



## EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case Nos: 4106994/2019, 4114955/2019, 4103297/2020, 4104161/2020,  
4107775/2020, 4107963 /2020, 4100283/2021, 4109317/2021, 4102006/2022 and  
4104363/2022**

**Held in Chambers on 27 September 2023 [via Written Submissions]**

10 **Employment Judge L Doherty**

**Ms L Stevenson**

**Claimant**

**Scottish Police Authority**

**Respondent**

### JUDGMENT OF THE TRIBUNAL

15 The Judgment of the Tribunal is:

- (1) The application for strike out of the claims under Rule 37 (1) (e) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (the Rules) is refused;
- (2) The application for strike out of the claims under Rule 37 (1) (d) of the  
20 Employment Tribunal (Constitution and Rules of Procedure) Regulations  
2013 (the Rules) is refused;
- (3) The application for strike out of the claims under Rule 37 (1) (b) of the  
Employment Tribunal (Constitution and Rules of Procedure) Regulations  
2013 (the Rules) is refused;
- 25 (4) The respondents should confirm within 7 days if they have any objection to  
the claimant's application to sist the proceedings;

**REASONS**

1. This was a continued hearing conducted by way of written submissions to consider the respondents application for strike out of the claimants claims. The claimant has presented 10 claims against the Scottish Police Authority in the period from 17 May 2019 to 3 August 2022.
- 5 2. The respondent's submission was that the claims should be struck on the following grounds:
  - 10 a. All the claims should be struck out in terms of Rule 37 (1) (e) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 (the Rules) on the grounds that it is no longer possible to have a fair hearing in respect of them;
  - b. All claims should be struck out in terms of Rule 37(1) (d) on the grounds that that they are not being actively pursued;
  - c. All claims should be struck out under Rule 37(1) (b) on the grounds that the manner in which they have been pursued is vexatious; and
  - 15 d. Claims 4102006/2022 and 4104363/2022 to be struck out on the grounds that the Employment Tribunal only have jurisdiction to hear claims brought under part 5 of the Equality Act 2010 and these claims are not brought under part 5 of the Equality Act 2010.
- 20 3. The respondent's application for strike out and opposition thereto was set down for considered by the Tribunal at hearing on 10 July 2023 conducted by way of written submission.
- 25 4. The Tribunal continued consideration of the applications for strike out of all of the claims on grounds of Rule 37 (1) (e), (b) and (d) until 27 September 2027. It did so as it considered that the respondents' submissions were underpinned by what they categorised as the claimant's continued refusal or inability to progress these claims. The Tribunal considered it to be to be of significance to it consideration of the applications at (a) to (c) above that the position with regard to the claimant's fitness to attend a substantive hearing (either in person or remotely) at which the merits of the claims can be determined, was  
30 made clear. The Tribunal considered that it was it was consistent with the

overriding objective in the Rules that and that the claimant was given the opportunity to specify clearly what her position is with regard to her medical fitness to attend a final hearing, supported by relevant medical evidence from her GP, or Hospital Consultant if appropriate, before the strike out application on those grounds was determined.

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5. To that end the Tribunal made an Order in the following terms:

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*a. the claimant should confirm to the Tribunal by **24 August 2023** whether she is fit to attend a final hearing; in the event she is not currently medically fit to attend such a hearing, the claimant should produce medical evidence explaining the reason why she is currently not fit to attend; if the claimant is not currently medically fit to attend a final hearing, she should provide confirmation of when she is expected to be fit to attend a final hearing accompanied by medical evidence explaining why it is expected that she will be fit to attend at that time;*

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*b. the respondents have until **7 September 2023** to provide any further written submissions if they consider it necessary in light of the information provided by the claimant; and*

*c. the claimant has until **21 September 2023** to provide any response to these submissions if she considers it necessary.*

20 **The claimant's response to the order**

6. The claimant responded to that order in an email dated 24 July 2023 in which she advised among other things that her life was being profoundly affected by what she considered to be the theft of electronic equipment and by Police Scotland and the COPFS. That without this equipment and without this data being returned to her she did not believe she could prepare for, or present at a tribunal hearing as she required these things to be able to do so. The claimant sought an order from the tribunal for the return this equipment, and the data. This application was declined on the basis that the Tribunal could not require the Police Scotland or the COPFS to return equipment or data in the circumstances described by the claimant.

