

Case No: F90MA139

Neutral Citation Number: [2019] EWHC 3963 (QB)

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MANCHESTER DISTRICT REGISTRY**

Civil Justice Centre  
1 Bridge Street West  
Manchester M60 9DJ

Wednesday, 2 October 2019

BEFORE:

**MRS JUSTICE FARBEY**

BETWEEN:

**DAVID BOYCE**

Claimant/Respondent

- and -

**(1) DEPARTMENT OF WORK AND PENSIONS**

**(2) SECRETARY OF STATE FOR WORK AND PENSIONS**

Defendants/Applicants

**MR REDPATH** appeared on behalf of the Defendants/Applicants

The Claimant, **MR BOYCE**, appeared in person, assisted by a McKenzie Friend

**JUDGMENT**

(Approved)

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(Official Shorthand Writers to the Court)

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1.

MRS JUSTICE FARBEY: I have before me a number of applications today in relation to a claim form issued on 16 May 2019. The claimant, Mr David Boyce, has issued proceedings against the Department of Work and Pensions ("DWP") and the Secretary of State for Work and Pensions ("SSWP"). The defendants now apply for an order striking out the claimant's claim under CPR 3.4(2)(b) on the grounds that the claim is an attempt to relitigate issues which were raised or should have been raised in the previous proceedings; alternatively under CPR 3.4(2)(a) on the grounds that the claim discloses no reasonable grounds for bringing the claim; and in the further alternative, a stay under CPR 3.4(4) pending payment of costs from an earlier claim which was struck out on 16 May 2019.

2.

The claimant applies for a stay of the defendants' applications pending the resolution of extant appeals relating to earlier proceedings. Although the claimant's application form formulates the application for a stay in slightly different terms, the claimant clarified for me today that he is seeking a stay of the defendants' applications and he also has made an application for judgment against the defendant. I shall return to that later.

3.

The claimant has been assisted by his friend, Mr Doyle, who acts as a McKenzie Friend. In the exercise of my discretion and out of expedience on a one-off basis, I permitted Mr Doyle to help the claimant with oral submissions. I exercised my discretion on this limited basis for two principal reasons. First, Mr Doyle has carried out this role and has advocated on behalf of the claimant in the previous county court proceedings. Secondly, in my judgment, it is reasonable for someone with the claimant's disabilities to have such assistance. On behalf of the defendants, Mr Redpath agreed with this course of action. In the event, both the claimant and Mr Doyle took part in the advocacy.

4.

I turn to the factual background. In his claim form, the claimant seeks compensation for financial losses, harm, injury and a loss of enjoyment of life arising from breach of contract. He further seeks compensation for harm, injury and loss of enjoyment of life arising from tortious interference by both defendants causing the claimant harassment, intentional and/or negligent infliction of emotional harm and/or distress. Finally, he seeks compensation for financial losses, harm, injury and loss of enjoyment of life arising from conspiracy to injure by unlawful means or, in the alternative, lawful means.

5.

The claimant's claim is for compensation in the amount of £500,000. He also seeks aggravated damages in the same sum and exemplary damages in the same sum, such that the total value of his claim is said to be £1.5 million.

6.

The Particulars of Claim set out in detail the background to the claim. I have considered everything in those particulars with care. In summary, the claimant, after a hard working career spanning 34 years, found himself in a position where he was out of work and so he was forced to claim Jobseeker's Allowance ("JSA") which is administered by the DWP on behalf of the SSWP.

7.

Subsequently, he was assessed by the DWP as fit for work and was required to enter into a new Jobseeker's Agreement ("JSAG"). When he could not comply with its terms owing to his ill-health, he received a statutory sanction such that his JSA was stopped. The Particulars of Claim say that the consequence of the decision to sanction him and to review his JSAG had horrific consequences for his health and it is those consequences that, he says, give rise to this claim.

8.

The Particulars of Claim allege that the official with oversight of the claimant's case applied further sanctions by way of victimising the claimant for seeking a mandatory reconsideration of the first sanction. It is not in dispute that the claimant's request for mandatory reconsideration was nevertheless successful.

9.

The claimant alleged that the sanctions caused him to suffer very serious physical and mental health problems:

"24. The long-term effects of mental anguish, stress and distress, lack of correct foods and funds to deal with his diabetic health issues which were all caused by [the official's] unlawful acts, aggravated by the lack of urgency by the first and second defendants to conclude the mandatory consideration review, had a devastating effect on the claimant's health.

