correspondence bundle (referred to herein as C) comprising 372 pages.
    IV. An updated skeleton argument from Mr Lewis.
    V. An authorities bundle from Mr Lewis.

5. On the morning of the first day of the hearing at 08:57 an email was sent to the Tribunal from the Claimants email address but signed by 'Mrs Uruakpa (on behalf of Mr Uruakpa).' The email was sent to and copied to a number of different email addresses but not to the Respondents solicitor, Laura Daniels. The email subject was the various case numbers, a 'Crime No' and 'Application re Mr Uruakpa is sick Police Crime Number.' The email itself stated two matters of importance namely 'Mr Uruakpa is ill, attending GP surgery/hospital and a medical note will be provided as soon as possible' and 'It's believed that Mr Uruakpa, witness and other have been advised not to engage with any individual or organisation involved in criminal activity.'

6. The Claimant did not attend the hearing.

7. At the outset I shared the contents of this email with Mr Lewis Counsel for the Respondents. He took instructions and his position was that I should proceed to hear the strike out application in the absence of Mr Uruakpa. I decided to do and set out my reasons later in this Judgment.

8. The history of these claims is relevant both to my decision to go ahead in the Claimant's absence and to my decision to strike out the claims.

9. Mr Uruakpa has issued 8 claims in various regions of the Employment Tribunals and as follows:

    a. On 4 September 2019, in the Midlands West Region, the Respondents being the Department for Education, Hasan Afzal, Rizwana Nisa and Evelyn Markey (Case no 1307323/2019).

    b. On 1 April 2021, again in the Midlands West Region, the Respondent being Paul Martin (Case no 1301134/2021).

    c. On 27 April 2021, in Leeds, the Respondents being Carl Mawson and Claire Smith (Case no 1802630/2021).

    d. On 6 May 2021, in the Midlands West Region, the Respondent being the Department for Education (Case no 1301442/2021).

    e. On 6 July 2021, in Leeds, the Respondents being James Hughes and Philip North (Case no 1803652/2021).

    f. On 10 November 2021, in London Central, the Respondents being Mike Green, William Brown, Alek Raj and Rebecca Shepherd (Case no 2207086/2021).

    g. On 23 December 2021, in London Central, the Respondents being Jonathan Clear, Rebecca Manning, Joanne Meaney, James Hughes,

Philip North, Rachel Hope, Victoria Saunders, Julia Young and the Department for Education (Case no 2207639/2021).

h. On 4 February 2022, in Newcastle, the Respondents being Laura Daniels, Nadhim Zahawi, Gavin Williamson, Simon Fryer, Michael Green, Robin Walker, Simon Case and Harris Federation (Case no 2500156/2023).

10. The claims have been consolidated and are all being dealt with by the Midlands West Region.

11. There have been 4 previous Case Management Preliminary Hearings to date.

12. The first such hearing took place on 16 February 2021, before Employment Judge Dimblylow. At that stage, he was simply dealing with the first claim. He listed a final hearing of that claim to take place on 9 – 16 February 2022. The Claimant was represented at that hearing by a solicitor who had been instructed 'very recently' and required time to set out the claims in a 'comprehensive pleading to draw all strands of the claim together in a comprehensive format'. Employment Judge Dimblylow noted the claims appeared to be of race discrimination, harassment and victimisation and whistleblowing. Employment Judge Dimblylow noted that the statutory defence was not pleaded by the employer and the Claimants solicitor would 'consider whether any named individual (Respondents) are required to be parties to the action.'

13. The next Case Management Preliminary Hearing took place on 28 May 2021, before Employment Judge Algazy, KC. On this occasion, the Claimant was represented by a direct access barrister. The first 2 claims were considered, and the Judge was aware a 3rd claim had been issued in Leeds. The final hearing listed for 9 – 16 February 2022 remained listed. In readiness for this hearing, the Respondent had prepared a draft list of issues with blanks therein requiring the Claimant's input. Employment Judge Algazy KC appended this to his Case Management Summary and ordered the parties to agree and file a 'comprehensive list of issues' based on the draft. It appears the Claimant subsequently provided his own list of issues, said to be a draft, running to 11 pages with some 147 paragraphs and dated 7 July 2021.

14. On 3 February 2022, the Tribunal postponed the final hearing on the basis it 'was obvious the case is not ready' and further claims were required to be consolidated. A further Case Management Preliminary Hearing was listed on 16 February 2022.

15. That hearing took place before Employment Judge Wedderspoon. The Claimant did not attend but was represented by his mother, Mrs Uruakpa. She sought an adjournment on the basis the Claimant was unwell and relied upon

a GP fit note stating that the Claimant was unfit from 11 February 2022 until 17 February 2022 by reason of 'tension headache/stress.' The fit note had been sent to the Tribunal and others but not to the Respondents solicitor. It is to be noted that the period of this fit note would have covered most of the length of the final hearing had it not been postponed.

16. Mr Lewis, who appeared for the Respondents on that occasion, raised the point that the Claimant should communicate with the Respondents solicitor. The Claimant had not made the Respondents solicitor aware that he wished to apply for a postponement and if he had the Respondents costs of instructing Counsel may not have been incurred. Employment Judge Wedderspoon agreed to postpone the hearing in light of the medical evidence. She noted at paragraph 5 of her reasons 'Pursuant to Rule 30(2) of the 2013 Rules when parties make an application they must notify the other parties. This is a mandatory requirement under the Rules and is not discretionary.'

17. On 13 May 2022, the Tribunal wrote to the Claimant, directed by Regional Judge Findlay, as follows 'The Tribunal has received recent correspondence from someone who refers to themselves as 'McKenzie Friend'.' The Claimant is directed to confirm who this person is, and whether they are representing the Claimant by 23 May 2022. If the Claimant does not provide the details…, the Tribunal will not respond to any further communication from 'McKenzie Friend'.

