



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Izaddoust

**Respondent:** Alliance Medical Limited

**HELD AT:** Liverpool

**ON:** 2, 3 & 4 March 2021

**BEFORE:** Employment Judge Shotter (by CVP)

**Members:** Ms L Atkinson  
Mr P Northam

## REPRESENTATION:

**Claimant:** No attendance on first day, then in person.

**Respondent:** Ms Rezaie, counsel

# JUDGMENT

The unanimous judgment of the Tribunal is that the claimant's claim of sexual harassment is not struck out.

# REASONS

1. This has been a remote hearing by video which has been consented to by the parties. The form of remote hearing was Code V: Kinley CVP fully remote. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The respondent seeks to strike out the claimant's claim for the reasons set out below.

3. No oral evidence was heard on the facts in this case, the respondent's application was made when the claimant (a) failed to provide a witness statement for today's final hearing and (b) did not appear on the first day of the final hearing having

indicated to the Tribunal that she had a bad back and sought an adjournment of the 3-day hearing to another date in an email sent to the Tribunal (and not the respondent) the morning of the first day of the hearing. The Tribunal was not prepared to strike out the claimant's claims without giving her an opportunity to respond, and if well enough, attend the hearing given it was to be by CVP video link and the claimant remained at home, which may be possible with a bad back.

4. In an email sent to the Tribunal on 2 March 2021 at 8.36am the claimant indicated she was unable to attend today's hearing via CVP due to severe back pain, and requested an adjournment of the three days allocated.

5. The Tribunal responded "With reference to your email dated 2 March 2021 requesting an adjournment Employment Judge Shotter has requested that you:

1. Provide a medical report confirming your inability to attend the final hearing over the next 3-days. The GP report will be provided within 21-days of today's date and will confirm when your back condition started.
2. Provide dates of availability for April 2023 onwards as this will be the earliest date the Tribunal can re-list the case.
3. Confirm that you are unable to attend on 3 and 4 March 2021 via CVP with breaks as and when required, having rested today.

All of these matters will be discussed with the respondent when the hearing commences at 10am with a view to it being adjourned to 2022.

6. There was no response to the Tribunal's suggestion that the claimant attend on the 3 and 4 March 2021 via CVP with breaks.

7. The Tribunal also put to both parties in a separate email whether the further information (further and better particulars) the claimant had provided on her claims could stand as the witness statement with the claimant affirming the truth of its contents.

8. The claimant was sent a draft strike out warning by email from the Tribunal on the 2 March 2021 following the respondent's application made at the hearing. Having been sent the strikeout warning the claimant confirmed she was now well enough to take part as the medication she had been prescribed for her back was effective. The Tribunal was provided with a MED3 from the claimant's GP confirming she was suffering from severe back pain and diarrhea.

9. The claimant appeared via CVP to deal with the strike out application on the second day allocated for the liability hearing. The claimant referred to be raped by an employee of the respondent, and she indicated that she wanted to bring this allegation up during the liability hearing. There was no express application to amend the Grounds of Complaint to introduce a completely new allegation of rape.

10. The claimant produced a number of documents not previously disclosed to the respondent during the second day of hearing, including the following:

- 10.1 A document marked "Statement" the claimant now intends to rely upon as her witness statement which consists of a cut and paste from a without

prejudice letter previously sent by her solicitor to the respondent with additional comments by the claimant including a reference to settlement negotiations and a claim for personal injuries and aggravated damages. There is no allegation of rape, despite the claimant's insistence today that she is alleging rape in this case. The "witness statement" contains nothing new as it essentially sets out the claimant's response to the request for further and better particulars which were served on the respondent last year, which the respondent has had time to digest and deal with in its witness statements. The statement sets out a "brief description" of the allegations and records "it is not possible to detail each and every incident." It is clearly a cut and paste from a without prejudice letter seeking to settle the claimant sent by the claimant's solicitor to the respondent, setting out the further information provided by the claimant, which was then incorporated into the claimant's response to further and better particulars.

10.2 A letter/statement from Dr Hussain. The claimant describes Dr Hussain's document as a "character reference."

10.3 A witness statement provided by the claimant's partner Dr Bhavish Patel, unsigned and undated produced for the first time this morning. The contents of this witness statement will not take the respondent by surprise as Dr Patel was not a witness to any of the alleged incidents and records what he was told by the claimant largely concerning the disciplinary hearing. There is only one reference to harassment which does not provide details. There is no reference to any rape allegations. It appears to the Tribunal that Dr Patel's evidence may be more relevant to remedy if applicable, given it touches upon the alleged effect on the claimant of the alleged sexual harassment.