25. The claimant's Type 2 diabetes is a condition he has historically and successfully treated through a specific dietary balance of food. That has been the case for the past four years and was the case for a number of years prior to the cessation of his payments/entitlements on 5 March 2014.

26. The claimant lost control of his diabetes between 18 March 2014 and 21 May 2014 as a direct result of his payments/entitlements being unlawfully stopped.

27. As a result of the prolonged stress and mental anguish caused by the defendant's actions, the claimant suffered from a known medical condition, diabetes burnout, and lost control of his blood glucose levels and developed neuropathic foot ulcers, along with other medical complications which led to him almost dying and having a toe and leg amputated. The claimant was also directed to seek psychiatric evaluation. The claimant was admitted to hospital on 21 May 2014 and was not fully discharged from Salford Royal Hospital for 13 months.

28. The claimant was caused extreme levels of distress, anxiety, depression, frustration, humiliation, had constant suicidal thoughts and was admitted to psychologist due to obvious signs of suffering from mental health issues."

10.

At paragraph 30 of the Particulars of Claim the claimant alleges that whilst in hospital and bedridden and in pain and very sick and on medication, he was receiving texts and phone calls from the mortgage collections department, sometimes up to three times a day which put additional mental anguish upon him.

11.

The Particulars of Claim seek to argue a number of heads of claim.

(1) Harassment and misconduct in public office. This head of claim is directed against a named civil servant with whom the claimant dealt in connection with his JSAG and JSA claim generally, and who was the official who took the sanction decisions on behalf of the SSWP.

(2) Breach of contract. It is argued that the JSAG was a legally binding contract between the claimant and the DWP.

(3) Conspiracy to injure by unlawful or lawful means. It is said that two successive Secretaries of State conspired with the relevant DWP official to injure the claimant.

(4) Breach of duty of care. It is alleged that the defendants knowingly used unlawful means as an arbitrary way to deprive the claimant of the ability to purchase foods that were needed to control his diabetes. A number of other allegations are made under this head of claim, but I need not set them out here.

### **Previous claims**

12.

This is not the first claim in relation to the events I have described. There is a lengthy and complex history of litigation in the county court. The claimant has directed me today to a number of documents relating to previous litigation before a number of district judges and appeals to circuit judges in the county court, one of which appears to be extant, albeit lodged out of time. The claimant says that there is a live appeal pending in the county court from a decision or decisions of the district judge which were adverse to him. To the extent that those documents are relevant to the present claim, I have taken them into consideration.

13.

For present purposes, the history of the previous litigation is described in the reserved judgment of District Judge Hovington dated 13 November 2018 following a hearing on 12 November 2018. The district judge sets out that a previous claim was brought by the claimant on 14 November 2016. The claim form indicated that the claimant brought his claim “for damages and declaratory relief for breaches of the [Human Rights Act 1998](#)” and that the claimant expected to recover damages between £15,000 and £50,000. The claimant was granted an extension of time to serve particulars of claim. He filed and served Particulars of Claim within the extended time limit. He indicated at that stage that he was intending to seek damages in the sum of £1.5 million.

14.

There then followed a series of notices of applications. I take the details from paragraph 3 of DJ Hovington’s judgment:

1. On 19 October 2017 the claimant issued an application to transfer the case to the High Court.
2. By separate application also dated 19 October 2017, the claimant sought permission to amend his claim form by adding the permanent secretary of the DWP as second defendant and increasing the value of his claim as indicated in his Particulars of Claim.
3. On 30 October 2017, the defendant issued an application for an order that the claim be struck out pursuant to CPR 3.4 or, in the alternative, that there be summary judgment for the defendant pursuant to CPR 24.2.
4. On 17 April 2018, the claimant issued a second application seeking an order that the case be transferred to the High Court.
5. The claimant’s application for transfer to the High Court, having been considered by DJ Goodchild on the papers and refused, the claimant made a further application dated 17 April 2018 to set aside her order.

6. On 17 April 2018 the claimant reapplied for an order that the DWP be joined as second defendant.

7. On the same day, the claimant issued an application for an order pursuant to CPR 34.8 that the relevant employee of the DWP be examined on oath before any trial.

8. DJ Goodchild having dismissed the claimant's application to join the DWP as a second defendant, the claimant issued a further application dated 21 May 2018 to set aside that order.

9. DJ Goodchild, having refused the claimant's application for a deposition order, the claimant filed an application dated 31 May to set aside that order.

15.

