Case No: 3331148/2018

EMPLOYMENT TRIBUNALS

Claimant: **MR J ANNOOZ**

Respondents: **(1) CREATE RECRUITMENT SPECIALISTS LIMITED**
(2)SORCHA PIKE

Heard at: Watford **On: 23 - 26 September 2019**

Before: Employment Judge Skehan
Ms Boot
Ms Johnstone

Appearances
For the claimant: In person
For the respondents: Ms Moses, of Counsel

RESERVED JUDGMENT

1. The claimant's claim for direct race discrimination contrary to the Eqality Act 2010 against the respondents is unsuccessful and dismissed.

REASONS

1. The first respondent, referred to as 'Create' within this judgment is a specialist fashion recruitment agency. Create proposes and places candidates for technical and production roles within the fashion industry. The second respondent, referred to as Ms Pike within this judgment, is the co-founder and director of Create. The claimant is a Finnish national of Iraqi origin who approached Create and Ms Pike in particular with a view to obtaining work as a pattern cutter. Neither Ms Pike nor Create put the claimant forward for any roles. The claimant claims race discrimination and submitted a formal ET1 to the tribunal on 05/07/2018. The claim was defended and the respondent submitted their form ET3 and grounds of response on 24/08/2018.

2. The claimant's claim is brought under Section 55 of the Equality Act 2010 (EqA) that deals with employment service providers or recruitment consultants. It provides that:

(2)An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—

(a)as to the terms on which A provides the service to B;

(b)by not providing the service to B;

(c)by terminating the provision of the service to B;

(d)by subjecting B to any other detriment.

3. To establish a claim of direct discrimination, the claimant must show that he has been treated less favourably in some way than a real or hypothetical comparator. Section 23(1) of the EqA provides that there must be no material difference between the circumstances of the claimant and the comparator. The tribunal must ensure that it is comparing like with like, except for the protected characteristic being race or Iraqi origin in this case.

4. The burden of proof provisions in the EqA 2010 are set out in section 136(2) and (3) and states: "(2) If there are facts from which the court [or tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision." This is effectively a 2 stage approach: Stage 1: can the claimant show a prima facie case? If no, the claim fails. If yes, the burden shifts to the respondent. Stage 2: is the respondent's explanation sufficient to show that it did not discriminate?

5. The claimant's claims are subject to the limitation provisions of S123(1) of the EqA provides that a claim "may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. It is also the case that conduct extending over a period is to be treated as done at the end of the period. The tribunal is entitled to take into account anything that it deems to be relevant when considering whether or not it is just and equitable to extend the statutory limitation period *(Hutchinson v Westward Television Ltd [1977] IRLR 69)*. The tribunal's discretion is as wide as that of the civil courts under section 33 of the Limitation Act 1980 (LA 1980). Time limits are applied strictly in employment cases, and there is no presumption in favour of extending time. In fact, tribunals should not extend time unless the claimant convinces them that it is just and equitable to do so. The burden is on the claimant, and the exercise of discretion to extend time should be the exception, not the rule. This was followed by the Court of Appeal in *Department of Constitutional Affairs v Jones [2008] IRLR 128*. In the circumstances of this claim, the claimant approached ACAS on 21/06/2018. The early conciliation certificates against both respondents were issued on 22/06/2018 and his claim was submitted to the employment tribunal on 05/07/2018. Any act or omission which took place before 20/03/2018 is potentially out of time and the employment tribunal may not have jurisdiction to hear it.

The Facts

6. We heard evidence from the claimant, on his own behalf, who had the benefit of a tribunal appointed interpreter. We heard evidence from Ms Pike and Mr Costello on behalf of the respondents. The witnesses gave evidence under oath or affirmation. Their witness statements were adopted and accepted as

evidence in chief. The witnesses were permitted to adduce further evidence in chief and were cross examined. We were provided with an employment tribunal bundle in excess of 300 pages and any page references within this judgment are references to that bundle unless otherwise stated. As is not unusual in these cases, the parties have referred to a wider range of issues than we deal with in our findings. Where we fail to deal with any issue raised by a party or deal with it in the detail in which we heard, it is not an oversight or omission but reflects the extent to which that point was of assistance. We only set out our principle findings of fact and we make findings of fact on the balance of probability, taking into account all witness evidence and considering its consistency or otherwise considered alongside the contemporaneous documents.

7. On 25/01/2018 the claimant telephoned Create to discuss a potential role he had seen advertised. Ms Pike answered the phone. The claimant told Ms Pike that he was a pattern cutter, was in the area and had a CV with him. He asked to speak 'face-to-face'. They agreed to meet at short notice and a meeting was convened for about half an hour later. Ms Pike was in the process of preparing for London Fashion Week (LFW) and had potential pattern cutter vacancies that required candidates.

8. The claimant attended Create's offices met with Ms Pike and her. It is common ground between the parties that the impromptu meeting lasted approximately 2 ½ hours. The claimant provided the employment tribunal with little information about this meeting. He said that when Ms Pike heard that the claimant was from Iraq, everything in the interview changed, and Ms Pike asked the claimant if he made garments for the Iraqi army. Within the document attached to the claimant's original ET1, he states 'when [Ms Pike] saw me she immediately asked me where I was from. I explained that I am originally from Iraq. [Ms Pike] then had sight of my CV which showed that I have worked in various locations including Iraq, Jordan and Finland. After this [Ms Pike and her colleague] started to look at each other and their body language changed.'

9. Ms Pike told us that the claimant, contrary to what he had said on the initial call and his claim form, had not brought a CV with him to their initial meeting. The claimant accepted during the course of hearing that he had not brought a CV with him to this initial meeting. Ms Pike says that the claimant talked at length about himself, his experience and his work. Ms Pike found it difficult to take control of the conversation and impose her usual interview process. Ms Pike says she had to speak slightly louder for the claimant to listen to her.