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7. That the claimant wrote twice to the tribunal on 23 August 2023. In one email the claimant advised that her father would be writing to the tribunal on her behalf prior to 24 August 2023. The claimant also made reference to a chronology of events showing human rights breaches, fraud, criminal neglect, and submitted that she was being abused defrauded and discriminated against by the local health board and that deceit on the part of health professionals had reached a criminal stage. The claimant also questioned the legality of the Morton Fraser, solicitors for the respondent, and submitted that she believed they were being used as a tool to further a criminal agenda. In a second email she made similar types of allegations against her local health and social care partnership.
8. A letter was received from the claimant's father on 24 August 2023. The letter stated that he had been asked to write on her behalf. The letter stated that the claimant decided that she would attend the final hearing on the basis that he would attend with her. The letter stated that the claimant was unable to prepare for the final hearing because of her inability to access critical data as a result of the confiscation of electronic equipment by Police Scotland in September 2022 and a sist of the proceedings was sought until such times as this electronic equipment was returned to the claimant, and she had appropriate time to prepare for the hearing. The Claimant continues to represent herself but by an email of 4 October confirmed to the Tribunal that what her father stated in the letter of 24 August was an accurate reflection of her position on these matters.
9. The claimant submitted further emails to the tribunal on 27 September 2023. One set of emails appeared to be correspondence relating to proceedings in Dunbarton Sheriff Court brought by her against her MSP. The second email related to judicial and criminal complaints which the claimant sought to bring against a sheriff at Dunbarton Sheriff court who had found against her.

### 30 **The claims**

10. This claim was presented on 17 May 2019. The claims are of disability discrimination (sections 13,15,19 and 21 of the Equality Act 2010 (the EQA); victimisation (section 27 of the EQA); and having been subjected to a detriment on the grounds that the claimant made a protected disclosure (section 47B of the Employment Rights Act 1998 (the ERA). The alleged detrimental /discriminatory treatment complained arises from 5 unsuccessful job applications the claimant made on 5 November 2018; 17 November 2018; 2 posts on 3 February 2019; and 1 March 2019.

*Case number 4114955/2019*

11. This claim was presented on 24 December 2019. The claims are of disability discrimination (Sections 13,15,19 and 21 of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.
12. The alleged detrimental /discriminatory treatment complained arises from one unsuccessful job application the claimant made on 13 July 2019.

*Case number 4103297/2020*

13. This claim was presented on 10 June 2020. The claims are of disability discrimination (Sections 13,15,19 and 21 of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.
14. The alleged detrimental /discriminatory treatment complained arises from one unsuccessful job application made by the claimant on 28 May 2019.

*Case number 4104161/2020*

15. This claim was presented on 3 August 2020. The claims are of disability discrimination (Sections 13, and 15, of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.
16. The alleged detrimental /discriminatory treatment complained arises from 1 unsuccessful job application made by the claimant on 5 December 2019.

*Case number 4107775/2020*

17. This claim was presented on 8 December 2020. The claims are of disability discrimination (sections 15 and 21 of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.

18. The alleged detrimental /discriminatory treatment complained arises from 1 unsuccessful job application made by the claimant on 22 July 2020.

*Case number 4107963/2020*

19. This claim was presented on 21/12/20. The claims are of disability discrimination (Sections 15 and 21 of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.

20. The alleged detrimental /discriminatory treatment complained arises from 1 unsuccessful job application made by the claimant on 11 August 2020.

15 *Case number 4100283/2021*

21. This claim was presented on 21 December 2020. The claims are of disability discrimination (sections 15 and 21 of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.