On 24 June 2018, DJ Hassall, directed that all outstanding applications be considered at a hearing on 4 July 2018.

16.

At the hearing on 4 July, DJ Davis recorded that there were four effective applications from the claimant outstanding and one from the defendant. DJ Davis heard the respective applications and ordered that the existing Particulars of Claim failed to comply with the CPR and should be struck out. He noted that, insofar as the now struck out claim comprised a claim for damages for personal injury, no medical evidence had been submitted in support of the claim; that the defendant contended that prior to the hearing on 4 July, the defendant had not seen the claim form; and that the claimant had filed a hearing bundle, but I need not give further details about that.

17.

DJ Davis made an order in the following terms: (1) that the claimant's Particulars of Claim be struck out; (2) that the claimant had permission to file and serve new particulars of claim, limited to addressing only those matters relating to his claim under the [Human Rights Act 1998](#) as detailed in an amended claim form attached to the order; (3) that such Particulars of Claim should be limited to five pages and filed by a certain date; (4) in addition, the claimant was permitted to file and serve draft amended particulars of claim to accompany his two draft amended claim forms, such particulars were to be limited in length and filed by a certain date; (5) that the case be adjourned, it being directed that at the adjourned hearing the court would determine the outstanding applications before it and address any consequential matters and give directions as required.

18.

Subsequently DJ Hovington dismissed the claimant's application to amend the claim form to include heads of claim particularised in Particulars of Claim dated 10 October 2017. DJ Hovington addressed a number of the heads of claim and dismissed each of them in turn. Those heads of claim were breach of contract, breach of European contract principles, tortious interference by the defendants by way of harassment, intentional and/or negligent infliction of emotional harm and/or distress, battery, intending or negligently causing the claimant terrorism, misconduct in public office and breach of duty of care. DJ Hovington allowed only the Human Rights Act claim to subsist and dismissed the application to transfer the proceedings to the High Court.

19.

On 16 May 2019, in an order dated 16 May 2019, DJ Hovington dismissed the Human Rights Act claim for being time-barred and the claimant was ordered to pay the defendants' costs.

## **Legal framework**

20.

CPR 3.4(2) provides:

“The court may strike out a statement of case if it appears to the court –

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings ...”

21.

CPR 3.4(4) provides:

“Where –

(a) the court has struck out a claimant’s statement of case;

(b) the claimant has been ordered to pay costs to the defendant; and

I before the claimant pays those costs, the claimant starts another claim against the same defendant, arising out of facts which are the same or substantially the same as those relating to the claim in which the statement of case was struck out,

the court may, on the application of the defendant, stay that other claim until the costs of the first claim have been paid.”

22.

In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160 at 180C-H, the Supreme Court gave guidance on the modern meaning of the legal term **res judicata**. The court held that:

(a) **Res judicata** is a portmanteau term which is used to describe a number of different legal principles with different juridical origins.

(b) The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is known as cause of action estoppel. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings.

I The second principle is that where the claimant succeeded in the first action and did not challenge the outcome, he may not bring a second action on the same cause of action, for example, to recover further damages.

(d) The third principle is that a cause of action is treated as extinguished once judgment has been given upon it and the claimant’s sole right is then a right upon the judgment which is known as the doctrine of merger.

I The fourth principle is that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both and which had been decided on the earlier occasion, may be binding on the parties. This is known as issue estoppel.

(f) The fifth principle is a party is precluded from raising in subsequent proceedings matters which were not, but could and should have been, raised in earlier proceedings. This is the principle of *Henderson v Henderson* (1843) 3 Hare 100, 115, per Wigram V-C.

(g) Finally, there is a general procedural rule against abusive proceedings which could be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger.

23.

In the Virgin Atlantic case Lord Sumption observed at paragraph 20:

“The implications of the principle stated in *Henderson v Henderson* were more fully examined by the House of Lords in *Arnold v National Westminster Bank plc* [1991] 2 AC 93. The question at issue in that case was whether in operating a rent review clause under a lease, the tenants were bound by the construction given to the very same clause by Walton J in earlier litigation between the same parties over the previous rent review. The Court of Appeal had subsequently, in other cases, cast doubt on Walton J’s construction, and the House approached the matter on the footing that the law (or perhaps, strictly speaking, the perception of the law) had changed since the earlier litigation. Lord Keith of Kinkell began his analysis by restating the classic distinction between cause of action estoppel (page 104D-E) and issue estoppel (page 105D-E):

‘Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be re-opened ...

Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue.’

...

22. *Arnold v National Westminster Bank plc* [1991] 2 AC 93 is accordingly authority for the following propositions:

(1) Cause of action estoppel is absolute in relation to all points which had to be and were decided in order to establish the existence or non-existence of a cause of action.

(2) Cause of action estoppel also bars the raising in subsequent proceedings of points essential to the existence or non-existence of a cause of action which were not decided because they were not raised in the earlier proceedings, if they could with reasonable diligence and should in all the circumstances have been raised.

(3) Except in special circumstances where this would cause injustice, issue estoppel bars the raising in subsequent proceedings of points which (i) were not raised in the earlier proceedings or (ii) were raised but unsuccessfully. If the relevant point was not raised, the bar will usually be absolute if it could with reasonable diligence and should in all the circumstances have been raised.”

24.

In his skeleton argument and his oral submissions, Mr Redpath submits that the first, third and fourth principles set out in the Virgin Atlantic case apply here, namely cause of action estoppel, merger and determined binding issue. He emphasises that DJ Hovington’s judgment dismissed the contract and

tortious claims for want of factual causation. Judgment was given upon those facts and the propriety of the judgment considered when HHJ Platt refused permission to appeal on 10 May 2019.

25.

Mr Redpath submits that the claimant's present claim relies on the same facts as the claims which have previously been struck out or dismissed. He emphasises that the Particulars of Claim assert, as the previous claim asserts, that the claimant suffered harm as a result of his JSA ceasing; as a result of the cessation of the JSA payments the claimant lost control of his diabetes and suffered harm; and that the defendants knew of the claimant's diabetes and their respective actions were intended to cause the claimant the harm suffered. He submits on this basis that the present claims arising from this factual scenario have already been determined and dismissed by the court.

26.

He further submits that, although the claimant has named in the present claim an additional defendant, namely the DWP, the SSWP and the DWP have a sufficient degree of identification and their interests are so connected that, having regard to the subject matter of this dispute, they are privy to each other based on their interests. In this regard he cites *Gleeson v J Wippell & Co Ltd* [1977] 1 WLR 510 at 514C to 515H. He submits that the SSWP is answerable to Parliament for the acts of the DWP and the acts of DWP officials are to be treated in law as acts of the Secretary of State under the well-known *Carltona* principle (*Carltona v Commissioner of Works*) [1943] 2 All ER 560). The decision to which one was party should be binding in proceedings to which the other is party (*Gleeson* at 515G, approved in *Johnson v Gore Woods & Co* [2002] 2 AC 1 by Lord Bingham at 332D to G).

27.

In relation to the defendants' application under CPR 3.4(2)(a), Mr Redpath submits that if, contrary to his principal submissions, the claimant's Particulars of Claim are found to raise something new and material, they contain no legally recognisable claim or reasonable grounds for bringing the claim. In the alternative, the SSWP seeks an order staying the proceeding pending payment of the claimant's costs orders ordered against him after the human rights claim.

28.

The claimant submits that I should stay the defendants' strike out application, as there were a number of overlapping issues in the ongoing appeal proceedings in the county court and in the applications which I have heard today. One of the grounds of appeal still raised in the county court relates to the amount of costs that should be paid which would be particularly relevant to the application to stay under CPR 3.4(4). It is submitted that, on account of the overlapping issues, the appellate proceedings may "bring out" aspects of DJ Hovington's judgment. It would be beneficial for the High Court hearing the strike out application to have the circuit judge's decisions and orders on the appeals.

29.

On the defendants' applications, the claimant submits in essence that the contractual and tortious aspects of his claim did not exist against the DWP in the first claim. The original claim form relied only on the Human Rights Act so that the tortious and contractual claims were never, as a matter of fact or as a matter of law, brought. The claim form is the key document and the claims in tort and contract relating to the first claim form did not proceed. Despite his efforts to revive those claims, he was prevented from doing so by the district judge. It follows that there has been no substantive consideration of the claims which the claimant wishes now to be considered in his most recent claim form.

30.

The claimant further submits that there is a legal distinction between the SSWP and the DWP. In reliance on some internet documents, he submits that the DWP is a private company which is different from the SSWP and her employees. In the first set of proceedings he sued the Crown, whereas in this set of proceedings he wishes to widen the ambit to sue a private company.

31.

The claimant further submits that there is a distinction between the Department for Work and Pensions and the Department of Work and Pensions and that these two emanations of the Crown have different juridical statuses, the one being the defendant in one set of proceedings, the other being the defendant in the second set of proceedings, and he says that there has not to date been a claim against the Department of Work and Pensions.