10. Ms Pike told us that she had a blank registration form on the table at the start of the meeting, as was her usual practice with all initial candidate interviews. The registration form has to be completed for all candidates and includes basic information such as name, contact details, references, nationality and other regulatory questions such as the candidate's right to work in the UK. Ms Pike said it was difficult to get the claimant to focus on completing the form. Ms Pike went through the registration form with the claimant. The claimant told Ms Pike that he was Finnish and originally from Iraq. The claimant's identification confirms that he was born in Baghdad. The claimant told Ms Pike that he had moved from Baghdad to Jordan, but he was not allowed to work in Jordan and kept moving from place to place. Ms Pike said that the claimant's background sounded tough and she felt sorry for him. It appeared to Ms Pike that the

claimant had gone through a lot and he wanted only to make a living. The completed registration form is contained within the bundle. Ms Pike denies that her attitude changed in any way when she learned the claimant was from born in Baghdad. If anything, Ms Pike says she was more empathetic. There was a question on the registration form relating to unspent convictions. The claimant did not understand this question and Ms Pike tried to explain it to him. She asked the claimant whether he had committed any crimes or was convicted by a court for example. Ms Pike denies treating the claimant 'as a suspect', and told us that she was trying to help the claimant to understand what 'unspent convictions' meant. Following her explanation, the claimant appeared to understand the question and ticked the box 'no' to confirm that he had no unspent convictions. Ms Pike explained that this is a standard question on the registration form applicable to all candidates regardless of nationality. Ms Pike says that her candidates are from all over the world and that the claimant's or any candidate's birthplace or ethnic origin has no bearing on her attitude or treatment of that person.

11. Ms Pike said that the registration form was filled in at the start of the interview and her meeting with the claimant continued at least another 2 hours following the discussions around the registration form. During this time Ms Pike assisted the claimant with identifying and putting together the information needed for his CV and attempted to work out his experience. Ms Pike says that she spent considerable time trying to help the claimant. Ms Pike explained that the lack of CV was not fatal to a candidate's prospects. Many candidates may not have a CV for valid reasons, for example a seamstress working for one company for many years or an individual who had only secured work through word-of-mouth, may have had no previous need for a CV. Ms Pike is familiar with assisting candidates and preparing their CV. In any event she needed to go through the claimant's experience in detail to assess his suitability for her clients.

12. Ms Pike said she spent considerable time with the claimant trying to extrapolate basic information being studies, previous roles, organisations he had worked for, where he had worked, the dates involved, what retail brands or designers he had experience of etc. The claimant responded in general terms saying 'I do everything, cutting, sewing and CAD'. His comments were very broad. Ms Pike identified that the claimant had not any experience with any company she recognised or any identifiable high street or high-end fashion experience. In trying to extrapolate the above information Ms Pike said that she asked questions such as who were you working with? what kind of companies? What kind of design and garments? Workwear? Overalls? Uniforms?. Ms Pike denies that she asked the claimant if he had designed clothes for the Army in Baghdad. She comments that if he had done so, it would have been good as it would count as technical high quality tailoring experience and any company that won such a tender for uniform design would be considered high-end and impressive on the claimant's CV.

13. Ms Pike told the tribunal that during the meeting she discussed potential roles available with the claimant. The claimant was interested in senior pattern cutter roles with salary expectations of up to £40,000. Ms Pike considered the claimant unsuitable for these roles. Ms Pike considered £40,000 to be a high salary bracket for senior roles that attracted candidates with top experience ie candidates who had previously worked in similar organisations such as high-end luxury fashion brands or recognisable high-street supply chains. The claimant did not have this experience. Ms Pike said that in her experience, in general, salaries for pattern cutters without top experience are lower than

£30,000. Ms Pike considered that if the claimant was willing to apply for a more junior roles, starting in a lower salary bracket, he would have much better prospects of success. Ms Pike said that the claimant was not interested in more junior roles. No evidence was put forward by the claimant to suggest that he applied for more junior roles or roles within a lower salary bracket than £30,000-£40,000.

14. Ms Pike says she brought the meeting to an end after approximately 2 ½ hours. She told the claimant that she had enough information from him about his experience. She also told the claimant that she would put a CV together for him if and when she got a minute, but warned him that she was busy with LFW. Ms Pike said that the claimant left her office on good terms. Ms Pike told us that she took notes during the meeting. She did not keep them and these were not made available to the employment tribunal.

15. Ms Pike told us that following the initial meeting with the claimant she formed the opinion that he did not have any experience with high-end LFW or high street clients. From the claimant's experience she was able to evaluate during their initial meeting, Ms Pike considered that the claimant would not be a suitable candidate for the roles in which he was interested. Ms Pike explained that the normal registration process for candidates was that they completed the initial registration form and thereafter their details were logged on Create's system. Candidates actively pursuing roles were marked as 'active'. The claimant's details were registered on Create's candidate registration system. However, following the claimant's initial interview with Ms Pike, he was marked as 'inactive' on their system. Ms Pike told us that candidates were marked as 'inactive' when they were in a job, for some reason did not want Create to search for a job or were considered unsuitable for roles by Create. Ms Pike said that the claimant was marked as 'inactive' because following their initial meeting she did not consider the claimant's experience to be suitable for the senior roles in which he was interested with her clients. Ms Pike said she kept an open mind and the claimant may be suitable for junior roles.

16. Following the claimant's meeting with Ms Pike, the claimant telephoned her on more than one occasion asking if she had completed his CV. Ms Pike had agreed during the meeting to assist the claimant with his CV however she was busy and Ms Pike had told the claimant that she would let him know when she had drafted his CV. Ms Pike said that although the claimant was marked 'inactive', it was her intention to help him with his CV as she would have tried to find a junior role from for him. She also felt that once the claimant had a CV, he would have the opportunity to see for himself what the job market was like on different job boards. The claimant was not told that he had been marked 'inactive' on Create's system. Ms Pike said she knew that the claimant would not get senior roles he wanted as his experience was deficient and she was unwilling to put him forward to her clients when better candidates were available. It was Ms Pike's opinion that the only way the claimant would be likely to obtain that fashion house experience was to start at a lower-level role and work his way up. Ms Pike considered that there were hundreds of candidates who would take a job at any level to get a foot in the door of one of the elite fashion houses. Where individuals had talent or experience from sources that were not initially recognised, if they successfully secured a junior position, it was usually not long before their talent was spotted. Those individuals tended to move up the ranks quickly. The claimant was not willing

to consider this route. Ms Pike told us that the claimant was not interested in junior roles. The claimant did not suggest, nor was there any documentation to suggest that the claimant applied for junior roles.

17. Approximately a week after their meeting, the claimant contacted Ms Pike to say that he had paid somebody else to complete his CV for him. Ms Pike asked for the claimant to send through his CV. Ms Pike said that it was a weight off her mind not having to complete the claimant's CV as she knew the claimant was waiting for her to draft it but she was busy with LFW.

