EMPLOYMENT TRIBUNALS

Claimant **Respondent**

v

Mr A McEvoy **Home Office Commercial Directorate, Capabilities and Resources**

PRELIMINARY HEARING

Heard at: **London South Employment Tribunal**

On: **21 February 2022**

Before: **EJ Webster**

Appearances
For the Claimant: **In Person (assisted by his wife)**
For the Respondent: **Ms G Hirsch (Counsel)**

JUDGMENT

1. The Respondent's application for its ET3 form and grounds of response to be accepted out of time is granted.
2. The Respondent's application for the Claimant's claims to be struck out is refused.

WRITTEN REASONS

3. Brief, oral reasons were given at the hearing and the Respondent requested written reasons at the conclusion of the hearing.

The Hearing

4. The purpose of the hearing was to consider the respondent's applications for its response to be accepted out of time, and/or for some or all of the

claimant's claims to be struck out either due to being out of time and/or due to the claimant's conduct of these proceedings.

5. Part of the reason for the respondent's application for the claims to be struck out was that the claimant had failed to complete a schedule setting out his claims (sometimes referred to as a Schott schedule). This situation meant that no list of issues had been agreed between the parties or finalised at either of the previous two preliminary hearings in this matter.

6. I have therefore had to base my decisions today as to what the Claimant's claims might be on the following documents:
   (i) His ET1 dated 23 November 2019
   (ii) His ET1 dated 25 May 2020
   (iii) The partly finished table of claims that the claimant sent on 19 January 2021.

7. I note that the Claimant has, to date, made no application to amend his claims, yet the incomplete table appears to introduce new claims and/or new facts. Ms Hirsch therefore expressed concerns that my decision regarding whether claims were in time or not should include reference to or reliance on the table given that it potentially included incidents or matters that would not form part of any final claim depending on (i) whether the claimant made an application to amend at all and (ii) even if he did, the outcome of any such application was not yet clear.

8. Whilst I note Ms Hirsch's concerns and understand the perhaps frustrating history of progress in this claim, it would not serve either party for me to make a decision to strike out a case prematurely based on an incomplete understanding of what the claimant's claims are. I address this further below in my reasons regarding the strike out applications.

9. I also note that the claimant was reasonably well prepared for today's hearing but still appeared confused as to the extent of his responsibility to properly prepare for hearings, respond to orders by the Tribunal and set out clearly exactly what his case against the respondent is. I reminded him that it was his responsibility to tell the Tribunal and the respondent the factual and legal basis for his case – it was not sufficient to just present some facts and hope that the Tribunal would elicit from that some sort of discriminatory behaviour on the part of the respondent.

10. I urged the claimant to obtain legal advice and recommended some sources of legal advice which are included on the Orders sent out to the parties following this hearing.

<u>Respondent's application for the ET3 and Grounds of Resistance to be accepted out of time</u>

11. The Claimant has issued two claims against the respondent. The first on 23 November 2019 and the second on 25 May 2020. There was one period of Early Conciliation from 24 September to 24 October 2019.

12. The respondent submitted that the original ET1 (Claim no 2305183/2019) had not been served on them at all. They first heard reference to the claim when copied into an email on 8 June by the claimant regarding a PH on 9 June. The respondent contacted the Tribunal immediately and made an application to submit their ET3 out of time. It is that application that I am hearing today.

13. There has been significant confusion as to whether the ET1 was properly sent to the Tribunal on 23 November 2019 at all and whether it was then served on the respondent. At the time of today's hearing I did not have sight of the Tribunal file but since the hearing I have now found the file and can confirm as follows:

    (i) The ET1 was received by the Tribunal on 23 November 2019.
    (ii) A Notice of Claim dated 13 December 2019 and a Notice of Hearing dated 13 December 2019 informing the respondent of the PH on 9 June appear on the file and appear to have been sent to the Home Office Commercial Directorate in Croydon.
    (iii) On 3 June 2020 EJ Hyde directed that a further copy of the ET1 be sent to Government Legal Services when no ET3 was received. It is not clear from the file if that was done.

14. The claimant has objected to the respondent's application by saying that he cannot accept that the ET1 was not sent to the respondent. However, he accepted during the course of the hearing that he had not received any acknowledgement of his claim beyond the electronic acceptance and that he had not received the Case number until after the respondent had drawn the matter to the Tribunal's attention. However he appears to have received the Notice Of Hearing as he was aware of the hearing on 9 June when the respondent was not. During the course of today's hearing the Claimant withdrew his objections to the respondent's application and said that if it was necessary he agreed to the ET3 being accepted.