32.

Moving on to costs, the claimant submits that this aspect of the previous proceedings remains under appeal. There are outstanding documents and issues to be considered in the appeal. He also accuses the defendants of failing to pursue costs against him for tactical reasons. He submits that there is a different emphasis in the kind of damages that he sought in the first and second proceedings, and he has directed me to those aspects of the documents where he makes a claim for damages arising from personal injury as opposed to financial loss.

33.

I asked the claimant why he had not raised these various matters before and he said that there had not, in the earlier proceedings, been evidence that DWP officials receive bonuses.

34.

Finally, he submits that, as a judge, I would be predisposed towards Mr Redpath as a fellow lawyer whereas he is a litigant in person assisted by a McKenzie Friend, but I explained to him the constitutional independence of the judiciary from the Government and I do not propose to deal with this aspect of the submissions further as, in my judgment, they lack merit.

### **Analysis and conclusions**

35.

In my judgment, there is no material or legally relevant distinction between the present claim and the previous claims made by the claimant relating to what he claims are the effects of the statutory JSA sanctions regime. The two sets of Particulars of Claim are phrased in somewhat different ways but they do not need to be identical or word for word the same to raise the same facts and the same legal issues. In relation to harassment and misconduct in public office, DJ Hovington dealt with this claim at paragraph 49 of his judgment. In relation to breach of contract, the district judge dealt with this claim at paragraph 51 of his judgment. In relation to conspiracy to injure by unlawful or lawful means, the district judge dealt with this claim at paragraph 49 of the judgment. In relation to breach of duty of care, the district judge dealt with this claim at paragraph 43(ix) of the judgment.

36.

It is right to record that the claimant did not target his submissions at these parts of the district judge's judgments but on differences in formulation of issues in the case and the different status of the parties. However, those different formulations have no legal relevance. The submission that the previous claim form on the human rights claim did not contain tortious or contractual terms fails because those tortious and contractual claims were located in the Particulars of Claim and it is plain that the claimant persisted with them, irrespective of the wording of the claim form. The submission

that I should give weight to the fact that the district judge gave no substantive consideration to tortious or contractual claims is, in my judgment, mortally wounded because those claims were made but struck out. This claimant has gone to great lengths to keep those claims alive in the county court and cannot properly say that they have received no judicial consideration. He is undoubtedly unhappy with judicial decisions on those heads of claim, but his remedy is an appeal, not the recommencement of what are, in my view, unarguable claims.

37.

In relation to the distinction between the SSWP and the DWP, I agree with the defendants' submissions that there is plainly privity of interest between a Minister of State and his or her department and the officials who serve the Minister in that department. The submission that the DWP is a private company does not advance the claimant's case as the sanctions decisions were statutory and not governed by private law. The claimant relies on internet material. That material was published by D&B Credit and I regret that that information is not accurate.

38.

The distinction between the Department for Work and Pensions and the Department of Work and Pensions is semantic only, even if there has been a change of name in the period that I am considering: see [section 17](#) of the [Crown Proceedings Act 1947](#).

39.

I have considered the claimant's remaining submissions and given leeway to him as a litigant in person, but in my judgment, they do not have merit.

40.

On this basis, the defendants' application under CPR 3.4(2)(b) succeeds and the claim will be struck out as an attempt to relitigate issues which were raised or should have been raised in the previous proceedings. It follows that I do not need to consider CPR 3.4(2)(a) and it is fair to say that this aspect of the defendants' application was not at the forefront of the oral submissions of either party.

41.

The claimant's application for a stay of the present applications pending the outcome of any appeal in relation to the earlier proceedings is refused because such a stay would serve no purpose. The county court is concerned only with the first set of proceedings. It is the function of this court to determine the separate and discrete issues raised in this second set of proceedings. I see no benefit in delaying my decision in relation to the submissions I heard today.

42.

It follows that I do not need to decide the defendants' application to stay those proceedings pending resolution of costs issues in relation to the first proceedings. It also follows that the claimant's application for judgment against the defendant falls away as the claim will not proceed. The basis of the request for judgment was that the defendant has not filed an admission or defence to the claim and the upshot of this judgment is in any event that there is no proper claim to defend.

43.

For these reasons the defendants' application to strike out the claim succeeds and the claimant's applications will be dismissed.

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**This transcript has been approved by the Judge**