20 22. The alleged detrimental /discriminatory treatment complained arises from 1 unsuccessful job application made by the claimant on 11 August 2020 (Administrative Assistant)

*Case number 4100283/2021*

23. This claim was presented on 18 January 2021. The claims are of disability discrimination (sections 13 and 15 of the EQA); victimisation; and having been subjected to a detriment on the grounds that the claimant made a protected disclosure.

24. The alleged detrimental /discriminatory treatment complained arises from 1  
unsuccessful job application made by the claimant on 11 August 2020 (Public  
Enquiry and Support Assistant).

*Case number 4109317/2021*

5 25. This claim was presented on 29 April 2021. The claims are of disability  
discrimination (sections 15 of the EQA); victimisation; and having been  
subjected to a detriment on the grounds that the claimant made a protected  
disclosure.

10 26. The alleged detrimental /discriminatory treatment complained arises from 1  
unsuccessful job application made by the claimant on 25 October 2020.

*Case number 4102006/2022*

15 27. This claim was presented on 9 April 2022. The claims are of disability  
discrimination (sections 26, 21, and 15); victimisation; and having been  
subjected to a detriment on the grounds that the claimant made a protected  
disclosure.

20 28. The detrimental/discriminatory treatment complained arises from alleged  
detriments in relation to the respondents alleged continuing failure to extend  
the claimant rights under the Victims of Crime Code; ignoring the claimant's  
17 crime reports; committing human rights breaches against her and  
threatening her with arrest;

*Case number 4104363/2022*

25 29. This claim was presented on 3 August 2022. The claims are of disability  
discrimination (sections 26, 21,15); victimisation; having been subjected to a  
detriment on the grounds that the claimant made a protected disclosure; and  
breach of Section 6, article 3 and Article 14 of the Human Rights Act.

30. The alleged detrimental /discriminatory treatment complained arises from  
alleged detriments in relation to the respondents alleged continuing failure to  
extend the claimant rights under the Victims of Crime Code; ignoring the

claimant's 17 crime reports; committing human rights breaches against her and threatening her with arrest.

### Strike out applications

- 5 31. These claims have a long procedural history, which it is unnecessary to set out in extensive detail.
- 10 32. The respondents have sought to have the claims struck out on more than one occasion. Their first application for strike out application was dealt with by EJ Eccles in March 2020. That application was in part that the claim under Rule 47 the Employment Rights Act 1996 (the ERA) should be struck out under Rule 37 (1) (e) because it was no longer possible to have a fair trial. The claimant was legally represented at the strike out hearing. That application was refused by EJ Eccles.
33. The claimant's solicitors withdrew from acting for her on 7 July 2021.
- 15 34. The respondents made a further application for strike out of all the claims on multiple grounds under Rule 37 (1) of the Rules on 22 September 2022. There was also an application for claims 4102006/2022 and 4104363/2022 to be struck out as the Employment Tribunal only have jurisdiction to hear claims brought under part 5 of the Equality Act 2010 and these claims are not brought under part 5 of the Equality Act 2010.
- 20 35. The claimant was asked to confirm by 25 October 2023 if she could attend a hearing (remote or in person) to deal with the respondents strike out application.
36. The claimant advised on 18 October 2022 that she was unable to deal with the case in any way at present due to her ill health.
- 25 37. All of the claims were sisted for a period of 8 weeks until 29 December 2022.
38. On 28 and 30 December 2022, the claimant wrote to the tribunal with documents which she stated showed how she had been treated by the EHRC and that state corruption, fraud, a conspiracy to pervert the course of justice, discrimination and other elements had prevented her and continued to



prevent her from obtaining representation. She stated that it would not be fair or just for the tribunal to proceed with her cases in these circumstances. She stated that she was not in a position to prepare for any cases against the respondent for several months. The claimant requested that the claims were  
5 sisted pending a review by the European Court of Human Rights or the United Nations.

39. On 5 January 2023, EJ Hoey directed that that it appeared that the claimant was able to produce cogent written arguments. On that basis he suggested that it may be in the interests of the overriding objective in the Tribunal Rules  
10 to deal with the respondents strike out application on paper.