18. On 29/01/2018 the claimant sent certificates including confirmation that he had completed a CAD course and a three-day course on pattern cutting and grading to Ms Pike. Ms Pike said that this was a qualification held by the claimant but was not at the level that she had hoped to see. Ms Pike said that she was unable to identify within the claimant's work experience, any solid experience of using specific IT programs such as Gerber and Lectra. During the course of cross examination, the claimant was asked about his experience. He provided details of the courses he attended in Gerber and Lectra. The claimant told us that he had experience of using the technology in Ompelimo logo, this was his own freelance studio in Helsinki and in particular with his previous employer Raimo Kokko. His extensive experience spans back to 2006, using older versions of the technology and he updated his knowledge as new versions were introduced. Raimo Kokko was not mentioned on the first CV produced by the claimant. The claimant refered to the information he provided to the respondent within his portfolio under cover of his email dated 16/03/2018. The claimant says that this shows his experience in Finland and previously using both Lectra and Gerber. The claimant's portfolio consists of screenshots of the software being used, that the claimant says shows his proficiency with the IT. The claimant also submitted photographs of him taken in a work environment. The claimant told us that these photographs were taken in 2007, 2010 and also in 2012 when the claimant was working with a designer for high-end party clothes including clothes for Jordanian or other Royal families. The claimant says that he had proven experience over 21 years and it is simply not true that he had insufficient experience for the positions he applied for.

19. It was common ground between the parties that the claimant applied for various roles through the respondents and that the respondents did not put the claimant forward for any of these roles.

20. Create advertised available roles by placing them on third-party Internet based job boards. When an applicant applied for the role through the Internet job board, this generated an email to the respondent. The claimant said that he applied for over 20 roles with create. The tribunal was referred to 8 emails during February and March 2018 relating to jobs applied for by the claimant. The employment tribunal enquired whether or not any further information such as job specification was available within the bundle relating to these roles. We were told that the respondent only has the emails generated to it by the third-party job board and did not have the full job specifications as they had been deleted by the third-party Internet based job board. We do not have the salary details or FTE equivalent salary details offered for any of the roles from which the claimant supplied, however the email acknowledgements within the bundle contain the 'current salary' of the job applicant. The claimant told us that he aligned his 'current salary' within each application with the salary on offer. The parties appear to be in agreement that the salary bands of the roles applied for by the claimant are all within £30,000-£40,000 per annum.

21. Ms Pike said that the claimant sent his CV with one of his first applications for a position advertised by Create. The first version of the claimant's CV is contained within the bundle. This role is for a Lectra pattern cutter. Ms Pike addressed each one of the available emails during the course of her oral evidence referring to roles applied for by the claimant. Ms Pike noted that every role applied for by the claimant was in her opinion, a senior role as they attracted salaries between £30,000 and £40,000 per annum. Ms Pike told us that her clients would expect to see candidates for these roles with experience within their market being either luxury brands or high street suppliers. Ms Pike considered that the claimant did not have any such experience and was therefore an unsuitable candidate for these positions. The claimant told us that he did not consider that specific experience was required within the job specifications. In any event, the claimant considered that his experience more than matched the requirements for these jobs.

22. It was common ground between the parties that Ms Pike and the claimant spoke on various occasions following their initial meeting. The claimant regularly telephoned Ms Pike to discuss potential employment opportunities. Ms Pike told us that she found the claimant difficult to speak to on the telephone and he tended to speak over her. Ms Pike says that when speaking to the claimant she had to raise her voice to get the claimant to listen to her and this was because of the claimant's attitude and behaviour and unrelated to his race nationality or ethnic origin.

23. The claimant alleged that during a telephone conversation with Ms Pike, that Ms Pike told him that she could not send his CV to a designer and said 'from Iran, nobody will look to your CV and they will throw it away'. Ms Pike denies making this comment. Ms Pike told us that she may well have said something on the phone to the claimant along the lines of an explanation that her clients sought candidates with UK high street experience, and this was true. We note reference to the above allegation made elsewhere in the documentation, in particular within the document attached to the initial ET1 the claimant states "[Ms Pike] said to me, 'nobody will trust in your CV because you are from Iraq. [Ms Pike] also said that if she sent my CV to anyone they will throw it away because I am from Iraq. We also note the reference to this incident within the claimant's grievance letter of 03/04/2018 set out below.

24. On 03/04/2018 the claimant submitted a complaint to the respondent. This letter states that the claimant has been discriminated against. He says that his CV and portfolio [the print offs and pictures referred to above] prove over 20 years' experience and the respondents have not treated him like other candidates. The claimant complains 'when I ask you, you told me your clients' will not even take a look to CV because my Iran experiences and I haven't been in Iran, you tried your best in direct and indirect ways to make [me] feel I'm not successful pattern cutter.' The claimant sets out his experience and the fact that the respondent continues to advertise for candidates. The claimant alleges direct discrimination. Ms Pike told me that on receipt of this grievance letter she sought advice. The claimant was not an employee and the ACAS code did not apply and Create did not respond to this complaint. Ms Pike said that there is no complaints procedure for candidates in existence.

25. The claimant continually telephoned Ms Pike. Ms Pike told as that it got to the point where she felt she could not escape the claimant's calls. Ms Pike says the claimant became more aggressive and she began to feel harassed in the office. Ms Pike tried to be polite to the claimant, but she was busy and had to cut the calls short. She would try to hang up quickly. Ms Pike considered the claimant to be aggressive in his approach and was worried about the claimant's aggressive reactions and confrontations, which got them nowhere. Miss Pike says that she avoided the claimant where possible telling the receptionist to take a message.

26. The claimant says on his CV and also within his letter of complaint dated 03/04/2018 that he has fluent English. The tribunal was referred to later correspondence between the claimant and Ms Pike. In September 2018 the claimant sought to engage Create to source seamstresses for his sample studio business. This instruction did not proceed.

27. We were provided with a CV for 'Ms RR' who had been placed by the respondent within the luxury brand Roksanda. This CV experience includes a degree in fashion design in 2003, experience with the Arcadia group (Topshop Topman), previous experience within Reiss, Jigsaw, Nicole Ferrari, Wallis, Roland Mouret, Erdem, JW Anderson, Whistles. The claimant claims that Ms RR is a comparator who was not subject to less favourable treatment.

