

From: Edward Cooper
Sent: Wednesday, November 15, 2023 11:06 AM
To: Fiona McLellan <Fiona.McLellan@hildickinson.com>
Subject: 2302023/2014 Day
Importance: High

Dear Fiona

I now have instructions and set out below our views on what is required this Friday. I would propose this email and the attachment be sent to the ET, together with your email last week and any response .

Whereas the directions required may not be as extensive as for many hearings nevertheless we consider that more is required than you suggest.

List of issues

At paragraph 74 of his decision EJ Self comments about the absence of a list of issues for the hearing of the substantive application for wasted costs. We consider there should be a list of issues Please find attached our draft for your agreement. We propose this list in any event subject to review after disclosure.

Further information

EJ Self comments (see para 76 of his decision) that you have “*denied the allegations although the factual position of HD’s conduct has not been given in any detail at all*”. We consider that it is appropriate and in accordance with the overriding objective that you provide within 14 days of the hearing this Friday your response to the allegations made in the application for wasted costs in sufficient enough detail that the Claimant can understand your position and the defence to his claim he has to address.

In particular we suggest that your client needs to set out their position in response to the issues set out in the claimant’s proposed list of issues.

Disclosure

Whereas we agree there should be an order for disclosure we want to make clear at this juncture that without prejudice to the terms of the order made , disclosure should include from HD:

- a. documents generated in seeking to secure the work from the Second Respondent (or their predecessor) for HD on the LDAs
- b. the retainers of HD in respect of the work undertaken by them in respect of the 2014 LDA and the generic LDA
- c. the time records showing those working on each such retainer and these proceedings (up to and including 15 October 2018)
- d. notes of any meetings relating the preparation of the 2014 LDA and/or the generic LDA

- e. the signed and dated 2014 LDA between the First and Second Respondents and emails between HD and the Second Respondent and solicitors of the First respondent about it
- f. communications to and from the Philipp Farrar (who we understand was for much of the material time Head of NHS Employment at HD) regarding each of these matters.
- g. Internal communications within HD leading up to or following each of the decisions of the ET, the EAT and the Court of Appeal relating to whether the Claimant was a worker the purposes of section 43K of the Employment Rights Act 1996 (the worker status issue) in these proceedings and also following the concession made that the Claimant was a worker the purposes of section 43K of the Employment Rights Act 1996
- h. Communications by HD to any third parties regarding the decision of the ET, the EAT and the Court of appeal relating the worker status issue and also following the concession made that the Claimant was a worker the purposes of section 43K of the Employment Rights Act 1996
- i. Internal communications within HD regarding (i) the statements about HD made by Sir Norman Lamb MP and Justin Madders MP on 3 July 2019 (ii) adverse comments made about HD by Tommy Green and other journalists from 2019 to date relating to the failure to disclose the 2014 LDA in these proceedings.
- j. Communications by HD to any third parties regarding the statements about HD made by Sir Norman Lamb MP and Justin Madders MP on 3 July 2019
- k. Internal communications within HD regarding the letters to HD from the Claimant and/or Sir Norman Lamb (between April and June 2019) challenging the late disclosure of the 2012 LDA.
- l. Responses made by HD or on behalf of any of their partners or staff in response to any investigation or enquiry made by a regulatory or other body relating to the failure to disclose the 2014 LDA in these proceedings.
- m. Briefings sent by HD about the worker status issue to NHS bodies, and others within or associated with the medical profession or NHS or representing their interests between 2014 and 2020.

EJ Self has raised the prospect that you might claim privilege in respect of some of the relevant documents. If and to the extent that you do , we ask that you clarify which form of privilege is claimed in respect of all or any part of each relevant document.

Hearing Bundle

We propose that you prepare the hearing bundle, which will be an expanded version of the bundle considered by EJ Self.

Witness evidence

We would propose exchange of witness statements no later than 36 days before the hearing.

Hearing

On the basis that there is to be half a day's reading , we anticipate this hearing will require 3 days.

I look forward to hearing from you. Please let me know should you wish to discuss to see what can be agreed.

Regards

Edward

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