18. On 26 May 2022, the Tribunal wrote again to the Claimant who had not responded to its earlier letter stating, 'the Tribunal will not respond to any further correspondence received from 'McKenzie Friend' until the Claimant responds to that email.' There is nothing to indicate the Claimant did respond at any time.

19. There was a further Case Management Preliminary Hearing on 1 July 2022 by CVP. This came before Employment Judge Meichen. Mr Iraney-Mayer was Counsel for the Harris Federation, and Mr Lewis was Counsel for the other Respondents. At this hearing it was agreed that the Claimant would withdraw his claims against 3 Respondents, Simon Case, Robin Walker and Harris Federation. It was noted that one of the Respondents was Laura Daniels, the solicitor for most of the Respondents, and that there was an application to strike out the claim against her made by a colleague of her Edward Williams who was on record as acting on her behalf. Employment Judge Meichen noted that it was unclear why there were so many Respondents and again noted, as had Employment Judge Dimblylow at the first Case Management Preliminary Hearing well over a year previously in February 2021, that the Department for Education accepted it was the correct Respondent (as the Claimant's former employer) and that it was not relying on the statutory defence.

20. Employment Judge Meichen noted that the Claimant should 'carefully consider whether it is really necessary to include any additional Respondents' noting that doing so might make the claims 'difficult and time consuming.' He made an order that within 14 days of the date the order was sent to the Claimant, (it was sent on 20 July 2022) so by 3 August 2022, the Claimant "must provide to the Tribunal and the two representatives (of the Respondents) (Edward Williams and Laura Daniels) the following information" (in respect of each of the individuals named as Respondents).

    "i. A concise explanation of why they have been included as a Respondent, how they are alleged to have acted in a way that is relevant to the Claimant's tribunal claim and how it will be argued that they may be liable in the Claimant's tribunal claim. This information must be provided specific to each individual.

    Or alternatively:

    ii. Confirmation that the Claimant consents to the individual being removed as a Respondent from these proceedings."

21. Employment Judge Meichen also noted the claims had generated "an enormous amount of paperwork. The Claimants pleadings are lengthy and he (and/or those assisting him) have sent a large amount of correspondence. Much of that correspondence is unnecessary and has been needlessly sent to a large number of recipients who have little or nothing to do with the case. This is to nobody's advantage, especially the Claimant. If the Claimant's practice of sending large amounts of correspondence about the case to people not associated with the case persists, it may lead to the strike out of the Claimant's claim. The Tribunal may consider doing this at the next hearing so if the Claimant does not stop he should be prepared to explain himself." Employment Judge Meichen also noted that the Claimant omits to copy correspondence to the Respondents representatives. He noted that this practice should stop, and he made an order that "whenever he writes to the Tribunal… the Claimant must copy in Laura Daniels and Edward Williams" and he set out their individual email addresses in his order.

22. Employment Judge Meichen also noted that correspondence from the Claimant was often written by an unnamed person given their signature as 'McKenzie Friend' without identifying themselves by name. This was something that the Tribunal had previously raised with the Claimant in its May 2022 correspondence. He noted "it is not appropriate for the Tribunal or other parties to correspond with unidentified people who may not be properly representing the Claimant. The Claimant has had representation in the past" (namely a solicitor at the Case Management Preliminary Hearing on 16 February 2021 and counsel at the Preliminary Hearing on 28 May 2021) but

according to his ET1's he was a litigant in person and "so far as the Tribunal is aware the Claimant is representing himself."

23. A further relevant feature of the hearing before Employment Judge Meichen was the Claimant's limited participation. When the hearing commenced, the Claimant was not present. Instead, the Claimant's parents attended and persons describing themselves as his brother and uncle were also present. These people stated that did not know where the Claimant was, but that he was unwell. The Tribunal had received no medical evidence and so Employment Judge Meichen explained that he expected the Claimant to join the hearing. Subsequently, the Claimant did log in, apparently using the same link as that which his parents had been using. He said he had a tight chest and breathlessness and had been advised by his GP to go to A & E. Employment Judge Meichen made an order that "…within 7 days of the date of this order (20 July 2022) the Claimant must provide to the Tribunal (and the two Respondent's representatives) medical evidence explaining whether he was fit to attend a hearing by video link today and if not, why not." I understand no such medical evidence was ever provided.

24. Employment Judge Meichen noted that 'this was another hearing where very little progress had been made. In view of…matters…I took the view that the Tribunal may consider that the manner in which proceedings have been conducted by or on behalf of the Claimant has been scandalous, unreasonable, or vexatious and therefore the claim should be struck out. This is because there have been 4 hearings which have been largely ineffective. This may be considered at the next hearing and so the Claimant should be prepared to deal with this point.' He noted that the Claimant should attend the next hearing which is 'very important because the claim may be struck out.' Finally, he noted that whilst the Claimant had not asserted that he was anxious about the hearings, the Tribunal was well used to dealing with unrepresented parties and that the Claimant could be supported at a future hearing, perhaps by sitting next to a family member (as he had done when he briefly appeared).

25. On 4 August 2022, the Tribunal wrote to the Claimant directed by Employment Judge Meichen and stated 'I do not see any reason to vary the Case Management Orders which I made following the hearing on 1 July and I expect those orders to be complied with in full.' It appears the Claimant had asked for a 'video transcript' of the hearing on 1 July 2022 and it was explained to him that 'no recording of the hearing was made…so no video or transcript is available.'

26. I have noted the hearing before Employment Judge Meichen took place on 1 July 2022 and he had warned the Claimant about the volume of his written correspondence. It appears the Claimant did not head his warning as, on 5 August 2022, the Tribunal wrote to the Claimant as follows "Regional Judge

Findlay has considered the quantity of emails being sent by, or on behalf of the Claimant, to the Tribunal and has made the following order under Rule 29… and taking account of the overing objective in Rule 2… with immediate effect, the Claimant (and anyone claiming to represent the Claimant) shall communicate with the Employment Tribunal, its Judges and administration staff solely by pre-paid post. The reason for this order is the interests of the overing objective – the quantity of emails sent by, and on behalf of the Claimant, is causing a disproportionate burden on the Tribunal's resources and affecting its ability to deal with other cases and creating a delay and expense."