28. We were referred to email correspondence from the HR consultant at Pentex Limited, a client of Create. This email asks Create to block the claimant. By way of background apparent from the email trail, the claimant had applied for a trial day with Pentex. He was unsuccessful in his application and the response sent to the claimant from Pentext reads, '… Unfortunately you have not been selected to progress further as we have candidates with more experience to our product range and customers'. The claimant replied, 'there is no candidate's who have more experience of mine, I have been working in FASHION industry over 20 years, also it is not possible to know what is the candidate experience without TRIAL day to see how use the software and other skills, you speak with professional, you could say the truth perhaps because of my race you didn't interview me RACIST.'

29. We heard from Mr Costello who was a statutory director and co-founder of Create, alongside Ms Pike. Mr Costello is also involved in a separate recruitment consultancy called Four Seasons Recruitment Ltd (FSRL). The claimant also contacted FSRL in respect of potential vacancies. FSRL had declined to register the claimant and not put the claimant forward for vacancies as it did not consider the claimant's experience to be sufficient for its clients. The claimant made various allegations of discrimination against FSRL and commenced early conciliation through ACAS although that claim did not proceed further. Mr Costello investigated the claimant's allegations against FSRL. The claimant had been informed that FSRL only dealt with candidates where FSRL considered the candidate's experience matches the client's criteria and expectations. This was not the case with the claimant. Mr Costello received various complaints from members of staff, as detailed within the bundle, who spoke to the claimant on the telephone. They complained that the claimant had made unsubstantiated allegations of discrimination, was aggressive and shouted, they considered the claimant's behaviour to be bordering on harassment.

30. The respondent produced various additional documents within the bundle detailing previous placements made by the respondent in respect of candidates from a wide range of nationalities.

Deliberations

31. As a general point, we note that the claimant's interactions with the respondent were in English. English is the claimant's second if not third language. The claimant had the benefit of a tribunal appointed interpreter during the course of the hearing. There were occasions during the hearing when the claimant became frustrated with using the tribunal appointed interpreter and requested to speak English directly to the tribunal. The employment tribunal had difficulty understanding the claimant's English and requested that he use the interpreter to avoid any possible misunderstanding. While the claimant claims to be fluent in English, the employment tribunal considered the spoken English used by the claimant and written documentation put forward by the claimant to be difficult to understand. The tribunal considered that the claimant did not speak or write English fluently. This is not intended as a criticism of the claimant. However, there is an obvious capacity for miscommunication and misunderstanding on the claimant's part when communicating through English directly without the assistance of an interpreter.

32. At the outset of the hearing we revisited the list of issues agreed between the parties with Employment Judge Heal at the hearing on 29/11/2018. We look at each issue in turn. As this is a claim for direct discrimination we must also identify the relevant comparator or the relevant hypothetical comparator and we address the comparator in respect of each allegation separately below.

33. *On 25 January 2018 at an interview with Ms Pike, when Ms Pike understood that the claimant had been born in Baghdad, her attitude to the claimant changed in that she started to ask if the claimant had committed crimes and she treated him like 'a suspect'.*
    It is common ground that the interview occurred on 25/01/2018. On the balance of probability, we conclude that: Ms Pike had Create's registration form in front of her during the interview as claimed. This included the standard questions in respect of nationality and unspent convictions. Early in the meeting, the claimant confirmed his nationality as Finnish and that he was born in Baghdad. The claimant did not understand the reference to 'unspent convictions' and Ms Pike explained what it meant. The meeting continued for 2 hours after these topics had been discussed. Ms Pike spent considerable time trying to understand the claimant's past experience. Ms Pike tried to assist the claimant and agreed to produce a first draft of the claimant's CV. There is no evidence to support the allegation that Ms Pike's attitude towards the claimant changed once she realised he had been born in Baghdad or that she treated him as a suspect following this time. The length of the subsequent discussion and Ms Pike's willingness to assist with the claimant's CV, lead us to prefer Ms Pike's evidence. Further, claimant did not make any complaint in respect of his initial meeting with Ms Pike in his grievance letter of 03/04/2018. The claimant has not shown on the balance of probability that he was treated like 'a suspect'. We conclude that the claimant has shown on the balance of probability that *on 25 January 2018 at an interview with Ms Pike, when Ms Pike understood that the claimant had been born in Baghdad, she asked if the claimant had committed crimes.*

34. In examining this allegation we have been unable to identify an actual comparator and considered the hypothetical comparator. In this case the material circumstances of the comparator would be a job applicant who attended the respondent's premises without a CV, was asked to fill in the respondent's candidate form and who did not understand the term 'unspent convictions'. We conclude that the hypothetical comparator would be asked to complete the nationality and immediately following that, the unspent convictions part of the registration form. When any comparator would query the meaning of 'unspent convictions', it would be explained to him by reference to past criminal convictions and by way of explanation he could be asked if he had committed crimes.

35. We examined the two-stage burden of proof in discrimination claims. In the circumstances Ms Pike asked the claimant's about his nationality and closely followed that question with one about potential criminality. Taking the claimant's case at its highest it is possible that these two isolated facts amount to a prima facie a case of discrimination. However, when turning to the respondent's evidence, the respondent has shown on the balance of probability that these questions reflect its standard registration form, We find that, while there was a discussion in respect of previous criminal convictions with the claimant during this initial interview, there is a clear and reasonable explanation for this topic of conversation that has nothing to do with the claimant's nationality or ethnic origin. When taking the entirety of the evidence into account we conclude that the respondent has shown a clear non-discriminatory reason for the conduct.

36. *Ms Pike asked if the claimant with designing clothes for the army in Baghdad.* Ms Pike denies making this comment but considers it likely that she mentioned uniforms to the claimant as that would be considered relevant experience. It is clear from viewing the evidence relating to the meeting that Ms Pike found it difficult to extrapolate relevant information from the claimant. She asked questions relating to his experience and we find on the balance of probability that in discussing uniforms, she used a gist of words along the lines of '*designing clothes for the army in Baghdad'.* Taking the claimant's claim at its highest, he was asked about his nationality at the outset and thereafter reference was made to 'the Army in Baghdad'. Although not expressed by the claimant in such terms, the employment tribunal consider the potential implication is that the reference to army uniform implies some negative connection with war or conflict within Iraq and by association the claimant. In the circumstances, we conclude that again taking the claimant's claim at its highest, the claimant can meet the first stage of the burden of proof in identifying a prima facie case of discrimination. We then turn to the respondent's evidence. Ms Pike has shown on the balance of probability that previous experience with uniforms would be a positive addition to the claimant's experience and assist the claimant in securing a position and something that may be legitimately asked for the benefit of the candidate, particularly one who had difficulty identifying relevant past experience. Ms Pike has shown on the balance of probability that any comment relating to uniforms, army or otherwise or designing clothes for the army in Baghdad or while in Bagdad related to her legitimate queries on uniform experience. Ms Pike's references to uniforms, and by extension clothes for the Army in Baghdad, related solely to her task in identifying any potential relevant experience on the claimant's part that could assist the claimant with securing a position. We conclude that the respondent has shown on the balance of probability that the reason for discussion of uniform of any kind and in particular the reference to designing clothes for the

Army in Baghdad was for non-discriminatory reasons. The respondents have shown that they did not discriminate against the claimant.