15. I find that the ET1 was, on balance of probabilities not served on the respondent. I reach this conclusion due to the apparent lack of a Notice of Claim being copied to the claimant either. Although on consulting the file it appears as if a Notice of Hearing was processed, I find that, at the very least, it never reached the respondent's legal department. There was no intention by the respondent to not defend or respond to the claims.

16. As soon as the legal department was aware of the claim they acted immediately in notifying the Tribunal and applying for an extension of time. Although there was then some delay in submitting the full ET3 (25 August 2020), the respondent had not by then received any response from the Tribunal regarding

their application and had chased a response on 3 August 2020. They were also sent a second Notice of Claim for Claim 2305183/2019 on 3 August 2020.

17. I accept that they filed a full ET3 on 25 August 2020 which was intended to respond to both claims, and that at the relevant time the country was living/working through the Covid pandemic thus making it difficult to obtain full instructions.

18. Applying the principles in Kwik Save Stores Ltd v Swain [1997] ICR 49 EAT, I must consider what is just and equitable in all the circumstances when considering whether the accept the respondent's application for their ET3 to be accepted out of time. I should take into account all relevant factos including the merits of the defence and the explanation for the delay.

19. In considering the balance of prejudice against the parties, I find that the respondent would be far more prejudiced were I not to allow the out of time response. They have an arguable defence to the claimant's claims. To refuse them the right to defend the case would clearly prejudice them. Further I find that they had not received the ET1 in the first instance and that the subsequent delay in providing a fully pleaded ET3 was in no small part caused by the Covid Pandemic. It is also noteworthy that they were only able to prepare their response once the claimant sent them a copy of the ET1. The Tribunal did not do so despite requests from the respondent. That has caused its own problems which I address below but it also illustrates the difficulties the respondent had in corresponding with the Tribunal during this period.

20. For all those reasons I have allowed the respondent's ET3 in out of time. Considering the guidelines outlined in the case of Weighing the balance of prejudice overall it is clear that the Respondent has an arguable case and to prevent them from putting that argument would be unjust.

<u>The Respondent's application that the claimant's claims be struck out for being out of time</u>

21. The Tribunal's power to strike out a claim can be found in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and in particular in rule 37 the material parts of which read as follows:

"(1) At any stage of the proceedings, either on its own initiative or on the application of the party, a Tribunal may strike out all or part of the claim or response on any of the following grounds –

that it is scandalous or vexatious or has no reasonable prospect of success……"

22. I do not intend to repeat the helpful facts found by EJ Tsamados and recorded in his notes of the hearing on 22 October 2021. However it is helpful to

understand the timeline of when pleadings and further information were provided by the claimant in this case.

(i) ET1 – the first ET1 submitted on 23 November 2019 has brief detail given referring to claims of disability discrimination and a failure to make reasonable adjustments and the boxes of holiday pay and arrears of pay are also ticked.
(ii) The next claim was made on 25 May 2020. It provides much more detail and on preliminary reading raises claims of disability discrimination, unpaid wages including holiday pay and other payments. It also makes reference to whistleblowing and constructive unfair dismissal but the claimant has confirmed he is not pursuing any such claims.
(iii) The respondent responded to both claims on 25 August 2020.
(iv) At a hearing on 11 November 2020 EJ Truscott ordered the claimant to submit further information in a table format. The respondent sent the claimant a table to complete on 13 November 2020.
(v) A table was sent by the claimant to the respondent on 19 January 2021 following an agreed extension of time by the respondent. That table is alleged to be incomplete mainly because the claimant has failed to say why there has been a delay in him raising various claims. The respondent also states that this table raises a large number of facts or claims that had not been advance in either of his ET1s. I am going to refer to that table as Further Information.
(vi) At a hearing on 22 October 2021 the claimant said he was unable to participate. Following the hearing EJ Tsamados made various orders for the progression of the case and for the preparation for today's hearing.

23. The claimant's claim for unpaid wages is, according to him, complicated because he says he was made a retrospective payment in March 2019 which lumped together various payments without breaking them down. His case is that this made unpicking any underpayments very difficult and took some time for him to understand. He says that the respondent was slow to provide explanations or documents to assist him in that process. He submitted a grievance in relation to the matter in July 2019 meaning that he must have been aware at that time or just before, that he believed he had been underpaid.