27. 5 days later on 10 August 2022, the Tribunal wrote again to the Claimant. This was at the direction of Employment Judge Meichen who referred to the Tribunal having received 'more correspondence', namely 2 emails on 9 August 2022, and the Claimant was reminded of the order made by Regional Judge Findlay and that 'compliance with this order is not optional.' It was noted that the Respondents had made a strike out application due to the Claimant's alleged unreasonable conduct and failure to comply with orders. This had been listed for hearing in February 2023. Employment Judge Meichen noted "the Claimant argues he has complied with the orders and the onus will be on him to demonstrate at the (February 2023) hearing by reference to pages in the agreed bundle that he has done so. If he does not do so, his claim may be struck out." He went on 'I remind the parties that my order from 1 July 2022 has not been varied or set aside and I expect it to be complied with.'

28. On 19 August 2022, the Tribunal office again wrote to the Claimant 'Your files have been referred to Regional Employment Judge Findlay who responds as follows: - A further copy of my order dated 5 August 2022 is attached. You appear to have breached the order on 9 August, on 5 occasions on 15 August and on four occasions on 18 August 2022 and these will not be responded to. If you continue to breach that order, sanctions may be considered, up to and including strike out of your claims.'

29. On 31 January 2023, a Judgment was issued dismissing Laura Daniels as a Respondent in case number 2500156/2022. She remains the solicitor instructed by the remaining Respondents.

30. The Respondents strike out application listed for February 2023 was postponed and re-listed for 3 and 4 July 2023.

Proceeding in the Claimant's absence

31. As noted earlier in this Judgment, the Claimant was not in attendance having sent the aforementioned email to the Tribunal (but not to the Respondent's solicitor) on the morning of the hearing. Mr Lewis' position was that I should

proceed in the Claimant's absence. The Claimant's email did not on the face of it make any application to postpone. It is notable that at the hearing on 16 February 2022, the Claimant had not attended, but his mother had on his behalf, and she had sought a postponement backed by a fit note. The Claimant is therefore aware that postponements may be granted in such circumstances.

32. No-one attended this hearing on the Claimant's behalf and no medical evidence was provided. This is against the background of the failure to comply with the order to provide medical evidence after what occurred at the hearing on 1 July 2022. In the email sent on the morning on the hearing before me no detail was given as to the nature of the Claimant's ailment. The email had been sent only an hour before the hearing was due to begin and the Respondent's solicitor was not copied in such that the Respondent was unaware that the Claimant would not be attending. (The failure to copy in the Respondent's solicitor was another breach of a Tribunal order). There are a number of individual Respondents to these claims who still have these proceedings hanging over them and further delay would cause consternation for them.

33. The first claim was filed in September 2019. This is the 5th hearing in these matters, progress needs to be made.

34. Having considered matters, and in particular the overriding objective, I decided to proceed in the Claimants absence. Delay and expense should be avoided and it would be proportionate to press on for the reasons given.

The Strike Out Application

35. On 4 August 2022 the Respondent's solicitor wrote to the Tribunal and copied in the Claimant indicating its desire to make strike out applications.

36. The Respondents invited the Tribunal to strike out the (8) claims in their entirety under Rule 37, specifically on the following grounds:

    a) Firstly, that the manner in which the proceedings have been conducted by, or on behalf of the Claimant, has been scandalous, unreasonable or vexatious (Rule 37(1)(b))
    and
    b) Secondly, that there has been material non-compliance by the Claimant with Orders made by the Employment Tribunal (Rule 37(1)(c))

37. The Respondents referred me to the Claimant's apparent failure to comply with the Orders of Employment Judge Meichen made at the hearing on 1 July 2022 as follows:

a) The Claimant's failure to copy in the Respondents solicitor(s) when he corresponded with the Tribunal
b) The Claimant's failure to provide medical evidence as to his inability to appear at the hearing on 1 July 2022
c) The Claimant's failure to comply with the Order regarding whether and why there was a need to pursue all of the individually named Respondent

38. The Respondents also pointed to the Claimant continuing to email various parties who appeared to have no connection to the case and the sending of correspondence on behalf of the Claimant by an unnamed 'McKenzie friend.' Further, the Claimant has continued to email the Tribunal and its staff despite the clear order to correspond by post only.

39. Mr Lewis, counsel for the Respondents, took me through various correspondence to illustrate his points (and after the observations made by Employment Judge Meichen on 1 July 2022). His skeleton argument had been prepared for the hearing on this strike out claim that was supposed to take place in February 2023, but which had been postponed. He had updated it. He acknowledged that correspondence from the Claimant appeared to reduce somewhat in February 2023 but there had been a further spike since May 2023.

40. Shortly after the hearing before Employment Judge Meichen, the Claimant was sending emails to the Tribunal but also to various persons seemingly unconnected with his claims. On 22 July 2022 (SB 12) the Claimant wrote to the Tribunal using his own email address and in his own name, and also included the Respondents solicitor, but also copied individual Respondents, ACAS, a police force and another Tribunal Region.

41. On 25 July 2022, the Claimant forwarded the correspondence mentioned above to the Tribunal but also to named individual Respondents, administrative staff at the Tribunal and individual Judges, to the Information Commissioners Office, to police forces, and to the Administrative Courts. He failed to copy the Respondents solicitor in (SB 11 – 12).

42. On 26 July 2022, the Respondents solicitor sent a helpful email to the Tribunal, copying in the Claimant, clarifying the various case numbers and Respondents to the claims. On the same day, the Claimant, again using his own email address and name, forwarded that email to the Tribunal and to a number of additional email addresses but did not copy in the Respondents solicitor. Again, the Claimant copied in individual Judges, senior colleagues at the Respondents solicitors practice, and other individuals that appear to have nothing to do with the claims including the Good Law Project (MB 727 – 728).