10.4 A "Chronology of Events" set out in an undated letter to Dr Hussain with a view to him preparing a report, which he did on the 28 February 2021. The report was not disclosed to the respondent and nor was the fact the claimant intended to obtain it. In contrast to the indication from the claimant given to the Tribunal today, the information provided by the claimant to Dr Hussain does not mention an alleged rape.

10.5 Medical report Dr Hussain dated 28 February 2021 not previously disclosed to the respondent, and relied upon without leave of the Tribunal. The report does not go to issue of liability, and may be more relevant to remedy if applicable.

10.6 A further copy of the MED3 previously provided.

11. It is notable the claimant only produced the documents listed above, including her statement, when she was asked by the judge whether she had a witness statement, and despite the various orders and strike out warnings the claimant had not sent copies of her witness statements to the respondent. The claimant was invited to explain why she had persistently ignored orders and communications from the Tribunal and from the respondent.

12. The Tribunal heard oral submissions from Ms Rezaie and the claimant concerning the strike out application, during which the claimant abused counsel,

shouted at the judge, spoke over people, refused to answer the question directly, gave a contrary explanation of why she had failed to comply with case management orders and took no steps to advance the litigation for a month in February 2021 until today. The claimant, after the Tribunal insisted on a short break pointing out that all parties should deal with each other with respect, apologised to the Tribunal for her behavior; she did not apologise to counsel who she had abused in Farsi, a language the Tribunal could not translate as intended by the claimant. For the remainder of the hearing the claimant continued to talk over people and had to be stopped numerous times. The claimant required strong management.

### The bundles

13. The Tribunal has before it a bundle of documents totaling 715-pages plus additional documents consisting of party-to-party correspondence, three witness statements provided on behalf of the respondent, a cast list and chronology prepared by the respondent. The only documents produced by the claimant are those set out above, and she confirmed there were to be no additional documents.

### The claim and litigation history

14. By a claim form received on the 10 March 2020 following ACAS early conciliation that took place between 11 October and 24 October 2019, the claimant claimed unfair dismissal and sexual harassment by a unit manager employed by the respondent who allegedly dismissed her when she asked him to stop harassing her. The claim was drafted by the claimant, badly pleaded and there was no reference to any specific alleged acts of harassment with the result that the respondent did not know the claims it had to meet.

15. The respondent denied the claims, maintaining the claimant was dismissed during her probation period for poor performance, absences and timekeeping.

16. The unfair dismissal complaint was struck out by a judgment with reasons promulgated on 6 January 2020. The section 26(3) claim brought under the Equality Act 2010 remained the only live complaint.

17. A private preliminary hearing dealing with case management hearing took place on 23 March 2020 which the claimant attended in person, and case management orders were sent to the parties on 31 March 2020 which included an order the claimant provide further information of the alleged harassment no later than 11 May 2020.

18. Given the inadequacy of the claimant's pleading, sequential exchange of witness statements was ordered. This is an important point. The claimant was aware the judge had ordered she would set out her case in a witness statement which would be sent to the respondent before it produced and sent to the claimant its witness statement. The claimant has never complied with this order and the respondent had not seen the claimant's witness statements before it produced and sent to the claimant its witness statements.

19. A witness statement was ordered to be sent by the claimant to the respondent no later than 19 October 2020 with the respondent's witness statement to follow. A list of

issues was attached as an appendix to the case management order. The Tribunal was satisfied that contrary to the claimant's representations today, the employment judge explained the importance of providing a witness statement and she would have understood the difference between a trial bundle and witness statement.

20. It is notable at the strike out hearing the claimant indicated she did not understand the legal terms and did not know the difference between witness statements and trial bundles, hence she was not able to access the respondent's bundle as she did not have the pass key. It is also notable the claimant changed her reasons for failing to access the trial bundle, indicating the link had not worked. The claimant's explanations were contradictory and not credible. The Tribunal found it remarkable that the claimant took no steps to access the trial bundle before the final hearing, and if the claimant's account could be believed, make contact with the respondent and/or the Tribunal explaining she could not access it given the imminent trial. The Tribunal concluded the claimant took no steps to prepare for the final hearing until she received the strike out warning yesterday.