40. On 5 January 2023, the respondents confirmed their agreement to this course. On the same date the claimant sought a sist pending review of her case by the UN.

41. On 5 January 2023, the claimant also advised the Tribunal that there was  
15 insufficient time for her to respond to the application for strike out. She advised she intended to present a new clam and that it was not in the interests of justice to determine any claims until this had been lodged. She continued to seek a sist to allow a UN review and also sought an extension of 6 weeks to respond to the respondent's application.

20 42. On 24 January 2023, EJ Hoey refused the application for a sist pending review by the UN. He directed that as it appeared the claimant was able to engage with issues given her ability to set out complex issues, that it was in the interests of justice to progress matters expeditiously and avoid delay.

43. The claimant was asked to confirm if she had any further submissions in  
25 respect of the respondent's application for strike out and was given until 17 February 2023 to make them. The respondents were given until 24 February 2023 to make further submissions should they wish to do so. The parties were advised that an EJ would then consider the respondents application for strike out in the papers in Chambers on the basis that the claimant had not  
30 requested a hearing and had been given the opportunity to provide full written

submissions. The claimant was advised that if she felt able to and wishes to attend a hearing, she should advise the Tribunal within three weeks.

44. On 20 February 2023, the claimant wrote to the Tribunal indicating that she did believe she had enough time to respond to the Strike Out application, and that she was unable to provide a response 'just now'. She emailed again on 5 1 March 2023 asking for an extension of time to 3 April 2023 to respond.
45. An extension of time to respond was granted until 3 April 2023.
46. On 3 April 2023, the claimant emailed the Tribunal advising she was as 'not capable' of providing a response. She also indicated in a separate email of 10 the same date that she had tried to lodge a new claim against the respondents but due to an error in the Tribunal website had been unable to do so. In a further email of the same date, she advised that the police were withholding some of her IT equipment, making it impossible for her to move forward with her case against the respondents.
- 15 47. On 27 April 2023, Employment Judge Hoey directed that a one day in Chambers strike out hearing on the grounds that the claims were not actively being pursued and whether a fair hearing remains possible should be fixed. The parties were advised that the hearing would be conducted in Chambers as the claimant was unable to attend but has provided written submissions. 20 No date was assigned for the hearing at that point.
48. On 30 April 2023, the claimant emailed the Tribunal acknowledging that the Tribunal would make a decision on the respondents strike out application and notify her of the date when this would take place. She enclosed 25 correspondence in which she alleged corruption on the part of the government and the police which she indicated she considered relevant to her position.
49. On 5 June 2023, EJ Hoey directed that the claimant was to refrain from copying the Tribunal into multiple emails addressed to third parties. The parties were given 7 days to provide final submissions relative to the respondent's representatives application for strike out of the claims. The

respondents were given 14 days thereafter to submit a bundle incorporating each submissions and associated papers.

50. On 6 June 2023, EJ Hoey directed that In Chambers Case Management Hearing take place on 10 July 2023 at which the Tribunal would consider the respondents strike out application.

51. The claimant emailed the Tribunal on the 6 ,9, 11, and 12 June 2023 with a number of documents alleging fraud, breaches of human rights, criminal activity on the part of a number of third parties.

52. On 12 June 2023, the respondents lodged a revised strike out application. The application was made on the same grounds as that lodged in September 2022.

53. Between 22 and 29 June 2023, the claimant sent 12 emails to the Tribunal and the respondents attaching extensive documentation addressed to third parties concerning various grievances on a number of a matters including an alleged failure to provide legal assistance on the part of the EHRC; and alleged failures on the part of her MSP and Sheriff Court proceedings she has pursued against him.

54. Up until the date of the in Chambers Hearing on 10 July 2023, the claimant continued to send numerous emails and attachments to the Tribunal with similar content. Those included allegations, among other things, that it was an indisputable fact that the respondents were conducting themselves in a criminal way towards the claimant, and that Morton Fraser were not only aiding and abetting criminality within the legal expenses sector but were conspiring to pervert the course of justice.