37. *The respondent did not put the claimant forward or submit a CV and job vacancy.*

It is common ground between the parties that the respondents did not put forward the claimant for any vacancies within the respondent's clients. We accept on the balance of probabilities that:

37.1. Ms Pike is an experienced recruitment consultant within the fashion industry. Her clients consist of high-end luxury brands and high street retailers.

37.2. The industry is highly competitive.

37.3. Roles for pattern cutters that are advertised with salaries of £30,000+ are reasonably considered as senior roles. Suitable candidates for senior roles will invariably have some previous recognisable brand name experience be it within luxury brands or high street retailer.

37.4. It is commonplace for talented individuals, who do not have recognisable brand experience or sufficient experience to take junior positions, in the hope that their talent will be recognised and they would quickly rise through the ranks.

37.5. The claimant did not wish to consider junior roles and was only interested in senior roles.

37.6. While we make no negative comment in relation to the claimant's ability, we conclude that the claimant had not been able to articulate or convey to Ms Pike sufficient detail of his past experience to meet her requirements for a senior pattern cutter. We are primarily concerned with the information available to Ms Pike at the time of the alleged discrimination. However, in assessing this information we note that the claimant referred to his past experience at length during the course of the hearing. The Claimant took the tribunal through his portfolio in detail. The tribunal found the claimant's evidence in respect of his past experience to be vague. The employment tribunal was not, from the claimant's evidence, able to identify any relevant past experience with recognisable UK high street names or luxury brands. While the claimant may have had experience in designing clothes for the Jordanian or other Royal families, Ms Pike was not familiar with any brands/designers/companies mentioned and reasonably did not believe that her clients would be either. When providing evidence relating to his past experiences with using technology, the claimant's responses were made in general terms. When the claimant referred to experience with a specific past employer, Raimo Kokko, it was noted that this employer was not listed within his initial CV submitted to the claimant. This was not a company or designer known to the respondents. The impression given by the claimant directly to the tribunal in respect of his experience is consistent with Ms Pike's evidence that the claimant gave general broad descriptions of his previous experience that was lacking in detail.

37.7. The claimant's portfolio, consisting of screenshot print offs and pictures of the claimant in a workplace as described above, some dating back quite some time, were of no reasonable assistance to Ms Pike in ascertaining the claimant's past experience. On a very basic level, the screenshots and/or the photos within the claimant's portfolio do not demonstrate any experience on the claimant's part. Ms Pike spent 2 hours discussing the claimant's past experience with him. While the claimant

appeared to have knowledge of use of software such as Gerber and had completed courses as he has claimed, the claimant had not articulated or communicated identifiable prior experience where this technology was used in the workplace to Ms Pike either during their initial meeting or at any time thereafter.

37.8. Ms Pike reasonably concluded following her initial meeting with the claimant that the claimant did not have identifiable luxury brand or high street experience or identifiable experience of working with the relevant software that would be required by her clients when recruiting a senior pattern cutter. Ms Pike has reasonably concluded that the claimant's experience was not sufficient to have any reasonable prospect of securing the roles in which he was interested with her clients. Taking the above into account, we conclude that the claimant was marked as 'inactive' and not put forward by the respondent for any position because the respondent reasonably considered his experience to be insufficient during for the senior jobs in which he was interested. This was entirely unconnected to the claimant's race or ethnic origin.

38. We are unable to identify a real comparator. We note the comparator referred to by the claimant as 'RR' mentioned above is of New Zealand origin. We have seen Rebecca's CV and note a number of instantly recognisable names thereon. We conclude that Rebecca circumstances are materially different from the claimant's and she is not an appropriate comparator. We heard no evidence from either party in relation to the other comparator referred to within the case management summary i.e. a woman (whose name the claimant does not recall) of European origin from the Czech Republic. We therefore consider the hypothetical comparator.

39. The circumstances of the hypothetical comparator in our opinion are a potential candidate who: expressed their past experience in a general way and was unable to identify any previous experience with a recognised high street name or luxury brand. This candidate would have qualifications equivalent to those of the claimant, but as in the claimant's case would be unable to identify past work experience where technology was used, other than on a general level. The hypothetical comparator would have produced a portfolio similar to that produced by the claimant. Taking all of the above circumstances into account we conclude that Ms Pike's conclusion that the comparator's experience would be insufficient to have any reasonable prospect of securing a senior role as a pattern cutter with her clients and the comparator would not be put forward for senior roles by Ms Pike. The claimant has not shown a prima facie case of race discrimination in the circumstances. If we are wrong, and the claimant has shown a prima facie case of race discrimination, we turn to examine the respondent's evidence. We conclude that the respondent has shown a non-discriminatory reason for the treatment afforded to the claimant i.e. its reasonable perception of the claimant's lack of the required experience.

40. <u>At least twice in the March 2018 Ms Pike said to the claimant this job is not for you</u>

Ms Pike accepts that she informed the claimant at least twice that job opportunities in which he was interested were 'not for him'. We repeat our findings in respect of the above allegation and conclude for the same reasons as set out above that this does not amount to direct race discrimination.