43. On 27 July 2022, the Claimant again emailed the Tribunal without copying in the Respondents solicitor and again, he copied in unconnected parties and some individually named Respondents (MB 726 – 727).

44. On 29 July 2022, an email was sent 'on behalf of the Claimant' from a different email address to that used by the Claimant and signed off as 'McKenzie Friend' with no individual name given. This email is addressed to the President of the Employment Tribunals and is copied to a great many email addresses including the Permanent Secretary to the Department for Education, various Members of Parliament, including Liz Truss, Suella Braverman, Nicola Sturgeon and Mark Drakeford, the EHRC, various press outlets including in the UK (The Sun, Sky News, The Guardian etc) and in the US (CNN, Washington Post), again various police forces and the Head of NATO. The email again was not copied to the Respondents solicitors. This email makes reference to fraud (SB 77 – 80).

45. On 10 August 2022, the Claimant sent an email from his own email address and signed by himself, to many recipients, and copied to many more, including Laura Daniels (SB 455 – 456). He did the same on 15 August 2022 (MB 871). This demonstrated that the Claimant had apparently taken heed of Employment Judge Meichen's order to copy in the Respondent's representative and that he was able to do so. However, the Claimant had continued in his practice of copying in many people who appeared to have no connection whatsoever with his case including the Solicitors Regulatory Authority, various Members of Parliament, the Information Commissioner's Office, various police forces, individually named Respondents who had a solicitor on record as acting on their behalf and members of the Tribunal administrative team. Copying in the SRA could point to an attempt to embarrass or intimidate the Respondents solicitor.

46. As already noted, Employment Judge Meichen had ordered the Claimant to provide by 3 August 2022 explanations as to why individual Respondents were being pursued. It appears he did not comply and on 17 August 2022 the Respondents solicitor sent a letter to the Tribunal, copied to the Claimant, setting out their written arguments as to why each individually named Respondent should be removed from the proceedings (SB 92 – 95).

47. The following day, 18 August 2022, the Claimant replied to this application by emailing the Tribunal (using his own email address and name), but he did not copy in the Respondents solicitor. He did however again copy in a number of individuals unconnected with the claim. In his footnote to the email he states 'Note: I would be grateful if hmcts/ MOJ Staff/ employee do not abuse position and power.' It is unclear what he is referring to here (SB 91).

48. Later that same day, the Claimant sent another email to the Tribunal (again, using his own name and email address) (SB 85 – 86). He again failed to copy in the Respondents solicitors but copied in unconnected parties.

49. On 18 August 2022, the Claimant, again in his own name, sent an email to the Tribunal. Again, he copied in various persons seemingly unconnected to the claims but failed to copy in the Respondents solicitor (SB 91). The Claimant did copy in persons at the Respondents solicitors practice but not the individual that he was ordered to copy in. I am told by Mr Lewis that the Claimant regularly copies in the Heads of the Respondents solicitors' firm in both the UK and in the US.

50. On 13 September 2022, an email was sent 'on behalf of the Claimant' from 'McKenzie Friend' to senior individuals at the Respondents solicitors' firm, the SRA, the Legal Ombudsman and copied to various police authorities and press organisations in the UK and US. The subject matter referred to a 'police ref' and to Laura Daniels. The email stated that Laura Daniels had failed to comply with a Tribunal Order (SB 101 – 102). This is not in fact the case.

51. On 14 September 2022, the 'McKenzie Friend' sent a further email on behalf of the Claimant to many email addresses apparently working in the justice or education departments and copied to various Members of Parliament, police forces and press organisations. This email was addressed to the MOJ Permanent Secretary and started with 'further to Chief Constable advice' and went on 'furthermore, it has been advised and believed that the police have zero tolerance regarding threats, intimidation and inappropriate behaviour towards the public, or anyone from MOJ / hmcts staff and other' (SB 105 – 107).

52. On 21 September 2022, the 'McKenzie Friend' sent an email to the Secretary of State and Permanent Secretary for Education. The subject matter was a 'Police ref' and named 2 individual Respondents 'Joanne Meaney, Paul Martin and other Possible Aiding Abetting Prejudice.' The email stated, 'further to Chief Constable and CPS & advise' and referred to fraud (SB 109 – 110).

53. On 26 September 2022, the 'McKenzie Friend' sent a further email again addressed to many people including Members of Parliament, police forces and press organisations. The email stated, 'It had been advised and believed that the Employment Judge alleged that the Claimant's claim is considered well founded' and named various individual Respondents as having 'submitted no defence'. By stating that a Judge has considered his claims to be well-founded, the Claimant is being disingenuous and is seeking to give the impression that he has support in his contentions. The Claimant attached various documents to this email which he had redacted including the Tribunal correspondence of 5 and 10 August 2022 referred to above, a letter from the

Respondents solicitors, and a copy of the Respondents Response to the Claimant's schedule of loss (SB 167 – 188). One of the attachments appears to be a redacted copy of the Record of Preliminary Hearing from 1 July 2022.

54. On 19 October 2022 at 09:16 the 'McKenzie Friend' sent an email to the Permanent Secretary and CSIS stating 'Further to Minister Advise.' Again, this was copied to various persons including Members of Parliament, police authorities and press organisations (MB 922 – 924).

55. Later that day at 15:14 the 'McKenzie Friend' emailed a large number of recipients headed 'Police Crime Ref… Union Evidence re Crime, Possible Fraud, Aiding & Abetting' (MB 885 – 887).

56. On 1 November 2022, 3 emails were sent on the Claimants behalf:

    i. At 09:35 'McKenzie Friend' sent an email to West Midlands Police but copying in many other police authorities and Members of Parliament. Again, the subject matter refers to 2 of the individual Respondents and others are named in the text of the email (MB 888 – 894).
    ii. At 10:39 'McKenzie Friend' emailed staff at the Department for Education and police authorities again copying in very many individuals including the press. The text of the email refers to individual Respondents by name (MB 895 – 897).
    iii. At 12:03 'McKenzie Friend' sent another email copied to similar parties, again in the text referring to individual Respondents by name (MB 898 – 900).