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#### **Doctors Reports/Fit Notes**

55. The Tribunal has received two doctor's reports and one fit Note in the course of dealing with the procedural matters arising from the claims.

56. On 20 January 2021, the claimant's then solicitor requested a sist of the proceedings for a period of 8 weeks on the basis that the claimant was not fit to attend a hearing or give instruction. A Soul and Conscience certificate from the claimant's GP was produced in support of the application, which was granted.
57. On 8 June 2021, the claimant's solicitor requested a discharge of a PH which had been fixed for 29 April 2021 and sist of all the claims for a period of 10 weeks. A Soul and Conscience letter from the claimant's GP dated 7 June 2021 was provided stating that the claimant continued to be unfit to undertake any activity in connection with the Tribunal proceedings and that the GP could not predict when she would be medically fit to participate. The application was granted and the claims were sisted until September 2021.
58. On 12 September 2022, a fit note from the claimant's GP was forwarded to the Tribunal by her father which stated that she was not fit for work for a period of three months from 8 September 2022, a request was made for the claims to be sisted for an indefinite period of time.

### Submissions

59. The Tribunal had the parties written submissions from the hearing on 10 July 2023. In the interests of brevity these are not set out here in detail but are dealt with below where relevant.
60. The Tribunal also had the claimant's response to the Order issued in July as set out above.
61. The respondent continued to urge the Tribunal to strike the claims out on the basis of the submissions already made. Mr Gibson submitted that the matter of whether the claimant can prepare for a full hearing due to not having a computer equipment as part of a criminal investigation was ancillary issue. He submitted however that simply strengthen the respondent's argument that given the long delay in the proceedings it was no longer possible to have a fair trial. He submitted that the issues around the computer equipment should not delay consideration of the respondent strikeout application, and if the

application was unsuccessful then consideration of a request for a sist on the basis of the computer equipment issue should be given consideration at that stage.

### Consideration

5 62. Rule 37 of the Rules provides:

#### ***Striking out***

**37.—** (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—*

- 10 (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;*
- 15 (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*
- 20 *out).*

#### **Application under Rule 37 (1) (e)**

63. The Tribunal began by considering the respondent's application under Rule 37(1) (e). That is strike out on the grounds that it is no longer possible to have a fair hearing in respect of the claims.

25 64. It considered Mr Gibson's submissions to the effect that the extensive period between the alleged protected disclosure and the alleged acts which are said to have been detrimental was such that it is no longer possible to have a fair

hearing in respect of those parts of the claim. Further and in the alternative, the extensive time period between the alleged acts said to have been detrimental and discriminatory, and an unknown date in the future when these claims may come before a tribunal is such that it is no longer possible to have a fair hearing.

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65. Mr Gibson referred to the cases of ***Peixto v British Telecommunications Plc EAT 0222/07*** and ***Riley v Crown Prosecution Service 2013 IRLR 966CA***, which it was submitted deal with the impact of an unknown delay stretching into the future on a fair trial. It was submitted that some of the principles articulated in these cases could be applied to the impact on a fair trial of a matter stretching into the distant past. In ***Peixto***, it was held that the right to a fair trial impossible was firmly rooted in the requirement under the European Convention Human Rights 1950, Article 6, that the trial had to take place within a reasonable time.

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66. Mr Gibson acknowledged that the draconian measure of strike should be used sparingly, however he submitted that this was an extraordinary case. The respondents were being put to challenge a position which is now 15 years old, and he could not fathom how that could be done. Further, he submitted that 4 years have elapsed from the first claim was lodged, and that claim been followed by a series of very similar claims being lodged each time the claimant was unsuccessful in a job application.

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67. In ***Riley***, Mr Gibson submitted that the EAT commented that if a doctor could not give any realistic prognosis of sufficient improvement within a reasonable time and the case itself dealt with matters which were already in the distant past, strike out had to be an option available to a tribunal. He submitted that in this case there was a significant lack of medical evidence as to why the claimant was apparently unable to bring these cases before a tribunal. She had been able to instruct a solicitor, produce written pleadings once her solicitor withdrew, and write lengthy letters to the Tribunal. He submitted there was no medical evidence to support and explain why the claimant could engage in this activity but actually progressing these claims before a tribunal was something she could not do.