41. *In about the end of February or beginning of March 2018 Ms Pike said - I can't forward your CV to them because how can I send them a CV from someone who is from Iran (Ms Pike said Iran although the claimant is from Iraq).*
Ms Pike also said if the designer was to see a CV from someone on Iraq they will throw it away because what is Iraq it is nothing- and she hung up.
It was unclear to the tribunal whether the above allegations were said to have happened together or separately. We consider them both together and separately. Following her initial meeting with the claimant, Ms Pike considered the claimant's experience insufficient for the roles to which he applied. At no time was this clearly communicated to the claimant. The claimant telephoned Ms Pike on regular occasions. In light of Ms Pike's opinion of the claimant's experience and the claimant's obvious frustration in failing to secure a position, we consider it likely that the telephone conversations may have been strained. Ms Pike accepts that she is likely to have told the claimant that her clients would expect to see evidence of recognisable multinational or UK brands. We consider that in explaining this Ms Pike is likely to have explained that Iraqi experience if unknown to or unrecognised by her clients would not be considered sufficient. We note that the claimant places great emphasis on the alleged mistake by Ms Pike between Iraq and Iran. While we cannot see any potential discrimination claim arising from such a mistake, it does lead us conclude on the balance of probability that there was discussion relating to the perceived usefulness of the claimant's experience in Iraq/Iran. We consider that the claimant's lack of ability in English is likely to have contributed to this allegation. We note the different ways in which this allegation has been expressed by the claimant as set out above. There is, in our view, a vast difference between the comment relating to a deficiency in the claimant's experience obtained in Iraq (as lacking in London Fashion Week Luxury or recognisable high street brands) as opposed to a deficiency in the claimant as a candidate because he is from Iraq. We consider it relevant that when the claimant mentioned this within his initial grievance he said 'you told me your clients' will not even take a look to CV because of my Iran experiences'. We conclude on the balance of probability that the claimant was told by Ms Pike that the claimant's previous experience in Iraq was not with a brand recognisable to her clients and would not be sufficient to secure the claimant the roles in which he was interested. We conclude on the balance of probability that Ms Pike got Iran and Iraq muddled when speaking to the claimant about his past experience.

42. We are unable to identify a real comparator in the circumstances and consider the hypothetical comparator. The hypothetical comparator in these circumstances would also have experience with previous employers or brands that were not known by Ms Pike and not likely to be recognised by her clients. In conclusion, when we examine these comments, we consider that the claimant has not shown a prima facie case of discrimination. In the event that we are wrong, we turn to look at the respondent's evidence. In the circumstances we conclude that the respondent has shown on the balance of probability that its comments in relation to the claimant's experience in Iraq related to an absence of brand names recognisable to Ms Pike. They had no connection to the claimant's nationality or ethnic origin and cannot constitute direct discrimination on the grounds of race. While Ms Pike made a mistake in mentioning Iran rather than Iraq, we, consider this to be an error on Ms Pike's part, we are unable to identify any less favourable treatment arising from this error. We consider any comparator would equally be at risk of such a lapse, for example Australia for New Zealand or Scotland for Northern Ireland.

43. For the sake of completeness, we also examine the issue of limitation. The above complaints arise from a meeting on 25/01/2018 and events prior to 20/03/2018. The claimant did not contacted ACAS until 21/06/2018. The actual employment tribunal claim was not submitted until 05/07/2018. There is no reason given by the claimant for the delay. As set out above the employment tribunal has jurisdiction to hear discrimination complaints where they have been submitted beyond the primary limitation period and it is just and equitable to do so. Time limits are applied strictly in employment cases, and there is no presumption in favour of extending time. It appears to the tribunal that the claimant at the very least by the time of his grievance on 03/04/2018 was alleging race discrimination. The claimant has not provided any information that could reasonably convince this tribunal that it is just and equitable to extend time in the circumstances. We therefore conclude that these claims have been brought outside the statutory time limit, it is not just and equitable to extend that time limit and the employment tribunal has, in any event, no jurisdiction to consider the above claims.

44. *The claimant called Ms Pike again a couple of times each week from the interview in January to the end of March 2018. Ms Pike would speak to him and she would raise her voice; she would be angry with the claimant and she would hang up. she would tell the claimant that she did not feel he was a professional person.*

    It is common ground between the parties that the claimant made a large number of calls to Ms Pike following their initial meeting. Ms Pike's opinion of the claimant's experience and the likelihood of her placing the claimant within roles for her client remained unchanged. These were clearly unwelcome calls for Ms Pike. Ms Pike described the claimant as aggressive in his approach. We have heard through Mr Costello that other employees of FSRL found the claimant to be aggressive in his approach. The claimant considered that he has in excess of 20 years' experience and could not understand why respondent was unwilling to put him forward for positions. We conclude on the balance of probabilities that the claimant was persistent and when not receiving the information he desired, loud and aggressive in his approach. Ms Pike would raise her voice with the claimant and end the call before the claimant was ready to do so. Ms Pike's evidence that she considered the claimant's approach to be unreasonable, aggressive and harassing. Ms Pike did not consider the claimant to be professional. We conclude on the balance of probabilities that Ms Pike told the claimant her thoughts, conveying the sentiment that she did not feel the claimant was a professional person.

45. We are unable to identify any real comparator in respect of this claim. When considering the hypothetical comparator we are considering a candidate, not of Iraqi origin, whose circumstances include that he is reasonably considered by the respondent to be unsuitable for positions for which he is applying and contacting Ms Pike at least twice a week for a period of approximately two months and who is loud and aggressive in his approach. We conclude that, taking the evidence as a whole, a hypothetical comparator is likely to have been treated in a similar fashion to the claimant in that Ms Pike is likely to raise her voice, she would be angry with the comparator she would hang up and convey to the comparator that Ms Pike did not consider him a professional person. In the circumstances we conclude that the claimant is unable to show a prima facie case of discrimination. If we are wrong, we turn to examine the respondent's evidence. We conclude that the respondents have shown on the balance of probability that the reason for treating the claimant as set out above

was related to their reasonable understanding of the claimant's past experience and the claimant's loud and aggressive approach during his telephone calls with Ms Pike.

From April to October 2018 the claimant called the respondent about once per fortnight, but receptionist would say that Ms Pike was unavailable. Receptionist would take message but no one called claimant back.

46. It is accepted by the respondents that the claimant continued to contact Ms Pike but was told that Ms Pike was not available and Ms Pike did not return the claimant's calls. We refer to our reasoning in relation to the above allegation and conclude that claimant is unable to show a prima face a case of discrimination in the circumstances. However if we are wrong, we consider that the respondent has shown on the balance of probability that the reason for Ms Pike's treatment of the claimant was due to Ms Pike's reasonable perception of the claimant's experience and the claimant subsequent persistent, loud and aggressive behaviour.