57. On 14 November 2022, 'McKenzie Friend' emailed various police authorities, the Department for Education, the Cabinet Office and a number of Members of Parliament and copied in very many others. The subject of the email is again a 'Police Crime ref No' and there is a reference to individual Respondents (SB 380 – 382).

58. On 18 November 2022, 'McKenzie Friend' sent an email to many recipients, addressed to Cabinet Office Permanent Secretary stating 'Cabinet Office and victim (meaning the Claimant – the McKenzie Friend would sometimes refer to the Claimant as 'Clamant' and sometimes as 'victim') employer advised and believe that Mr Philip North, Mr William Brown, Mr James Hughes (all individual Respondents) and other accessed victim civil service pension account without signed written authorisation from Mrs Susan Acland-Hood (Permanent Secretary, Mr Simon Case (Cabinet Secretary/ Head of Civil Service), Mr Boris Johnson, Mrs Truss and Mr Rishi Sunak.' The email goes on to say that the individually named Respondents may have committed a criminal offence (fraud) and requests a 'police, NCA and independent investigation' (MB 910 – 914).

59. On 22 November 2022, 'McKenzie Friend' sent an email to various entities, copied to very many others, headed 'Police Crime Ref…Possible National Security Breach re Unsanctioned Release of Government Official Information' and stating, 'Ministry of Justice, Cabinet Office and Victim (Claimant), employer advised and believe that…' (SB 422 – 424).

60. On 29 November 2022. 'McKenzie Friend' sent an email to the Permanent Secretary for Education and many others headed 'Police Crime Ref…Possible Fraud, National Security Breach re Public/Civil Service Pension Account' (MB 908 – 910).

61. On 1 December 2022, an email was sent by the Claimant using his email address and name to the Secretary of State for Education and copied to other Members of Parliament, police authorities, the CPS, the GMB and EHRC. The subject heading referred again to 'fraud' and the email stated 'MPs, union, police and I would be grateful for your response' (SB 432 – 433).

62. On 7 December 2022, 2 emails were sent by 'McKenzie Friend': -

    i. At 09:43 to Mr Wallace, Secretary of State for Defense (sic), Mr Barclay (DHSC) and Simon Case with subject matter 'Police Crime Ref… Possible Impeding Police & MP Investigation.' This was again copied into many individuals. In the body of the email were named individuals who are Respondents (MB 915 – 918).
    ii. At 11:25 an email was sent to Mr Rycroft (Permanent Secretary) and Simon Case again copied to many individuals with similar content (MB 919 – 922).

63. On 19 December 2022, the Claimant sent an email using his own name and email address to senior individuals at the Respondents solicitors' firm and the SRA, various Members of Parliament, police authorities and some individual Respondents. Yet again he failed to copy in the Respondents solicitors themselves. The email refers to one of the Respondents solicitors by name and states that she, a member of the Tribunal administrative staff 'and other are perverting the course of justice, altering, concealing an arrestable office and preventing the police obtaining important evidence. MPs, police and I would be grateful…' if documents could be released to 'myself, police and CPS by 2pm 19 December 2022' (the email was sent at 01:05 AM) (MB 927 – 929).

64. On 23 January 2023, the Claimant sent an email using his own email address and name to senior colleagues of the Respondents solicitors, the SRA, various Members of Parliament, police authorities, Interpol, Mayoral offices and others with the subject matter 'Fraud Act 2006, Criminal Law Act Request for all Files to be Transferred to Police (National Security).' Again, the email alleged that one of the Respondents solicitors, her firm and a number of the

Tribunal administrative staff were perverting the course of justice (MB 932 – 934).

65. On 26 January 2023, 'McKenzie Friend' emailed many of the same entities (police, MP's, news organisations, trade unions/local authorities) naming individual Respondents in the subject header and stating 'CPS and National Crime Agency advise and believe it is in the remit of the police/ metropolitan police to interview and consider charging' and went on to name 16 individuals which list included individual Respondents (MB 949 – 952). There was lots of attachments to this email, some with redactions.

66. On 31 January 2023, the email used by 'McKenzie Friend' sent an email 'To whom it may concern.' This was signed off not as 'McKenzie Friend' but as an unnamed 'Claimant, Victim and Witness Representative.' The email was sent and copied to many addresses including the CPs, FBI and Interpol. The Respondents solicitor was copied in on this occasion. The email refers to 'HMCTS Whistleblower Recording Evidence' and states 'it is believed was a alleged to victim/police no transcripts or recording exist. However, Ministry of Justice/ hmcts Whistleblower provided recording re 1st July 2022 (evidence attached).' It is understood this may be a reference to the Claimant's request for a 'video transcript' of the hearing before Employment Judge Meichen on 1 July 2022 and the Tribunal's explanation to the Claimant that no recording was made (see paragraph 25 above). The suggestion appears to be that the Claimant has in fact obtained a recording through a 'Whistleblower.' No further details are forthcoming and there does not appear to be any 'evidence attached' despite the Claimant's assertion. The email goes on to say 'Bar Standards Board, Ombudsman, CPS, FBI, Interpol, Serious Fraud Office and National Crime Agency advise and believe it is in the remit of the police/ Metropolitan police to interview and consider charging' and lists off 18 individuals including Mr Lewis and Mr Serr (both of whom have acted as Counsel for the Respondents in these claims) and Laura Daniels and Edward Williams (the Respondents solicitors) and named members of the Tribunal administrative staff. Later in the email it states 'BSB, Ombudsman, CPs, FBI, Interpol, SFO and NCA advised and belie it is in the remit of the police / metropolitan police to interview…' and lists MPs, the President of the Employment Tribunal, named Employment Judges who have been involved in earlier case management hearings involving these claims or somewhat surprisingly, who have not appeared to have had any involvement in these claims (MB 1048 – 1051).