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68. Mr Gibson submitted that the respondents did not deny the claimant was clearly experiencing significant mental health problems, and he submitted that it appeared from the content of her communications to the respondent and the Tribunal, that her health was not improving, and it did not appear that it would do so within a reasonable time. Mr Gibson's position was that whilst the claimant could clearly compose very long letters of complaints it did not appear that she was well enough to actually progress these claims to a conclusion.
69. Mr Gibson submitted that the crucial question in looking at the strike out a claim is assessing the balance of prejudice. He submitted that the claimant would no doubt argue that her case did not arise until the alleged detriments and discrimination occurred. He accepted that this was correct, but submitted however that the claimant did not get to the question of detriment in connection with the protected disclosure claim until she got over the hurdle of Section 43B of the Employment Rights Act 1996 (the ERA). The prejudice caused to the respondents of having to now challenge that the claimant made a protected disclosure in June 2008 is so overwhelming that the claim must be struck out and assessing the balance of prejudice. He submitted that at the present there was not the slightest prospect of even discussing fixing a hearing to determine the question of detrimental treatment, and therefore the complaints did not occur within the recent past.
70. Mr Gibson is correct to acknowledge that strike out on this ground is a draconian measure, albeit it can be used in extraordinary cases and that the balance of prejudice is the crucial question which the Tribunal has to address.
71. Whilst some of the claims are of more recent origin, the oldest case before the Tribunal was presented in May 2019 and is therefore by now over 4 years old, which is considerable. Mr Gibson submitted that witness recollection will be affected by the passage of time. He submitted that the respondent's witnesses will be hampered in providing evidence as to why they did not invite the claimant to interview, and the existence of some documentation does not cure that prejudice, as the claimant will be in a position to exploit the fading memory respondent's witnesses given the passage of time, by suggesting to

them that they must have discriminated against her on the basis of the documents, rather than recalling the facts and circumstances pertaining at the time.

5 72. The Tribunal takes into consideration that whilst some of the claims are of more recent origin, the oldest case before the Tribunal was presented in May 2019 and is therefore by now over 4 years old, which is considerable. The passage of time, which is not insignificant, on witness recollection is a consideration to which this Tribunal attaches considerable weight in assessing the question of relative prejudice. It is not however suggested that  
10 the witnesses' recollection will be so affected that they will have no recollection of events or be unable to give evidence. Furthermore, the claimant's response to the Order following the hearing on 10 July 2023, confirms that she will attend a hearing and therefore the Tribunal is not looking at an indefinite sist. The question of a sist to enable the claimant to obtain  
15 computer equipment held by the Police remains outstanding, but consideration of that application will include all relevant factors including the effect of further delay to the proceedings. While events which occurred four years ago could not be categorised as the recent past, it is not the case that there is no prospect of a hearing being fixed on the grounds of the claimant's  
20 ill health.

73. That being the case, the circumstances of this case are different to those in **Peixto** and in **Reilly** where there was no prospect of a hearing being fixed on the basis that the claimant was unfit to attend a hearing. Should it be the case that notwithstanding her position that she will attend a final hearing, it  
25 transpires the claimant is medically unfit to attend a final hearing and continues for all intents and purposes indefinitely to be so, or that for some other reason it transpires that she feels unable and continues for all intents and purpose indefinitely to feel unable to attend a final hearing, then it is likely that the Tribunal will have to revisit the question of whether a fair trial remains  
30 possible. However, given the claimant's position that she will attend a final hearing, matters are not at that stage.