47. *The respondent failed to deal with the claimant's grievance.*
It is accepted that the respondents failed to deal with the claimant's grievance or reply to it in any way. We are unable to identify any actual comparator and use a hypothetical comparator in the circumstances. The material circumstances of the hypothetical comparator in the circumstances include the fact that the hypothetical comparator is not an employee and the ACAS code of practice relating to grievances does not apply to the hypothetical comparator. In considering the entirety of the evidence relating to this allegation we conclude that the claimant is unable to show any prima facie case of discrimination. Even if we are wrong, turning to the respondent's evidence, we find on the balance of probability that the reason why the respondent failed to respond to the claimant's grievance was because the ACAS code relating to grievance issues is stated to only apply to employees and would not apply to the comparator and in such circumstances the advice received and subsequent action on the respondents' part was likely to be the same. We conclude that the respondent would have treated a hypothetical comparator in identical fashion.

48. The respondent's representative was asked, prior to making final submissions to consider the applicability of the statutory codes of employment and in particular the provisions relating to avoiding discrimination in recruitment. The respondent's position was that the codes covered 'employers' only and did not apply to Create as it was not an employer. We note the explanation given within the code relating to use of the word 'employer'. In particular that the Act imposes obligations on people who are not necessarily employers in the legal sense and these people are also referred to as 'employers' for convenience and therefore apply, except where it is specified that the provision in question does not apply to these wider relationships. Although we can find no express clarification within the code, we consider, in light of the above guidance that as the Act extends to employment service providers, so do the codes. In any event the statutory codes contain basic information in respect of good practice relating to recruitment with which the respondents have not complied. In particular, we note the absence of records provided by the respondent's within this case. We were not provided with the relevant job advertisement, job

description or any person specification used in the recruitment process; the application forms or CVs, or any supporting documentation from other candidates applying for the job; records or notes of discussions and decisions by Ms Pike for other members of staff. We have considered whether such basic failures could result in this tribunal drawing an adverse inference of discrimination. We conclude in these particular circumstances, taking the evidence as set out above in its entirety, while the absence of these records on the respondent part shows a lack of good practice, we make no adverse inference of discrimination. We note the circumstances in the present case were that Ms Pike did not consider the claimant to be suitable for any position of senior pattern cutter attracting a salary of £30,000+. These were the only roles in which the claimant was interested. This decision not to put the claimant forward was made by Ms Pike as an early stage when the claimant was marked 'inactive ', without reference to any particular job opportunity. While the claimant applied for various jobs, he was without his knowledge marked as 'inactive' on the respondent internal systems and therefore not even considered for the roles. The claimant was simply told that the roles were not for him. While the evidence we heard in relation to the particular job applications were useful to the tribunal in assessing the genuineness of Ms Pikes earlier actions in marking the claimant as 'inactive', this was not the primary evidence required in these particular circumstances.

49. We also note the absence of any type of equality policy or complaints process shows a lack of good practice on Create's part that can lead to legitimate questions as to whether an organisation is taking its legal responsibilities seriously. Equal opportunities policies are a matter of good practice. Where one exists, it can give job applicants confidence that they will be treated with dignity and respect. A failure to provide any form of complaints procedure or implement any equal opportunities Policy is not best practice. The claimant in these circumstances sought to make an internal complaint, and raised issues of race discrimination. He may potentially have taken a different course of action had been internal procedures adhered to that could have properly considered and responded to his concerns at an early stage. The employment tribunal consider that the respondents' lack of open and clear communication with the claimant both in respect of his prospects of success and his complaint have contributed to this litigation.

Issues arising during the hearing.

50. We record the issues that arose during the tribunal hearing. The employment tribunal finished hearing the respondent's evidence at approximately 3.35pm on Tuesday, 24/09/2019. It was decided that the tribunal would hear both parties submissions the following morning. The respondent had prepared a document and provided authorities that it intended to rely upon. In an effort to deal with the matter in accordance with the overriding objective and place the parties on an equal footing, the process of submissions was explained to the claimant. The claimant was referred back to the list of issues and reminded that the purpose of submissions was to re-cap on the relevant parts of the claim. We told the claimant that he was under no obligation to make final submissions as in any event, in addition to any submissions made by the parties, the employment tribunal would review the evidence, examine the relevant legislation and case law thoroughly prior to making its final decision. On the morning of Wednesday, 25/09/2019, the claimant provided the employment tribunal with a document headed 'skeleton argument on behalf of the claimant'. The employment tribunal thereafter heard detailed oral submissions from the respondent's representative supporting her previous written submissions. Ms

Moses submissions were comprehensive addressing both the evidence and the statutory and case law framework.

51. When invited to a make his final submissions, the claimant informed the employment tribunal that he was told at the previous case management discussion hearing on 29th of November 2018 before EJ Heal that the best course of action was for this claim to go to judicial mediation. He thought that this whole hearing was about mediation. The claimant said that he thought references to 'final hearing' meant 'final hearing for mediation'. The hearing was a mistake on the part of the employment tribunal. There was no mistake on his part. He did not want a judgment or decision against Ms Pike or Mr Costello. The claimant was looking for peace and a future working relationship. As it was nearly lunchtime, the employment tribunal told the parties that it remained open to the parties to seek to reach agreement by way of without prejudice discussions up to the end of the hearing. The employment tribunal adjourned for lunch to allow the respondent to take instructions, the claimant to clarify his position and the parties to explore the without prejudice discussions should they so wish.

52. On resumption of the hearing the claimant told the employment tribunal that he wanted the hearing to the postponed to allow the parties to engage in mediation. Ms Moses said that the respondents were not interested in mediation at this late stage. The employment tribunal noted that mediation could not be facilitated where the respondent did not wish to participate. In any event, there would be immense practical difficulties in allowing any form of mediation at this stage. The employment tribunal considered that any delay at this stage for the purposes of mediation was not in line with the overriding objective to deal with this case fairly and justly and it would add an unjustifiable layer of expense and delay to these proceedings. The claimant told the employment tribunal that he did not wish to withdraw his claim. The claimant told the employment tribunal that, because of his misunderstanding in respect of the purpose of the final hearing, he wished for the claim to be adjourned. The claimant explained that this situation was caused by error on the part of the employment tribunal and reiterated that there was no fault on his part. The claimant suggested that the matter be adjourned for 2 months to allow the claimant to:
    52.1. seek legal advice;
    52.2. adduce evidence in relation to the correct comparator. There were various people with less skills than the claimant who had not been mentioned but it was now clear to the claimant should have mentioned them.
    52.3. adduce the considerable amount of evidence he had in respect of the jobs he had applied for, including the job descriptions. The employment tribunal had commented upon and appeared to consider these to be important and the claimant had them and wanted to produce them.