67. On 6 February 2023, a further email was sent and signed by 'Claimant, Victim and Witness Representative', again 'To whom it may concern' and again to many recipients. It again refers to 'Ministry of Justice/ hmcts Whistleblower evidence' and a 'recording' and repeats the requests for interview and/or charge of various persons as was requested on 31 January 2023 (MB 1055 - 1058).

68. I have already noted that the Respondents concede that email traffic from the Claimant, or those acting on his behalf, became quieter after early February 2023. It may be that not all email traffic came to the attention of the Respondents or their solicitor as they have not always been copied in. Another explanation is that the Claimant may have been standing for election in local elections (Mr Lewis informed me that someone with the same name as the Claimant had been standing) and if this was he, he may have been preoccupied with his campaign. I was told email traffic had resumed in mid-March 2023 and was taken to the following:

    a) On 14 March 2023, an email from 'Victim Representative', using the email address of the former 'McKenzie Friend' was addressed 'To whom it may concern' and sent to many recipients including those at the Department for Education, MPs, press organisations, the Governor of the Bank of England.' There was a call for the police to interview various people including some of the individually named Respondents (MB 1069 – 1072).
    b) On 23 March 2023, 'Victim Representative' emailed many of the same receipients again calling for the police to interview persons including some of the individual Respondents. On this occasion the bodies said to have 'advised and believe' such interviews should take place had been expanded to include HMRC (MB 1073 – 1076).
    c) On 17 April 2023, 'Victim Representative' again emailed 'To whom it may concern' with many recipients similar to previously. Again, there was a call for the police to interview and charge some Respondents and their solicitor, and to interview Respondents Counsel, Tribunal Staff and MPs including Priti Patel and Gillian Keegan (MB 1077 – 1081).
    d) On 15 May 2023, 'Victim Representative' sent a very similar email to many recipients calling for the interview and/or change of individuals including Employment Judges and Regional Employment Judges and the President (MB 1096 – 1099).
    e) A similar email was sent on 23 May 2023 (MB 1101 – 1105) (referring to 'King Charles suspending an inquiry into slavery, and discrimination') and 1 June 2023 (MB 1121 – 1125) where the list of those to be interviewed and/or charged appeared to be growing. The latter, amongst various allegations made about Government Inquiries concerned a confusing reference to issues surrounding Philip Schofield. The attachments included the Cabinet Office 'Findings of Second Permanent Secretary's Investigation into alleged gatherings on Government premises during COVID restrictions.'
    f) On 12 June 2023, 'Victim Representative' sent a further email 'To whom it may concern' coped into many of the earlier recipients (MB 1185 – 1189). The email again called for interview and/or charge or various Respondents, legal representatives and MPs. The email

suggested the Respondents solicitor had no authority to act for them, that the Respondents had failed to attend hearings and referred to a pledge to 'weed out fraud, corruption and abuse of power in the judiciary, hmcts and MOJ.' There were many redacted attachments to this email including Records of Preliminary Hearings in these proceedings.

g) On 14 June 2023, 'Victim Representative' emailed various recipients alleging that named individual Respondents had committed 'Alleged COVID19 breaches' and 'Alleged fraud of forgeries' and again calling for interview and/or charge of individuals involved in those proceedings, and others who appeared to have no connection (MB 1352 – 1356). Attachments again included redacted Records of Preliminary Hearings in these proceedings.
h) Similar emails from 'Victim Representative' were sent on 16 June 2023 (MB 1463 – 1467), 19 June 2023 (MB 1602 – 1605), 21 June 2023 (MB 1608 – 1612) in which it stated that the Respondents solicitor is impersonating an MP, and curiously adding the President of FIFA and Owner of Arsenal Football Club to the list of these copied in, and twice on 26 June 2023 at 09:16 (MB 1684 – 1688) and at 12:57 (MB 1689 – 1692).

69. After the main bundle for the hearing had been prepared, further emails were sent after 27 June 2023 which appeared in the recent correspondence bundle which ran to 372 pages and the following are of note:

a) On 27 June 2023, 'Victim Representative' sent an email to 'Minster of Civil Service, Metropolitan Police Commissioners and Others' copied into many persons and entries as previously and asking for some 20 persons, including individually named Respondents and Laura Daniels to be interviewed and charged by 'Nottinghamshire Police/ South Yorkshire Police/ Northumbrian Police/ West Midlands Police/ Metropolitan Police.' It goes on to ask the same police forces to interview a further 76 persons including Edward Williams. This again attaches the Second Permanent Secretary's Investigation into Alleged (Covid) Gatherings Report and Updated Report, a Judicial Conduct Investigations Office Statement regarding a Judge who has nothing at all to do with these claims, a redacted Record of Preliminary Hearing and redacted copies of the Respondents solicitors' correspondence with the Tribunal in these claims (C 2 - 104).
b) Later on 27 June 2023 'Victim Representative' sent another email again to many entities calling for the same persons to be interviewed and/or charged and attaching emails sent to and from with various police forces and similar attachments to their earlier email (C 105 -113) as at 69a above.
c) The next day on 28 June 2023, 'Victim Representative' sent a further similar email, again with similar attachments (C 175 – 244).

d) On 29 June 2023, at 09:21, a similar email is sent by 'Victim Representative'. This email asks for the 'Deputy Prime Minister and Minister of Civil Service' to refer the many named people (Respondents, their solicitors, Judges etc) 'to Metropolitan Police commissioner for an independent investigation by 30th June 2023', that being the working day before the hearing before me (C 245 – 248).
e) Further similar emails are sent on the same day (29 June) at 09:23 (C 250 – 254), at 12:21, again with many attachments, (C 255 – 357), and at 13:49 (C 358 – 362).
f) On 30 June 2023, 'Victim Representative' sent a similar email, again with attachments.

70. It is the Respondents position that this correspondence demonstrates aggravating features, in addition to amounting to clear and persistent breaches of Tribunal orders. The correspondence is excessive and creates a great deal of work for the Respondent. It has a significant impact on a number of people who are caused discomfort, embarrassment, and worry. Copying in the police, media organisations, senior persons in the Respondents solicitors' firm, high-profile MP's, senior civil servants and regulatory bodies could be seen as an attempt by the Claimant or those assisting him to intimate or vilify the Respondents. Many of the emails contain accusations of criminal behaviour and call on the police to interview and/or charge many Respondents.