74. With regard to the Sect Employment Judge ion 47B claim, the respondent's arguments for strike out were dealt with by EJ Eccles in March 2020. Mr Gibson referred to the decision of the Employment Judge Eccles, issued in March 2020 in which she refused the respondent's application for strike out. He referred to paragraph 23 of that decision in which EJ Eccles held; 'While the adverse effect of a passage of time on a person's ability to recall events is recognised, there is no suggestion the person to whom the protected disclosure is said to have been made will be unable to give evidence.'
75. Mr Gibson submitted that since that date the respondent has sent correspondence to Lee Wilson, the witness in question, asking him to act as a witness, which has been returned as marked no longer at this address. The respondents did not have any further contact details, and therefore the position has altered since EJ Eccles's decision was made. Further, EJ Eccles made her decision in March 2020, but the tribunal is now looking at matters in 2023 and is looking at an indefinite sist.
76. There have been two changes of circumstance since that application was dealt with and refused. The first is the passage of time since the application was refused and the effect that may have on witness recollection. That is a matter which is dealt with above. The second it the circumstances pertaining to the witness Mr Wilson as described in Mr Gibson's submission. The Tribunal again attaches considerable weight to this factor, however at this stage it is not indicated if any further enquiry is possible or has been undertaken to ascertain the whereabouts of Mr Wilson; such steps may be capable of securing his attendance at the hearing and remove the disadvantage highlighted. The factors which EJ Eccles took into account in her decision, reflecting to the burden of proof, the fact that the detriments alleged are of more recent origin than the disclosure relied upon and the claims are brought in time, and respondents the ability to cross examine the claimant, remain unchanged.
77. The Tribunal considered the balance of prejudice to the parties in granting or refusing the application on the basis that a fair trial no longer remains possible. While it is a finely balanced exercise, in the circumstances where

the claimant has indicated that she will attend a final hearing, and therefore the Tribunal is not looking at an indefinite sist of the proceedings on the grounds that she is medically unfit to attend a hearing and pursue her claims, and it does not appear that all avenues of enquiry as to the whereabouts of the witness have been exhausted, it was not persuaded at this stage that the prejudice to the respondents occasioned by the passage of time was greater than that to the claimant in striking out her claims of detriment and discrimination.

78. The application for strike out on this ground is therefore refused at this stage.

#### **Application under Rule 37 (1) (b)**

79. The Tribunal then considered the application under Rule 37 (1) (b). Mr Gibson in his written submissions outlined the history of the multiple claims raised against the respondents. He submitted that despite raising a tenth claim making the same allegations against the respondent as she did against the Scottish Police Authority, the claimant has failed to withdraw it. He submitted that it was vexatious to argue two different respondents acted in the same way and on the facts of this case that was impossible to argue logically. None of the claims have been progressed, and the claimant is engaged in a course of vexatious litigation. The respondent is being harassed and put to disproportionate expense in the defence of these claims.

80. Mr Gibson submitted that the vexatious nature of the claimant's pursuit of these claims is not limited to the ten claims, and that she is now engaging in a course of conduct of bombarding the respondent representative and some employees with irrelevant correspondence making extreme accusations of a breach of her human rights. He submitted that alternatively this amounted to unreasonable conduct.

81. In considering the application on these grounds the Tribunal reminded itself that a 'vexatious' claim has been described as one that is not pursued with the expectation of success. The hallmark of vexatious proceedings is that they have little or no basis, or no discernible basis in law, and that whatever the intention, the effect of the proceedings is to subject the defendant to

inconvenience and expense out of all proportion to the likely gain to the claimant, and that it involves an abuse of process of the court, the use of the court process for the purpose or in a way which significantly different from the ordinary and proper use of process.

5 82. The Tribunal was not in a position to reach a conclusion that the claimant raised the proceedings with no expectation of success. The claimant has presented a number of detailed claims of discrimination which give rise to factual disputes. The tribunal considered that issues with the 9 and 10 claims were potentially resolved by case management in which the claimant is required to clarify against whom the claim is properly presented and the basis on that.

10 83. The tribunal did however conclude that the claimants conduct of the proceedings was unreasonable in that in the course of conducting these proceeding the claimant has copied the respondents into extensive correspondence about third parties are not directly relevant to the proceedings and she has made unsubstantial and prejudice statements about the respondents and their solicitors, stating among other things that they are involved in criminal activity.

