



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

Dr Christopher Day

V

RESPONDENT

**Lewisham And Greenwich NHS
Trust**

PRELIMINARY HEARING

Heard at: London South Employment Tribunal On: 4 July 2022

**Before: Employment Judge Martin
Ms J Forcast
Ms C Edwards**

Appearances:

For the Claimant: Mr Allen QC

For the Respondent: Mr Tatton-Brown QC

AGREED ORDER

1. The Respondent is ordered to conduct a discovery exercise which interrogates written and electronic communications of the following individuals:

Dan Harding, Duncan Brooke, Janet Lynch, Elizabeth Aitken, Mehool Patel, Peter Luce, David Cocke and Ben Travis.

2. The discovery exercise should involve conducting a reasonable search for documents relevant to the issues in the claim, including those specifically related to:
 - 2.1. Any document to or from Janet Lynch relevant to the issues;
 - 2.2. The making and drafting of the public statements of 24/10/18, 4/12/18, 10/1/19 including all iterations of those documents;
 - 2.3. Any communications about the fact of any without prejudice position put forward by any party to the litigation;
 - 2.4. Any communications to stakeholders about the Claimant's case including those made on 4/12/18.

3. The Respondent is ordered to provide disclosure of all relevant documents identified as a result of the search to the Claimant by 12.00 midday tomorrow.
4. The Respondent is ordered to provide the Claimant by 12.00 midday tomorrow with a statement in the form of a witness statement which sets out the mechanism and methodology used to conduct the original disclosure exercise and the mechanism and methodology of the new discovery exercise bearing in mind the provisions of the Practice Directions to CPR 31.
5. The Claimant is permitted to produce a further supplementary witness statement dealing with the additional disclosure by 15.00 6 July 2022.
6. The Claimant shall disclose by 12.00 midday tomorrow any documentation showing (a) the links to the 2nd and 3rd press statements that he posted on his crowdfunding page(s) and when they were added, and (b) any text he added referring to or commenting on the press releases to which he says he provided links.
7. The Tribunal hearing will resume on Thursday 7 July 2022 with the evidence of Mr Cocke and Dr Day.
8. Submissions will be on Friday 8 July 2022. Written Submissions exchanged and filed with the tribunal by 11am and Oral Submissions to start at 1.30pm.

CONSEQUENCES OF NON-COMPLIANCE

Any person who without reasonable excuse fails to comply with a tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.

If any of the above orders is not complied with, the tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84. The tribunal may also make an "Unless Order" providing that unless an order is complied with, the claim, or as the case may be, the response, shall be struck out on the date of non-compliance without further consideration of the proceedings.



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Employment Judge A Martin
4 July 2022

SENT TO THE PARTIES ON

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C. Benjamin

04/07/2022

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FOR THE TRIBUNAL OFFICE

JUDICIAL MEDIATION

EXPLANATORY NOTE TO THE PARTIES

1. Alternative Dispute Resolution is a priority for the Government. Judicial mediation is seen as one of the possible ways to achieve this. The Employment Tribunals operate a scheme in all regions in England and Wales.
2. Judicial mediation involves bringing the parties in a case together for a mediation preliminary hearing. The judicial mediation is conducted by a trained Employment Judge, who remains neutral and tries to assist the parties to resolve their dispute. The Employment Judge will help to identify issues in dispute, but will not make a decision about the case, nor give an opinion on the merits of the case. The role of the Employment Judge as mediator is to help the parties find ways to resolve their dispute by mutual agreement. Resolution is not limited to the remedies available at a hearing.
3. Whilst judicial mediation is part of the process of resolving employment disputes, it is an alternative to a tribunal hearing, but not an alternative to ACAS conciliation. ACAS and the judiciary of the Employment Tribunals work collaboratively in relation to judicial mediation. The statutory duty placed on ACAS is not compromised by the process, and ACAS and the judiciary remain independent of each other at all times.
4. There are no restrictions on the jurisdictions that will be considered for judicial mediation, although it is unlikely that equal pay claims will normally be suitable for this process.
5. An important factor in assessing suitability is whether there is an ongoing employment relationship.
6. Whilst cases suitable for judicial mediation are identified in a number of different ways, identification is usually by an Employment Judge at a preliminary hearing for case management purposes. At that preliminary hearing, suitability for judicial mediation is considered, the parties advised of the possibility of an offer of judicial mediation, their interest (or otherwise) noted, and normal case management orders and directions made.
7. If the parties agree to consider an offer of judicial mediation, the file will be passed to the Regional Employment Judge, who will apply agreed criteria and determine whether the case qualifies for an offer of judicial mediation. An offer of judicial mediation is normally made at a telephone preliminary hearing with the parties when timetables for the mediation will be set, a stay or variation of the existing case management orders made if necessary, and the dates for the judicial mediation agreed. Agreement will also be reached on the issues for the judicial mediation (which may be wider than those determinable by a tribunal at a hearing), who will attend the mediation (which must include people empowered to make decisions), and any

requirements of the parties for the conduct of the mediation.

8. It is not possible to offer judicial mediation in all cases because of resource constraints and suitability of the issues to mediation. Parties are notified if an offer cannot be made.
9. Provided that the offer of judicial mediation is accepted by all parties, the matter proceeds to a one or two-day mediation.
10. The judicial mediation will be carried out by an experienced Employment Judge trained in mediation. A facilitative mediation technique is adopted and applied.
11. The judicial mediation is held in private and in circumstances which are entirely confidential with appropriate facilities made available. The contents or the events at a judicial mediation may not be referred to at any subsequent hearing. The Employment Judge mediating will play no further role in the case should it proceed to a hearing.
12. The judiciary of the Employment Tribunals may, on occasions, and with the prior consent of the parties, contact ACAS to reactivate conciliation, either during, or at the end, of the judicial mediation. This contact is usually by telephone conference call with the parties and an appropriate ACAS officer.
13. If there are any matters of concern or any explanation required, then please write to the Regional Employment Judge for clarification.