71. The Respondents invited me to approach the strike out application in 3 stages:

a) Establish whether there was conduct on the part of the Claimant that was 'scandalous, unreasonable or vexatious.'
b) Establish that a 'fair trial' is no longer possible.
c) Establish that 'strike out' is a proportionate response.

72. As to stage 1, Mr Lewis argued that the Claimant's failure to comply with Orders of the Tribunal and the nature and volume of the correspondence sent by him or on his behalf amounted to a clear case of scandalous, unreasonable, or vexatious conduct.

73. As to stage 2, Mr Lewis submitted that even if I agreed that the Claimant had exhibited scandalous, unreasonable, or vexatious conduct, I should usually still go on and consider whether a 'fair trial' is still possible. However, he argued that 'wilful, deliberate or contumelious disobedience' of a Tribunal Order (De Keyser Ltd v Wilson (2001) IRLR 324, EAT) or a 'persistent wilful disobedience of an order' (Blockbuster Entertainment Ltd v James (2006) IRLR 6301) may result in a claim being struck out without the Tribunal having to investigate or conclude that a fair trial was possible and that this was one such case.

74. Mr Lewis referred me to the EAT in Emuemukoro v Croman Vigilant (Scotland) Ltd (2022) ICR 327 where it was stated 'It would always be possible to have a fair trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.'

75. I was also referred to Arrow Nominees Inc v Blackledge (2000) 2 BCLC 167, where the court said, 'a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigation upon the finite resources of the court.'

76. In the Respondents submission, the Claimant's conduct has been such that it is no longer possible to have a fair trial. This is the 5th hearing, and there is not yet an agreed list of issues. The claims have not been progressed efficiently and the Claimant has failed to engage in a meaningful way in the last 3 hearings and has failed to comply with orders made.

77. As the third stage, Mr Lewis again referred me to Blockbuster where the EAT said the issue of proportionally should be considered in the context of the duration and character of the unreasonable conduct of proceedings and stated 'the time to deal with persistent or deliberate failures to comply with rules or orders designed to secure a fair and orderly hearing is when they have reached their point of no return. It may be disproportionate to strike out a claim on an application, albeit an otherwise well-founded case, made on the eve or the merit of the hearing.'

78. Mr Lewis referred me to Edmondson v BMI Healthcare (2002) AII ER (D) 387 (Nov) where a lay representative for the Claimant had behaved disruptively throughout the case, his behaviour had been judged to be scandalous and vexatious and the claim was struck out on the basis a fair trial was no longer possible.

The Law

79. The Tribunals power to strike out a claim comes from Rule 37 of the Employment Tribunal Procedure Rules of 2013, which provides "(1) At any stage in 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 –

    (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.

80. The Tribunal must firstly consider whether any of the grounds set out above have been established and then whether to exercise its discretion to strike out, given the permissive nature of Rule 37.

81. In Bennett v London Borough of Southwark (2002) IRLR 407, Sedley LJ considered the work 'scandalous' explaining that it was not to have the 'colloquial' meaning but rather 'two somewhat narrow 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.'

82. The meaning of 'vexatious' was considered in a family case in the High Court (Attorney General v Barker (2000) EWHC 453 where Bingham LJ said '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 come 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.'

83. A v B UK EAT5 / 0042 / 19 is a case where the EAT upheld the decision to strike out a claim by the Employment Tribunal where the Tribunal had found certain email communications from the Claimant to a witness were 'scandalous, unreasonable, and vexatious' where such emails were in breach of a prior order, were designed to intimidate the witness and had made a fair trial impossible.

84. In these claims, the Claimant appears on occasion to be represented by 'McKenzie friend' or 'Victim Representative'. In Bennet v London Borough of Southwark (2002) IRLR 407, the Court of Appeal gave guidance on how a Tribunal should assess the conduct of a representative. The Tribunal should scrutinise the way the representative is conducting the proceedings, how far that is attributable to the Claimant and the significance of the conduct. The Claimant must be allowed to disassociate himself from what his representative has done.

85. In the recent case of Smith v Tesco Stores Ltd (2023) EAT 11, the EAT upheld a Tribunal's decision to strike out given the Claimant's refusal to co-operate with the Respondent and the Tribunal. Despite several preliminary hearings, the list of issues were proving difficult to address. Mr Smith was not prepared to abide with his obligation to co-operate with the Tribunal and to assist in

achieving the over-riding objective and his disruptive conduct was likely to be repeated.

86. In Weir Valves & Calrol (UK) Ltd v Armitage (2004) ICR 371, the EAT set out some relevant factors to consider where an application for strike out is made under Rule (1) (c). Things to be considered are the magnitude of default, whether the default is that of a party or their representative, what disruption, unfairness or prejudice has been caused and whether a fair hearing is still possible.

Conclusions

87. It is my view that the Claimant had behaved unreasonably and that he has failed to comply with Tribunal orders. He failed to attend the third Case Management Preliminary Hearing on 16 February 2022. I accept his mother attended on his behalf and that his absence was supported by a fit note, but he had failed to notify the Respondent's representative that he would not be attending and would be applying for a postponement. This was raised with the Judge, and she reminded the Claimant that when making any future application he 'must' notify the other party.

88. On 13 and 26 May 2022, the Tribunal had to write to the Claimant about the correspondence being sent to it, apparently on the Claimant's behalf, by 'McKenzie Friend'. On 13 May 2022, the Claimant was directed to confirm who this person was and was reminded of this direction on 26 May 2022. It appears the Claimant ignored this direction.

89. A 'McKenzie Friend' is a term describing a person (who may or may not be a lawyer) who assists a litigant in preparing a case. Such a person does not usually address the Tribunal and is usually not permitted to manage the case for the litigant outside any hearing for example by writing letters as a representative of the litigant.