15 84. Before striking out a claim on the grounds that the conduct of the proceedings had been unreasonable the Tribunal has to be satisfied that a fair trial is no longer possible. For the reasons which are dealt with above, the Tribunal could not conclude that a fair trial was not possible at this stage.

20 85. The claimant should now ensure that in the conduct of these proceedings she does not make unsubstantiated and prejudicial statements about the respondents or their solicitors or any third party in correspondence or documents which she produces for the purposes of conducting these proceedings. If she continues to do so it will be open to the respondents to renew their application for strike out under Rule 37(1)(b). A continuation of such conduct on the part of the claimant in light of the tribunal's direction is likely to be capable of founding an application on the grounds of conduct which is scandalous.

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**Application under Rule 37(1) (d)**

86. The Tribunal then considered the application that claims should be struck out in terms of Rule 37(1) (d) on the grounds that that they are not being active pursued.

5 87. Mr Gibson submitted that there is a difference between the claimant wanting to pursue a claim and actively pursuing claims. In the event the claimant is not able to pursue claims, she should acknowledge this. Her lodging claims in the knowledge that she is not actually fit pursue them to a hearing does not amount to actively pursuing the claims. Mr Gibson submitted that between 25  
10 May 2023 and 12 June 2020, the respondent's representative received 25 different emails. These highlight the claimant is engaging in substantive correspondence and litigation with other parties, some of which are connected to this claim, and some indirectly connected to these claims. This vast amount of correspondence cannot be taken as a proxy for active actively pursuing the  
15 actual claims. The Tribunal should not be dissuaded from striking out the claims on the grounds that they are not actively pursued purely because the claimant makes and emotional and overwrought claims of unfair treatment against the respondents. Obsessive letter writing is not an active pursuit of claims.

20 88. In considering this application the Tribunal notes that it is not suggested that the delay has been intentional or disrespectful to the Tribunal.

89. The Tribunal understands however that it is suggested that the delay is inordinate and that there is no intention or ability on the part of the claimant to pursue these claims to a final hearing, which gives rise to a substantial risk  
25 that a fair hearing is impossible, or which is likely to cause serious prejudice to the respondents.

90. While there has been significant delay occasioned by the claimant's ill health or other factors which have prevented her progressing to a hearing, she indicates that she will attend a hearing. Mr Gibson submitted that whether the  
30 claimant can prepare for tribunal hearing due to the seizing of computer equipment as part of a criminal investigation is an ancillary consideration but

5 did strengthen the respondent's argument that given the ongoing delay in these proceedings it is no longer possible to have a fair hearing. He submitted that the issue at the computer equipment should not delay consideration of the respondent's application for strike out of the claims, and if the application is refused, then consideration of a request for a sist on the basis of the computer equipment issue could be considered at that stage. The Tribunal agree that this is the correct approach to the application to sist. Any ongoing delay occasioned by the claimant's application for a sist of the proceedings would be relevant factor which would be taken into account by the Tribunal in its consideration of that application.

10 91. The fact that the claimant indicates that she will attend a hearing is inconsistent with the suggestion that the claims are not being actively pursued. For the reasons given above the Tribunal did not conclude at this stage that a fair trial was not possible. Taking these factors into account the Tribunal was not satisfied that it was consistent with the overriding objective in the Tribunal rules to strike the claims out on the basis that they are not being actively pursued. In the event however it transpires the claimant for whatever reason finds herself unable to attend a final hearing to pursue these claims then given the delay in the proceedings to date, it will be likely that the Tribunal will have to revisit the question of whether the claims are being actively pursued and whether a fair trial remains possible.

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92. To enable the Tribunal to consider further procedure, the respondents should confirm within 7 days if there is any objection to the claimant's application to sist the proceedings.

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**Employment Judge: L Doherty**  
**Date of Judgment: 09 October 2023**  
**Entered in register: 10 October 2023**  
**and copied to parties**

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