24. The respondent argues that the date for calculation of the primary limitation commences at the date on which the payment was received in March 2019. This is possible. It is also possible from the facts however that it would not have been reasonably practicable for the claimant to submit a claim until he knew what he had and had not been paid for within that lump sum. It is therefore possible that the date for calculation starts (at the very latest) in July 2019. Primary limitation would then have fallen at the some time in October 2019. It was extended by ACAS EC which ran from 24 September 2019 – 24 October 2019. Thus the deadline would have been 23 November 2019 which is when the claimant submitted his ET1. That ET1 had the box of arrears of pay and holiday pay ticked.

25. I therefore consider that it is at least arguable, on the facts as evidenced to me, that the unpaid wages claim has been submitted in time in accordance with s23(4) ERA which states;

"Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."

26. The parties should note however that I have not made a definitive conclusion that this claim has in fact been submitted in time as I did not have the facts upon which to base such a conclusion because I did not have evidence as to when the claimant was provided information by the respondent as to what payments had been made to him and why. I have merely found that it is arguable that the claim has been submitted in accordance with s23(4) ERA and I therefore cannot take the draconian step of striking it out as requested by the respondent. Any future tribunal hearing the case in full ought to reach its own conclusions as to the issue of whether this claim is in fact in time.

27. The power to strike out a claim under Rule 37(1)(a) on the ground that it has no reasonable prospect of success should only be exercised in rare circumstances *Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly* [2012] IRLR 755, at para 30.

28. It will generally not be appropriate to strike out a claim where the central facts necessary to prove the case are in dispute. Here the central facts of what the claimant knew about his payments and when are clearly in dispute. It is not the function of a tribunal such an application to conduct a mini trial and I did not have the relevant facts upon which to base such a decision today. The proper approach is to take the Claimant's case at its highest as it appears from his (or her) ET1 unless there are exceptional circumstances *North Glamorgan NHS Trust v Ezsias* [2007] IRLR 603. Such exceptional circumstances could include the fact that the Claimant's case is contradicted by undisputed contemporaneous documents or some other means of demonstrating that 'it is instantly demonstrable that the central facts in the claim are untrue' *Tayside*. No such evidence was presented to me today.

29. Turning then to the claimant's disability discrimination claims. In discrimination claims where findings of fact can depend upon whether or not it is appropriate to draw inferences from primary facts particular care needs to be taken before striking out a claim *Anyanwu v South Bank Students' Union* [2001] IRLR 305, HL.

30. The statements of principle derived from the cases referred to above do not in any way fetter the discretion of a tribunal to strike out a case where it is appropriate to do so *Jaffrey v Department of the Environment, Transport and the Regions* [2002] IRLR 688 at para 41. Where, it is suggested that the claim

cannot succeed as a matter of law, then it would be appropriate to strike it out if the Tribunal were to accept that submission.

31. In *Chandhok & Anor v Tirkey* UKEAT/0190/14/KN Mr Justice Langstaff made the following comments:

"20. This stops short of a blanket ban on strike-out applications succeeding in discrimination claims. There may still be occasions when a claim can properly be struck out – where, for instance, there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in Madarassy v Nomura [2007] ICR 867):

"…only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

Or claims may have been brought so repetitively concerning the same essential circumstances that a further claim (or response) is an abuse. There may well be other examples, too: but the general approach remains that the exercise of a discretion to strike-out a claim should be sparing and cautious. Nor is this general position affected by hearing some evidence, as is often the case when deciding a preliminary issue, unless a Tribunal can be confident that no further evidence advanced at a later hearing, which is within the scope of the issues raised by the pleadings, would affect the decision."

Time limits in discrimination claims

32. The time limit that applies is that set out in Section 123 of the Equality Act 2010. A claim must be presented within 3 months of the act complained of or within such further period as is just and equitable. The test for extension under Section123(2)(b) allows for the Tribunal to extend time where it is just and equitable to do so. That discretion is the exception rather than the rule: *Robertson v. Bexley Community Centre* [2003] IRLR 434, at para 25. Although the discretion is wide, the burden is on a claimant to displace the statutory time limits, lest her claim be shut out irrespective of its validity: *Chief Constable of Lincolnshire Police v. Caston* [2010] IRLR 327. In *Abertawe Bro Morgannwg University Local Health Board v. Morgan (Unreported)* (UKEAT/0305/13/LA), Langstaff P held at para 52 that a litigant could hardly hope to satisfy the burden unless she provides an answer to two questions: The first question in deciding whether to extend time is why it is that the primary time limit has not been met; and insofar as it is distinct the second is reason why after the expiry of the primary time limit the claim was not brought sooner than it was.

33. In *British Coal Corporation v. Keeble* [1997] IRLR 336, the EAT considered Limitation Act 1980, s.33 to provide a useful checklist for a Tribunal's consideration of whether to exercise its discretion to extend time. That checklist sets out the following factors:

    (a) the length of and reasons for the delay;

    (b) the extent to which the cogency of the evidence is likely to be affected by the delay;

    (c) the extent to which the party sued had cooperated with any requests for information;

    (d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to cause of action;

    (e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

34. The courts have subsequently clarified that this is merely a useful checklist rather than a statutory requirement: *Southwark London Borough Council v. Alfolabi* [2003] IRLR 220.

35. The tribunal should consider whether to exercise its discretion to extend time separately in respect of each claim rather than doing so on a global basis (*Morgan*).

Discussion

36. It is clear from the schedule of claims put together by the Claimant and from the information given to me today that there are numerous significant facts and claims in dispute.

37. Further I think it is possible, that were it to be established, the claimant has listed enough events in the table of Further Information that if all those incidents are to be considered by a Tribunal it could amount to a continuing act as described in s123(1)Equality Act 2010.

38. It is not for me today to assess the validity of the assertions made in that schedule and I am aware that the respondent disputes that many of them in fact form part of the claim as no amendment application has been made. However I was not addressed as to exactly which of the incidents set out in that table are viewed by the respondent has been amendments as opposed to clarification of existing claims. I do not accept the respondent's allegations that the claims set out in that are too vague as to be possible to be interpreted as a continuing act at this point in time.

39. Of course it may for the Tribunal at the final hearing to determine that they any of the incidents listed did not occur or are too vague to amount to acts of discrimination, but it cannot be said that this list is so vague at this time as to

not be possible to amount to a series of incidents. Further, on consideration of the full facts of the case, it is possible that a Tribunal may find that it is just and equitable to extend time and allow any out of time incidents relied upon to be considered.

40. The claimant provided several arguments as to why it would be just and equitable for a tribunal to extend time including his mental health difficulties and various domestic considerations regarding the health of family members. Whilst I have not assessed them in full and have not been provided with evidence of those situations, I note that these arguments are relevant to the final Tribunal's decision on whether any or all of the incidents are in time.

41. I have considered Ms Hirsch's submissions that the claimant could not rely on his mental health difficulties on the basis that the claimant was well enough to raise a grievance and therefore he was therefore well enough to raise a claim in the Tribunal. She stated that case law established that waiting for the outcome of a grievance was not a good reason for any extension of time. I do not accept that the claimant is not coming to this matter with 'clean hands'. I accept that the claimant is not good at responding to direct questions. He has asserted that this is due to his health and there is some evidence in the bundle that he has struggled at times with his mental health.

42. However, I do not think that the respondent has established facts on which I could reasonably conclude that the claimant's claims are definitely out of time – though they may be. It is clear that the parties were involved in an ongoing dialogue and conversation regarding the claimant's return to work and reasonable adjustments, on this occasion I disagree as it is clear that there has been ongoing continual dialogue between the parties to try to resolve the grievance to the extent that the claimant has been moved to a different department and continues to work for the respondent. This is not a case, as far as I am aware, where a grievance went 'quiet' and then led to a delay.

43. Therefore, I cannot take the step of striking out the claimant's discrimination claims at this time on the basis that they are out of time. As set out above, striking out of a claim is a draconian step to take and must only be taken where case has no prospect of success. That has not been established before me today.

44. However I note, as I did in my assessment of whether the claimant's unpaid wages' claim ought to be struck out for being out of time, that the parties should be aware that I have not made any positive finding that the claims are in time. I have simply made the finding that I cannot say that they are definitely out of time and therefore cannot strike them out for that reason. It will be for the Tribunal that hears the claimant's final claim to decide whether any aspect of the claimant's discrimination claims are in time or not.

<u>The respondent's application for the claimant's claims to be struck out due to the conduct of the case</u>

45. The respondent relies on several behaviours or incidents by the claimant as being unreasonably conduct of the case to date. These are outlined across two skeleton arguments I was provided with by the respondent. They are:
    (i) The claimant sent the respondent an amended Grounds of Claim and amended ET1 purporting to be the original document. The existence of the correct ET1 was only discovered during the PH with EJ Tsamados.
    (ii) The claimant's failure to properly complete the Further Information table.
    (iii) The claimant's addition of numerous allegations to the Further Information table without making any application to amend the claim
    (iv) Failing to properly answer questions around whether he was dismissed and his apparent claim for constructive unfair dismissal
    (v) Failing to provide a functioning email address
    (vi) Failing to comply with EJ Tsamados' order to provide a statement and evidence as to why he was unable to properly participate in the last hearing

General observations

46. It is correct that the claimant's conduct in managing this claim has been on occasion difficult and has caused significant delays. However I do not accept that the incidents relied upon are so bad as to amount to unreasonable conduct that ought to lead to his case being struck out.

47. I accept the claimant's submissions that his mistakes have been largely unintentional and owing to a lack of legal advice. Nevertheless it is worth noting that I have also found the claimant to be at times disingenuous in his comments or answers before me; with his explanations for the state of his claim varying and changing during the hearing. His grasp of documents and his case overall have been vague and he has made many wide ranging assertions without basis. Further, he has very casually made at least one very serious unsubstantiated allegation against the respondent during today's hearing, saying that they are committing fraud. I strongly suggested to the claimant that making such allegations in open court when he had made no such allegations in his claims was ill advised and not appropriate.

48. The need for specificity has been made clear to the claimant at several points during the hearing and appears to have been raised by the two previous EJs who have dealt with this case.

Specific allegations of unreasonable conduct

49. It is not in dispute that the claimant sent the respondent a document purporting to be the ET1 and grounds of claim that he submitted on 23 November 2019 but which is in fact made up of grounds of claim that are not before the tribunal and never have been - and from what I could glean are a hybrid and extended version of the two grounds of claim.

50. I was very troubled by the claimant's conduct in amending the ET1 and sending this with a different received date on it to the respondent. This is a significant issue that involves misrepresentation to the tribunal and the respondent. Had it

not been for EJ Tsamados' observations that the documents the claimant was relying upon were different from those actually sent to the Tribunal, the claimant would not have flagged this issue at all. However I, with some reservation, on balance accept the claimant's explanation that this has occurred due to inexperience as opposed to intent and for those reasons I do not find his conduct in this regard unreasonable.

51. The claimant says that such a document was sent in error. He worked on many versions of the Grounds of Claim for the second claim and this document was simply yet another version. He accepted during today's hearing that he understood that this could have been misleading but it was not intentional.

52. I accept this explanation by the claimant. I consider that it is possible for numerous drafts of the same document to exist and that an individual may continue working on such a document afterwards without understanding the exact legal nature of the pleadings submitted. The claimant has been unwell at various times and I have taken that into account when assessing whether the claimant's behaviour was deliberate. I do not consider that it was part of a plot by the claimant to mislead the respondent though I accept it had that effect. The possible impact of that on the respondent has been taken into account however in my decision to allow the respondent's response to be accepted out of time and to provide an amended response should it wish to do so – though Ms Hirsch has stated that bar the new information in the Further Information Table, their ET3 responds to all the claims as pleaded in the two 'real' ET1s.

53. The claimant has not fully completed the Further Information table. However he has provided a large amount of information, including dates and facts and whilst he has not provided an explanation for the timing of him bringing a claim in many areas, he has nevertheless made an attempt at completing the table. There has been no wholesale refusal to comply with orders. The failure to provide a reason for delay has not disadvantaged the respondent in their application for the claims to be struck out today due to being out of time. If anything such a failure to provide explanation would, in some situations, have aided them. My decision not to strike out the claims for being out of time has not been made because of the claimant's failure to explain any delay. That failure is still something that the respondent could rely upon when the Tribunal makes it findings on whether any or all of the claimant's claims are in time at the full hearing.

54. Although the respondent has asserted that the claimant has introduced new facts and claims by completing the table, they have not provided me with an analysis of which parts of the table are new or not. I understand that they have not undertaken that exercise because the claimant has not made any application to amend his claim to date. Nevertheless, the claimant providing more information than the respondent wants regarding how his claim has come about is not necessarily unreasonable conduct and in this case I consider that the claimant has, without legal advice, attempted to provide the tribunal and the respondent with the information he considered to be relevant in answer to the questions put to him by the table. It has in no doubt complicated matters but it

is not, I find, capable of being unreasonable conduct that ought to lead to the claimant's claims being struck out.

55. The claimant has seemed reluctant to clearly write that he has not been dismissed and that he has not resigned. His written answers to the respondent on this point are equivocal. I do understand that the respondent wanted to understand whether the claimant was in fact resigning. However I have seen no evidence of internal or 'workplace' correspondence with the claimant by the respondent, seeking to ascertain his employment status. Presumably the respondent was aware that the claimant had not formally resigned directly at work and that he remained on the payroll etc. Otherwise it would not have been confused. Despite that it took no steps (that I have seen) to establish whether, outside these proceedings, the claimant remained employed or considered himself to remain employed. The claimant explained that he was confused because he was not being paid and was not being given work to do so he was, in effect, questioning whether the respondent considered him to be employed. He says that he understands now that notwithstanding that state of affairs, he remained employed.

56. This was, in my view, a symptom of the state of affairs in employment rather than an example of a litigant in person attempting to behave unreasonably during the course of managing his claim. The use of incorrect labelling such as constructive dismissal is common amongst litigants in person and does not necessarily warrant unreasonable conduct. The claimant has now clarified the situation and the respondent is not disadvantaged.

57. With regard to the email address – I do not find that the claimant stating that the address is not monitored to be unreasonable conduct. He provided an email address and he has used it for correspondence and replied to emails albeit sporadically. I find that putting this 'signature' at the bottom is intended to be an indication that the claimant may not look at the email address very regularly as opposed to a statement of intent by the claimant to ignore the emails or not respond to them or that this is not a properly functioning email address. I reached this conclusion based on the fact that the claimant has given assurances to me that he understands he will be needed to check his email regularly and respond accordingly. The claimant was heavily and repeatedly reminded by me during the case management discussion of how to progress this case (as reflected in the Orders) that he must take responsibility for managing his case and complying with the Tribunal orders. I reminded him that the process of preparing a case for hearing was a collaborative process and that he must work with the respondent's representatives. I told him that he must check his emails on a very regular basis and respond to correspondence promptly. Future failures to do so may result in the Tribunal finding that his conduct is unreasonable particularly in light of the concerns raised by me during this hearing and EJ Tsamados at the last hearing.

58. I have carefully considered the claimant's failure to provide a statement outlining why he was not able to properly take part in the October 2021 hearing and attach relevant evidence. He was given a deadline of 12 November 2021 to provide the statement and evidence. He did not comply with that deadline

but provided a lengthy email six days later. The statement he did provide did not address this matter at all and he provided no explanation for the delay though he did apologise.

59. I do not accept that it is proportionate to strike out a claim because of a 6 day delay. However, I have given careful consideration as to whether the claimant has complied with EJ Tsamados' order to explain why he did not attend the October 2021 PH. I find that he has not done so in the statement and his explanation to me today was scant. I find that the claimant's refusal to properly explain his inability to take part in the last hearing unreasonable. He gave no explanation for why his statement did not address the information EJ Tsamados had asked for though he did provide some medical evidence. However I do not consider that it so unreasonable as to warrant the extreme measure of striking out his claims. EJ Tsamados agreed to postpone the hearing in any event and I have considered the matters today. The disadvantage to the respondent is another hearing and a delay but I do not considered that they are so disadvantaged as to warrant striking out the claimant's claim and will not do so.

60. Nevertheless, as has already been set out in this Judgment and in the Orders, the claimant is now on notice that he must comply with orders of the Tribunal in a timely fashion and provide the information actually requested as opposed to providing what he wants to say. A continued failure to appropriately engage with the process could result in his claims being struck out and that risk is greater now that he has had explained by the Tribunal, on at least 2 occasions, that he must comply with Tribunal orders.

61. For all those reasons I refuse the respondent's application for the claimant's claims to be struck out by reason of unreasonable conduct.

62. I have made various orders in a separate document.

Employment Judge Webster

Date: **28 February 2022**

JUDGMENT and SUMMARY SENT to the PARTIES ON

Date: **22 March 2022**

FOR THE TRIBUNAL OFFICE