90. It is not clear whether the individual sending emails signed off as 'McKenzie Friend' was seeking to act in the way described above or was acting as a friend (in the companion sense) of the Claimant, whose first name happens to be McKenzie.

91. In any event it is the case that when the fourth Case Management hearing came before Employment Judge Meichan on 1 July 2022 he noted that the correspondence from 'McKenzie Friend' was 'not appropriate.' Despite this, 'McKenzie Friend' continued to write to the Tribunal and others on the Claimant's behalf after 1 July 2022 on the many occasions detailed earlier in this Judgment until 26 January 2023. The same email address was thereafter used, but signed off 'Claimant, Victim and Witness Representative' or 'Victim Representative' but continuing to not put an actual name to the

correspondence yet purporting to be writing on the Claimant's behalf. This has continued to 30 June 2023, the last working day before the hearing before me. So, for a period of more than a year, since the Tribunal directed the Claimant to confirm who this person was, and Employment Judge Meichan said the correspondence was 'not appropriate' it has continued. This is unacceptable when it can be seen from the narrative set out in this Judgment that the Claimant is able to send correspondence using his own name and email address, doing so in July 2022, following the hearing before Employment Judge Meichan, in August 2022, in December 2022, and his email address was used to send the email on the morning of the hearing before me, albeit the email was signed off by his mother. The email traffic is unreasonable in the nature of the senders, in the volume, in the number and nature of addressees, and in the allegations made therein.

92. The use of a narrative calling for investigation and charges on the part of various police forces is clearly aimed at intimidating the Respondents and is based on spurious allegations of fraud and impropriety. In some of these emails the Claimant and/or those acting on his behalf seek to persuade any recipient to believe serious matters are afoot by asserting they have had 'advice' from entities who 'believe' that investigations should take place and by referring to crime reference numbers. These include entities such as the Bar Standards Board, CPS, FBI, HMRC, Interpol, Serious Fraud Office, and the National Crime Agency. The emails on occasion suggest serious wrongdoing, accusing some of the Respondents of fraud, forgery, Covid-19 breaches, impersonating an MP. There is a growing list of people that the Claimant, or those writing on his behalf, are calling to be interviewed and charged to include individual Respondents and their solicitor, counsel for the Respondents and Employment Tribunal staff and Judges. Whilst the Claimant has appropriate avenues of complaint, should he wish to pursue a complaint, copying in many entities as described in this Judgment making serious (and criminal) allegations is not at all appropriate and is unreasonable. In fact, it is in my view aimed at causing anxiety and distress for those involved.

93. The attachments to many of these emails also add to the unreasonable conduct. The Claimant, and those acting on his behalf, have shared confidential documents, such as Records of (private) Preliminary Hearings with a great many people. They have chosen to redact these apparently to remove any thing that does not support the allegations the Claimant makes. They also send attachments which has nothing whatsoever to do with the claims and which can only confuse the recipient.

94. It is not only the nature and amount of the Claimant's correspondence that is unreasonable, it is his steadfast refusal to comply with the Orders and direction of the Tribunal. Despite being told by Employment Judge Wedderspoon that he must notify the other parties when he makes any application, and being ordered by Employment Judge Meichan to copy in the

Respondent's solicitors when he writes to the Tribunal, he has continued to act in contravention of these instructions. On the very morning of the hearing before me, he sent an email to say he was unwell but did not copy in the Respondents solicitor who was expecting him to be in attendance. This is against the background of him not attending in any capacity in which progress could be made at the 2 previous hearings.

95. The Claimant has failed to comply with other Orders made by the Tribunal. He has not provided medical evidence as to his inability to participate in the hearing before Employment Judge Meichan despite being ordered to do so. He has failed to comply with Employment Judge Meichan's Order to explain why individuals were named as Respondents. He has failed to comply with the Regional Employment Judge's direction to send correspondence by post. Persons said to be acting on the Claimant's behalf ('McKenzie Friend' and 'Victim Representative') have continued to send correspondence. The Claimant has been warned that his behaviour may lead to his claims being struck out by Employment Judge Meichan on 1 July 2022, and on 10 August 2022 and by the Regional Employment Judge on 19 August 2022. Despite these warnings, his behaviour has continued.

96. I am of the view the Claimant's behaviour is scandalous, unreasonable, and vexatious. He is mis-using his claims to vilify others by sending emails demanding those involved with the Tribunal process and Respondents be interviewed and charged by the police where the claims, as I understand them, do not in any way involve criminal activity. He is subjecting these people to inconvenience and harassment.

97. I am also of the view the Claimant has failed to comply with Orders as set out above. I also consider that the claim is not being actively pursued. I note in his email sent to the Tribunal on the morning of the hearing before me, the Claimant states 'it is believed that (he), witnesses and others have been advised not to engage with any individual or organisation involved in criminal activity.' Given the Claimant had alleged that various Respondents, their solicitors, counsel and Judges and Tribunal administrative staff have been so engaged, it is not possible to see how these claims could progress.

98. Turning to whether a fair trial is still possible, I take the view it is not. After five Case Management Hearings there is no list of issues, and no real progress has been made. I remind myself that the first of the eight claims was filed on 4 September 2019, almost 4 years ago. The Claimant has taken up much judicial resource but failed to properly engage in 3 out of 5 hearings and has failed to comply with Case Management Orders made to assist in progressing matters. He has taken up time which could have been offered to other litigants and has put the Respondents to the costs of unproductive hearings. The delay of itself must be distressing for the Respondents.

99. Turning to proportionality, I agree with Mr Lewis that this should be considered in the context of the Claimant's unreasonable behaviour as set out in this Judgment. The Claimant's conduct has indeed reached the point of no return. I recognise strike out is a draconian step and should only be used sparingly. Nevertheless, it is a tool available to the Tribunal. This is one of these rare cases in which the claims should be struck out. For these reasons the claims are struck out.

Employment Judge Hindmarch
7 August 2023