53. The respondent objected to the claimant's application.
54. The employment tribunal considered the claimant's submission as to his genuine belief that he had been participating within a mediation exercise rather than a final hearing. The claimant was unrepresented and dealing with these proceedings through a second if not third language. This gave an obvious scope for misunderstanding to arise. We revisited the case management

summary document that was produced by EJ Heal following the preliminary hearing on 29/11/2018, in particular noting:

54.1. The first page of this document sets out the listing for this hearing for 4 days from 23 to 26/09/2019. It also contains a specific timetable for those 4 days which includes approximately half a day for the tribunal to determine the issues which it has to decide and reach its conclusions and 1 hour for the tribunal to give judgment with Reasons if possible. Further time is allocated to deal with remedy if the claimant succeeds in whole or part.

54.2. At the end of page 3 at the beginning of page 4, the letter addresses judicial mediation. This paragraph states"

> *I raised the possibility of this case being considered for an offer of judicial mediation. I explained how the process operates and now provide a note giving a full explanation of the judicial mediation scheme. I emphasised that this was just an enquiry as to whether the parties would be interested in the regional employment judge considering whether the case would be suitable for an offer of judicial mediation. The parties expressed an interest in this matter being dealt with by way of judicial mediation. If their views change, the tribunal is to be notified within 7 days of this hearing. Both parties will receive further notification from or on behalf of the Regional Employment Judge.*

The case management summary envisages that the employment tribunal may contact the parties to organise judicial mediation but no contact was made. Neither party followed this up.

54.3. the case management summary also provides the normal Orders to ensure preparation for the final hearing, including a full standard order for disclosure to take place on or before 20/01/2019 made on the standard civil procedure rules basis, alongside the normal preparation orders.

55. We considered the email from the claimant to respondents' advisers dated 31/07/2019 that states , ' I forgot to mention this in my previous email, you and your client know that the hearing in September for mediation purpose not any court decision making …..'. The respondents' adviser replied to the claimant, enclosing a further copy of the employment tribunal case management orders originally sent on 17/01/2019. This states 'please note point (1) which confirms the Final Hearing is listed to start at 10am on 23 to 26/09/2019. The tribunal has allocated 'one hour for the tribunal to give judgement' during those days. We again suggest you seek advice.' The claimant did not respond to this correspondence nor did he contact the employment tribunal to seek clarification.

56. We considered text message exchanges between the claimant and the respondent including:

56.1.1. respondent to the claimant on 31/12/2018 'do you want to meet for a coffee or breakfast next week, I am buying? We can discuss avoiding going to court next September. If you do not want to meet it is fine, just let me know…

56.1.2. Respondent to claimant on 10/01/2019…. There is also a court deadline to exchange documents which we cannot miss. I am happy to consider a settlement if you want… If not I understand and will see you in September 2019….

56.1.3. Respondent to claimant on 10/01/2019…. I'm referring to your claim against Create. There is a hearing that will determine any

wrongdoing. Shall we attempt to settle or allow the court to decide in September…..

57. We concluded that the case management summary document was clear and unequivocal in its listing of the hearing for a final hearing expressly noting a provision for the tribunal to reach a judgment in this matter. The mention of mediation within that correspondence and failure to follow up on the offer of mediation was a separate issue and could not in our view reasonably cause confusion. No reasonable reading of the correspondence could lead to confusion as alleged by the claimant. To the extent that any confusion existed, it was not caused or significantly contributed to by the employment tribunal's correspondence. The correspondence exchanged between the parties as set out above and the claimant's actions in up to this point in the proceedings, including participating fully throughout the hearing tend to show no reasonable basis for the claim to confusion on the claimant's part. The claimant had prepared a document entitled 'skeleton argument on behalf of the claimant' and made no comment relating to any confusion or mediation prior to the completion of the respondent's final submissions.

58. The tribunal concluded that the claimant had not demonstrated on the balance of probability any genuine confusion on his part. Should there have been any confusion on the claimant's part it was reasonable to expect the claimant to seek clarification from the employment tribunal, at least on 17/01/2019 following the exchange between the claimant and the respondent' s solicitors set out above. There were numerous further opportunities for the claimant to make comment or query in respect of any alleged confusion at the commencement of this hearing or during the previous two and a half days of hearing. To the extent that any genuine misunderstanding existed, it arose from error on the part of the claimant and there was an obligation on the claimant to read (or seek assistance to read) correspondence from the tribunal and the respondent carefully in preparation for his claim or seek clarification from the employment tribunal where required.

59. Regardless of the above conclusion, the employment tribunal considered whether, in the unlikely event that genuine confusion existed on the claimant's part, this has negatively affected, the employment tribunal's ability to deal with the matter justly and in accordance with the overriding objective and the claimant's opportunity to participate within the proceedings. We conclude that it has not. The process to be followed by the employment tribunal during the final hearing was explained to the claimant at the outset of the hearing. At the conclusion of day one, rather than commence hearing the respondents' evidence in the available time, the purpose of cross examination was explained to the claimant and the claimant was allowed the evening to prepare his cross examination questions for the respondents' witnesses. Similarly at the end of day two direction was given by the tribunal in respect of final submissions. The claimant fully participated within cross examination of the witnesses. The employment tribunal were, throughout the hearing, conscious that the claimant was acting in person, through an interpreter. The employment tribunal took an active role in accordance with the provisions of Rule 61 of the Employment Tribunal Rules in dealing with the hearing. In considering the potential failure to disclose documents, the previous orders of the employment tribunal relating to disclosure are clear and set out in writing. Should the claimant have had any documentation that was relevant to his claim he was required to disclose this

documentation in January 2019 in line with the employment tribunal orders. In any event, having heard the evidence, although the tribunal queried the existence of further documentation in relation to the roles applied for, it is most unlikely that this further documentation would have made any difference to the cases as argued.

60. For all of the above reasons, the claimant's application for an adjournment was refused and the claimant was requested to proceed with his closing submissions. The claimant thereafter was allowed and took two hours to make his detailed closing submissions to the employment tribunal.

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Employment Judge Skehan

Date: 8.1.2020

ORDER SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE