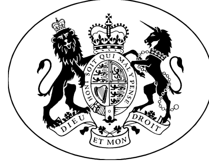

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr D Kuma	v	**Asda Stores Ltd**

(OPEN) PRELIMINARY HEARING

Heard at: Bury St Edmunds **On:** 3 July 2018

Before: **Employment Judge M Warren**

Appearances:
For the Claimant: Dr R Hermann, Attorney.
For the Respondent: Mr S Harris, Solicitor.

JUDGMENT

1. The claimant's claim that he was discriminated against by reason of race is struck out on the grounds that it is out of time.

2. The respondent's application for the claimant's claim of discrimination by reason of sexual orientation to be struck out as being out of time is refused.

3. A deposit order is set out in a separate document.

REASONS

1. This matter comes before me today having been listed for an open preliminary hearing, as it happens by me sitting in Cambridge on 22 March 2018. The issues before me today were to be:

   1.1. Whether any of the claims should be struck out as being out of time;
   1.2. Whether any of the claims should be struck out as having no reasonable prospects of success, or

1.3. Whether there should be a deposit order in respect of any of the claims.

2. If any claims survive, then today I will list the matter for a hearing and make any necessary case management orders.

3. Pursuant to directions which I had given in March, the claimant has filed what has been called a statement of case, but which is in effect, the further and better particulars of his claim I had directed. I have those before me today, along with some carefully prepared written submissions from the respondent. I am grateful to Mr Harris for the time and trouble that he has gone to in putting that document together.

Strike Out as Out of Time

4. I deal first of all with the application to strike the claims out as being out of time. The claims are of race discrimination and discrimination by reason of sexual orientation. The claimant still works for the respondent. In summary, the case consists of:

4.1. Allegations against a Mr Martin Hawthorne, that in June and July 2016, he was subjected to name calling of a vile nature, clearly related to sexual orientation. On 14 July 2016 the claimant raised a grievance against Mr Hawthorne, the respondent investigated and provided a grievance outcome in October 2016. Whilst in part his grievance was upheld as I understand it, his allegations about name calling were not.

4.2. The claimant's case continues with allegations that in September 2016 he was subjected to name calling and a threatening message from somebody known by the first name of 'Ryan'. Surname not known and not provided by the respondent.

4.3. Then in October 2016 and later in December 2016, the claimant says that he was subjected to name calling by a Mr Glenn Barnes.

4.4. Lastly, there is a claim of victimisation; the protected act being the grievance of July 2016 and the detriment relied upon, the claimant being suspended in April 2017. The Suspension was lifted on 3 May 2017.

Law

5. On the question of time limits, section 123(1) of the Equality Act 2010 requires that a claim shall be brought before the end of the period of three months beginning with the date of the act to which the complaint relates or such further period as the Tribunal thinks just and equitable

6. On the just and equitable test, the EAT in the case of Cohan v Derby Law Centre [2004] IRLR 685 said that a Tribunal should have regard to the Limitation Act checklist as modified in the case of British Coal Corporation v Keeble [1997] IRLR 336 which includes that:

6.1. One should have regard to the relative prejudice to each of the parties;

6.2. One should also have regard to all of the circumstances of the case which includes:

6.2.1. The length and reason for delay;

6.2.2. The extent that cogency of evidence is likely to be affected;

6.2.3. The cooperation of the Respondent in the provision of information requested, if relevant;

6.2.4. The promptness with which the Claimant had acted once she knew of facts giving rise to the cause of action, and

6.2.5. Steps taken by the Claimant to obtain advice once she knew of the possibility of taking action.

7. In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 the Court of Appeal clarified that there was no requirement to apply this or any other check list under the wide discretion afforded tribunals by s123(1), but that it was often useful to do so. The only requirement is not to leave a significant factor out of account, (paragraph 18). Further, there is no requirement that the tribunal must be satisfied that there was a good reason for any delay; the absence of a reason or the nature of the reason, are factors to take into account, (paragraph 25).

8. In the case of Robertson v Bexley Community Services [2003] IRLR 434 the Court of Appeal stated that time limits are exercised strictly in Employment Law and there is no presumption, when exercising discretion on the just and equitable question, that time should be extended. Nevertheless, this is a matter which is in the Tribunal's discretion.

9. That has to be tempered with the comments of the Court of Appeal in Chief Constable of Lincolnshire v Caston [2010] IRLR 327 where it was observed that although Lord Justice Auld in Robertson had noted that time limits are to be enforced strictly, his judgment had also emphasised the wide discretion afforded to Employment Tribunals. Lord Justice Sedley had noted that in certain fields such as the lodging of notices of appeal in the EAT, policy has led to a consistently sparing use of the power to extend time limits. However, this has not happened and ought not to happen in relation to the discretion to extend time in which to bring Tribunal proceedings which had remained a question of fact and judgment for the individual Tribunals.

Evidence

10. I heard oral evidence from the claimant today. I decided to call him to give evidence because through his representative, he made references to having left his case in the hands of his trade union and he blamed them for the fact that this case was not issued in time. There had been no previous mention of this in the paperwork before me. I accepted the oral evidence though, of the claimant given under oath. What I heard from him was that he has been mentally unwell since the incident of June 2016. He has on occasion been admitted into hospital. He has been away from work ill on and off for various periods of time ever since. He has been in receipt of various medications which have affected his power of recall and his cognitive abilities; the medications include those which he is on at the moment, namely Martazapine, Propanolol and Zopiclone. This evidence accords with what I was told by the claimant's sister when she spoke on his behalf at the preliminary hearing in March of this year.

11. The claimant told me that he had given all of his papers relating to his case to his trade union. He could not remember the name of the trade union. He says that it had assured him that they would deal with the case on his behalf. The trade union did act on his behalf in respect of the grievance and sent along a representative to accompany him at the grievance hearing. The claimant says that he telephoned the trade union several times to chase them about progress on his case, although he cannot remember the details. He does recall that many calls were not returned. He also says that he was given a variety of excuses for a lack of progress, including that the person who was dealing with the matter was away, that the person taking the call was not sure who the file had gone to or who it was who was supposed to have taken the case. In due course, the claimant told me, exasperated at the lack of progress, he went to ACAS on 29 August 2017, who then commenced early conciliation.

Conclusions

12. My conclusions are that this claim having been issued on 23 October 2017, and The last alleged act of discrimination is that of victimisation, which ended at the end of the period of suspension on the 3 May 2017. Three months from then was 2 August 2017. The claimant did not go to ACAS until 29 August 2017. The claim is therefore on the face of it out of time, regardless of whether or not one might say that there was a continuing act.

13. The question then arises whether it is just and equitable to extend time. I have regard to all the circumstances of the case and the relative prejudice to the parties of either extending or not extending time. Looking first of all to the Keeble checklist:

    13.1. The length and reason for delay; I find that the reason for the delay is a combination of the claimant's ill health and the failure by his trade union to pursue his claim on his behalf. The authorities are clear, that unlike in the case of unfair dismissal, (where the test is whether it was reasonably practicable to have brought the claim in time) a failure by one's advisors is not necessarily a bar to time being extended.

13.2. As to the effect on the cogency of evidence; undoubtedly the passage of time will have affected cogency of evidence, although that the matter has been investigated by the respondent close to the time of the first incident of alleged homophobic abuse in June and July 2016, may ameliorate that to some extent.

13.3. There is no suggestion that the respondent has in any way failed to co-operate in the provision of information.

13.4. The claimant has not acted promptly when he became aware of the facts which give rise to his case. As we have already explored, I find that the reasons for that are his ill health as well as the failings of his trade union. Once ACAS in fact issued him with an early conciliation certificate on 10 October 2017, he did issue these proceedings reasonably promptly, doing so on 23 October 2017.

13.5. The claimant did seek advice from his trade union.

14. The nature of the sexual orientation allegations against the claimant, particularly the earlier allegations in June and July 2016, are as I have already said, vile and the effect on his health if what he says is true, profound. In those circumstances, were I not to extend time it seems to me that there would be serious prejudice to the claimant. The victimisation claim is closely related to the sexual orientation claim, as the protected act relied on is in relation homophobic remarks. On the other hand, in respect of the claim of race discrimination, there is no pleaded fact that suggests that race had anything to do with matters about which the claimant complains.

15. In terms of prejudice to the respondent; if I do extend time it will be deprived of a statutory defence which Parliament has seen fit to put in place, albeit subject to the just and equitable extension of time caveat. If I were not to extend time, there may be said to have been a windfall on the part of the respondent, in not having had to deal with the alleged homophobic conduct by Mr Hawthorne, Ryan and Mr Barnes, of the nature described in the statement of case.

16. Having regard to the foregoing, I find that it is just and equitable to extend time in respect of the sexual orientation and victimisation claims and accordingly decline the application to strike out those claims on that basis.

17. However, the balance of prejudice is in favour of the respondent on the race claim, given its apparent lack of merit. I therefore strike out the race discrimination claims on the grounds that it is out of time and it is not just and equitable to extend time.

Strike Out or Deposit on Prospects of Success

Law

Strike Out

18. Employment Tribunals Rules of Procedure, rule 37 provides that:

> *(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—*
> *(a) that it is scandalous or vexatious or has no reasonable prospect of success;…*

19. It is the reasonable prospect of success aspect of that rule which concerns us. The appropriate approach in discrimination cases stems from the case of Anyanwu v Southbank Student Union 2001 ICR 391. In broad, general terms, that case was authority for the proposition that discrimination cases should be heard and not struck out. The theme set by the House of Lords in that case was followed in the whistle-blowing case of Ezsias v North Glamorgan NHS Trust 2007 CA ICR 1126..

20. In Morgan v Royal Mencap Society [2016] IRLR 428 the President of the EAT, Mrs Justice Simler, reminds us that the threshold is high, (paragraph 13). She acknowledges at paragraph 14 that there are cases where, if one takes the claimant's case at its highest, it cannot succeed on the legal basis on which it is advanced and in those circumstances, it will be appropriate to strike out. However, she says, where there are disputed facts, unless there are very strong reasons for concluding that the claimants view of the facts is unsustainable, a resolution of the conflict of facts is likely to be required.

21. In the case of ABN Amro Management Services (1) and Royal Bank of Scotland (2) v Mr Hogben 2009 UKEAT 026609 the then President, Mr Justice Underhill at paragraph 13 referred to the Ezsias *and* Anyanwu cases as not being controversial. He pointed out that in Anyanwu, Lord Hope said that *"in an appropriate case a claim for discrimination can and should be struck out if the tribunal can be satisfied it has no reasonable prospects of success"*.

Deposit Order

22. The Employment Tribunals' rules of procedure at Rule 39 provide as follows:

> *(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*
> *(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*
> *(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.*
> *(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be*

struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.
(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—
(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and
(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),
otherwise the deposit shall be refunded.
(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

23. In the case of Spring v First Capital East Limited UKEAT 0567/11 it was confirmed that the test for whether or not a Deposit Order should be made is different from that for a strike out; one does not adopt the Anyanwu approach. Spring affirmed an earlier authority of Jansen van Rensberg v Royal Borough of Kingston upon Thames EAT 00956/07; matters to be determined on considering whether to make a deposit order are not just legal matters but also factual matters. That can include a provisional assessment of credibility. The Tribunal has some substantial leeway, although of course there must be a proper basis for doubting the likelihood of the claimant being able to establish the facts essential to the claim. (See paragraphs 25 to 27 of van Rensberg).

24. There is more recent guidance from the present President of the EAT, Mrs Justice Simler, in the case of Hemdan v Ishmail and another UKEAT/0021/16. The President reviewed the legal principles to be applied when considering whether or not to make a Deposit Order. She said at paragraph 10,

"There can accordingly be little doubt in our collective minds that the purpose of a deposit order is to identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs ultimately if the claim fails."

At paragraph 12,

"The test for ordering payment of the deposit order by a party is that the party has little reasonable prospect of success in relation to a specific allegation, argument or response, in contrast to the test for a strike out which requires a tribunal to be satisfied that there is no reasonable prospect of success. The test, therefore, is less rigorous in that sense, but nevertheless there must be a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or the defence. The fact that a tribunal is required to give reasons for reaching such a conclusion serves to emphasis the fact that there must be such a proper basis."

She says at paragraph 13,

> *"The assessment of the likelihood of a party being able to establish facts essential to his or her case is a summary assessment intended to avoid cost and delay. …a mini-trial of the facts is to be avoided…"*
>
> *"Where there is a core factual conflict it should be properly resolved at a full Merits Hearing where evidence is heard and tested."*

Lastly, at paragraph 15,

> *"Once a tribunal concludes that a claim or allegation has little reasonable prospect of success, the making of a deposit order is a matter of discretion and does not follow automatically. It is a power to be exercised in accordance with the overriding objective, having regard to all of the circumstances of the particular case. That means that regard should be had for example, to the need for case management and for parties to focus on the real issues in the case. The extent to which costs are likely to be saved, and the case is likely to be allocated a fair share of limited tribunal resources, are also relevant factors."*

Discussion and Conclusions

25. I have already struck out the race discrimination claim, but go on to consider whether, had I decided otherwise, I would have struck it out as having no reasonable prospects of success. As I have explored with Mr Hermann today and referred to above, there is no reference in the claimant's pleaded case to anything which suggests that the matters he complains of are linked to his race. When considering striking out a discrimination claim, one should take the claimant's case at its highest. I do so, but as there is no reference to race in his pleaded case, I cannot see that it would have had any chance of succeeding at all. I would therefore have struck out the complaint of race discrimination on the grounds that it has no reasonable prospects of success.

26. In respect of the complaint of discrimination by reason of sexual orientation, the respondent rightly accepts that if I decided to extend time, this claim should be heard.

27. The complaint of victimisation is not quite so straight forward. The claimant was suspended on 28 April 2017. The grounds given for his suspension, he accepts, is that at the time he was said to not have a right to work in the United Kingdom. The claimant says the reason for his suspension was that he had raised a grievance. However, the suspension was 9 months after the grievance. The respondent says it knew that his visa was due to expire on 6 June 2017 and it had been told by the Government that the claimant's application to renew had been rejected. The claimant had delayed in giving permission for the respondent to contact the Home Office for further information until 2 May 2017. The Home Office then on 2 May 2017 did confirm that the claimant had the right to work in the United Kingdom, and that upon receiving that information, the respondent immediately lifted the suspension on 3 May 2017.

28. Now of course I do not know whether those facts are true or not. The claimant says that the respondent should have known that he had the right to work in the United Kingdom. The respondent will say they were told otherwise and

furthermore, would be committing a criminal offence if they continued to employ him when he had no such right. I think, taking the claimant's case at its highest, there is at least the potential to link the suspension with the earlier grievance, particularly if the tribunal were to find that the respondent had not been sufficiently robust in failing to uphold his complaint in respect of the homophobic remarks. I do not therefore feel that I can strike the victimisation claim out. Having said that, I have serious misgivings as to his prospects of success; the respondent's explanation for suspending the claimant is entirely plausible, these are events the employment tribunals know occur all too frequently these days, with employers having to act under the constraints of the threat of criminal sanctions. Further, there is the fact that the respondent says that it immediately lifted the suspension upon receipt of confirmation that the claimant had the right to work in the United Kingdom, which would strongly suggest that was the reason for the suspension and not the grievance he had raised 9 months earlier. I am therefore inclined to make a deposit order in respect of the victimisation claim.

29. I must have regard to the claimant's means and must not make an order which requires him to pay such a sum of money that means in effect, he is bared from proceeding. The idea is simply to warn him that if he does proceed and he fails, he likely to be ordered to pay the respondent's costs.

30. The claimant told me that his means were that he received gross pay of £2,246 per month, £1,680 net. He lives alone in rented accommodation. He has something like £15,000 worth of credit card debts, which he says he has accrued over the last couple of years because of his frequent absences from work. He says he has many debts to friends.

31. In the circumstances, I have decided to order the claimant to pay a deposit of £100 on condition of his continuing with his victimisation claim.

32. I emphasise, the effect of this is that if the claimant decides to pay £100 and pursue his victimisation claim and if he fails in that victimisation claim, then the respondent will be entitled to ask the Tribunal to order the claimant to pay its costs in respect of the victimisation claim. That is not limited to £100. It is whatever their costs might be as assessed at by the Tribunal, of which £100 will be but a contribution. The amount of course is likely to be a number of thousands of pounds.

33. To be absolutely clear what my thinking here is; the respondent says it suspended the claimant because it understood he did not have the right to work, as soon as it learned he did have the right to work, it reinstated him. That is entirely plausible. What is not plausible is the suggestion that actually, the real reason he was suspended was because he raised a grievance 9 months earlier.

CASE MANAGEMENT SUMMARY

The Issues

1. Having spent time today dealing with this case, it seems to me appropriate that I should take the opportunity to identify the issues for the final hearing. This is not an exercise I undertook in the presence of the parties, due to the shortness of time. However, after the event I decided that I should do so. If either party believes that I have in any way misrepresented their case as pleaded, they should make representations in writing, (copied to the other side) as to what amendments they say should be made to the list of issues.

Harassment related to sexual orientation

1.1 Did the respondent engage in conduct as follows:-

1.1.1 Mr Martin Hawthorne at the end of June 2016 aggressively confronting the claimant calling him a “cock licker, ass licker, gay and disgusting”, saying to him that he was going to make his life miserable and frustrating in order to make him resign and standing face to face with him, spitting in his face.

1.1.2 Mr Hawthorne during July 2016 sending a text message to the claimant stating that he will frustrate his life in order to get him out of the company because he did not want gay people working alongside him.

1.1.3 The following day approaching the claimant and saying to him, “Are you back again, so didn’t you get my message?”.

1.1.4 A few days later Mr Hawthorne sending a further text, “I was told that you were coming back to work?”.

1.1.5 An individual known to the claimant only as ‘Ryan’ in the beginning of September 2016, approaching the claimant and aggressively warning him to stop looking at him. The claimant says that this was an act of discrimination because Ryan is black Jamaican of whom, he says, a cultural trait is a dislike of gay people, of which this was a manifestation.

1.1.6 Ryan, a few days later, sending a threatening text to the claimant through a colleague named Thank God, informing the claimant that he should stop looking at him.

1.1.7 During October 2016, Mr Glenn Barnes, who is Jamaican also, says the claimant, manifesting the same cultural trait of a dislike of gay people, assigned to the claimant a different task which was not suitable to him because of a physical difficulty with his left arm which the claimant says, Mr Barnes did on purpose because he is gay, as a means of harassing him.

1.1.8 During December 2016, Mr Glenn Barnes and another colleague by the name of Bankura, standing behind the claimant and saying out loudly, “We don’t want gay people in this company”.

1.2 If so, was that conduct unwanted?

1.3 If so, did it relate to the protected characteristic of sexual orientation?

1.4 Did the conduct have the purpose or (taking into account the claimant’s perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

Direct discrimination because of sexual orientation

1.5 Did the respondent subject the claimant to the treatment listed above?

1.6 Was that treatment less favourable treatment, ie did the respondent treat the claimant as alleged less favourably than it treated or would have treated others (“comparators”) in not materially different circumstances? The claimant relies upon a hypothetical comparator.

1.7 If so, was this because of the claimant’s sexual orientation?

Victimisation

1.8 Did the claimant do a protected act? The claimant relies upon his grievance of 14 July 2016 in which he complained of the conduct of Mr Hawthorne.

1.9 If so, did the respondent suspend the claimant on 28 April 2017 because he had done the protected act? The respondent says that it suspended the claimant because the Home Office Employer Checking Service was unable to confirm that the claimant had a right to work in the United Kingdom.

Listing for hearing

2. I discussed with the parties what the appropriate time estimate for hearing this case would be. The claimant is calling four witnesses in addition to himself: Miss Abie Chirwa and Mr Kurt Reed who both witnessed Mr Hawthorne’s harassment; Thank God, (I do not know the gender of this person) who was the recipient of the text from Ryan, and Miss Vivet Bah, said to have witnessed Ryan’s behaviour towards the claimant.

3. The respondent is likely to call four witnesses, one with regard to the grievance, one with regard to suspension and then possibly the individuals against whom the allegations are made.

4. In estimating the time required for the hearing, I allow one and a half days for the claimant's evidence and witnesses, and one and a half days for the respondent's witnesses, one half a day for the Tribunals preliminary reading, two hours for closing submissions, one day for deliberation by the Tribunal and half a day for delivery of an oral judgment on liability. In view of the claimant's illness and his allegation that this is caused by the behaviour to which he was subjected, this is a case where a hearing as to liability only is appropriate. A remedy hearing will be arranged if the claimant succeeds.

5. Both parties are uncertain as to their witnesses' dates of availability, but given that the hearing is going to be in January 2019, hopefully this is sufficient notice so as to ensure that none of the witnesses make themselves unavailable. In the presence of the parties, I arranged to list the matter for 6 days on 14-18 and 21 January 2019.

Judicial mediation

6. Having explained judicial mediation, the claimant agreed that he would be interested in making use of that facility. Mr Harris indicated that the respondent had not been interested in judicial mediation, but in light of today's events he would like the opportunity to take instructions. The respondent is by 7 August 2018 to inform the Tribunal whether or not it would like to take part in judicial mediation.

Other matters

7. In discussion with and with the agreement of the parties' representatives, I made the following case management orders set out below.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

AMENDED GROUNDS OF RESISTANCE

1. The Respondent has leave to amend its Grounds of Resistance by no later than **7 August 2018** if so advised.

DISCLOSURE OF DOCUMENTS

2. On or before **28 August 2018** each party shall send to the other a list of the documents in their possession or control relevant to the issues in this case.

3. By the same date, the Claimant shall send to the Respondent a "schedule of loss", i.e. a written statement of what is claimed, including a breakdown of the sums concerned showing how they are calculated and the Claimant's list of documents should include any documents relevant to the schedule of loss.

4. If either party requests a copy of any document on the other party's list, that other party shall provide a clear photocopy within 7 days of the request.

BUNDLE OF DOCUMENTS

5. For the Hearing, the parties shall agree a bundle of documents limited to those which are relevant to the determination by the Tribunal of the issues in the case. The Respondent shall create the bundle.

6. On or before **18 September 2018** the Claimant shall notify the Respondent of the relevant documents to be included on behalf of the Claimant.

7. On or before **9 October 2018** the Respondent shall provide to the Claimant a clear, indexed, page-numbered copy of the bundle.

8. The Bundle is to be assembled in chronological order (save in respect of formal policies or procedures, which may be placed together) with each page numbered consecutively.

9. Copies may be double-sided provided they are readily legible. Copies of threads of emails are to be edited so that, as far as possible, each email is reproduced only once.

10. By 9.15 a.m. on the day, or first day, of the Hearing, the Respondent shall bring 4 copies to the Hearing (3 for the Tribunal and one for the witness table).

WITNESS STATEMENTS

11. On or before **30 October 2018** the parties shall exchange written witness statements (including one from a party who intends to give evidence). The witness statement should set out all of the evidence of the relevant facts, set out in chronological order, which that witness intends to put before the Tribunal. Such statements should consist of facts only and should not consist of argument, hypothesis or supposition.

    A failure to comply with this order may result in a witness not being permitted to give evidence because it has not been disclosed in a witness statement; or in an adjournment of the hearing and an appropriate order for costs caused by such adjournment.

12. The statement should be typed if possible and should be set out in short, numbered paragraphs. If reference is made to a document, it should include the relevant page number in the agreed bundle.

13. Each party shall bring 4 copies of any such statement <u>of each of their own witnesses</u> to the hearing.

HEARING

14. This matter has been listed for hearing at The Employment Tribunal, Cambridge County Court, 197 East Road, Cambridge, Cambridgeshire, CB1 1BA with a time

estimate of 6 days from the **14 to 18 and 21 January 2019** inclusive. This time estimate has been arrived at after discussion with the parties, to include the time needed for considering the oral and written evidence; the party's closing statements; the consideration and delivery of the fully reasoned Judgment of the Tribunal on liability only. The parties are expected to ensure that they prepare the case in such a way that it may be concluded within that time frame. The date of the hearing has been set on the basis of dates of availability provided by the parties and therefore any application for a postponement will only be granted in the most extenuating of circumstances.

Public access to employment tribunal decisions

The parties should note that all judgments and reasons for the judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The tribunal may also make a further order (an "unless order") providing that unless it 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 or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

____

Employment Judge Warren

Date: 31 July 2018

Sent to the parties on:

… 31.07.18 ………..………

For the Tribunal:

……………………………..