21. On the 31 March 2020 the claim was set down for hearing on 2,3 and 4 March 2021.

22. The respondent wrote to the claimant on 20 May 2020 threatening a strike out application for non-compliance of the case management orders.

23. On the 8 June 2020 the respondent wrote to the Employment Tribunal requesting an unless order as the claimant had not provided the further information.

24. The claimant was legally represented during this period from August 2020 onwards.

25. The respondent in an email sent 20 October 2020 chased the claimant for her further information, schedule of loss and witness statements. Dates were subsequently agreed for sequential exchange of witness statements when the respondent accepted the claimant's request for time extensions to the directions which were then not complied with by the claimant.

26. The further and better particulars were provided on the 18 November 2020, approximately 6-months after the date for compliance. The allegations were serious including the alleged perpetrator following the claimant to the toilets and hitting her with his belt, touching her breasts, making indecent suggestions, rubbing his groin and "continually" looking at her with "dirty eyes." There were no allegations of rape.

27. In an email dated 1 December 2020 the respondent threatened to make a strike out application as a result of the claimant "continually" failing to comply with the extended orders. Exchange of witness statements remained outstanding. The claimant failed to respond to correspondence, which she continued to ignore.

28. On 28 January 2021 the claimant was no longer legally represented. On the same date the respondent emailed the claimant concerning documents and witness statements, requesting the claimant send her statement "the next day...if you do not

provide your statement...we may make an application to the Tribunal requesting that your claim is struck out.”

29. The respondent emailed the claimant on 2 and 4 February 2021 concerning her failure to provide witness statements, requesting they be provided no later than 9 February 2021 stating “your failure to comply with the tribunal’s orders and to respond in a timely manner to our urgent correspondence seem to demonstrate you are not taking this case seriously. You are unfairly prejudicing Alliance Medical’s response to your claims.”

30. In a second email of the same date the claimant was asked whether she intended to pursue her claim and if so, when she will send her witness statements. The claimant was put on notice that “if we do not hear from you by close of business tomorrow...we intend to make an application to the tribunal to ask that your claim be struck out. If granted, that would mean you could no longer pursue it.”

31. The claimant responded on the 4 February 2021 stating she was representing herself, would forward relevant documents. The claimant wrote to the respondent “I am so looking forward to your witness statements as any human with right state of mind will know if no one rape anyone in front of other people to have witnesses???” It is evident from this the claimant was fully aware of the importance of witness statements and it was open to her at that early stage to make an application to the Tribunal to amend her claim alleging rape. She did not make such an application, and she did not produce witness statements preferring to wait until the second day of the liability hearing.

32. In a letter dated 10 February 2021 sent to the Employment Tribunal the respondent applied for an unless order a second time, setting out the grounds of application, including the claimant’s failure to provide her witness statement. Reference was made to the claimant continually missing deadlines, failing to provide information and failing to actively pursue the claim. The claimant was put on notice that she had the right to object and if she did not send her objection to the Tribunal within 7-days, the Tribunal was invited to deal with the respondent’s application in writing. A copy was sent to the claimant, who did not respond. The claimant did not provide a witness statement despite being pressed by the respondent in a further email sent on 10 February 2021.

33. On the 17 February 2021 the respondent wrote to the Tribunal referencing the request for an unless order sent on 10 February 2021 confirming no response had been received and the claimant had yet to send her witness statement.

34. Despite the claimant’s failure to serve her witness statement sequentially as ordered by the Tribunal, on the 18 February 2021 the respondent sent to the claimant its witness statements password protected. The password would be released when the claimant provided her witness statements.

35. In an email sent on 22 February 2021 to the Tribunal the respondent confirmed it had still not received the claimant’s witness statement and she had not responded to the unless order.

36. On the 26 February 2021 Employment Judge Johnson ordered the claimant to provide witness statements to the respondent by noon on 1 March 2021, and warned

the claimant “if the claimant fails to provide the statement by this date, she may not be permitted to give evidence at the hearing on 4 March 2021.” The claimant did not respond to this communication.

37. At today’s hearing the claimant was asked a number of times to give an explanation for why she had ignored case management orders and had not provided her witness statement by the deadline date. The claimant was evasive and contradictory. She stated at first that her solicitors had sent “all witness statements” to the respondent, and when this was explored with her and it became clear her solicitors did not produce witness statement, the claimant changed her explanation stating she did not want to send the respondent copies of her witness statements because she did not trust it or the solicitors. When this was explored with the claimant it became clear the basis of this mistrust was that the respondent had failed to settle. The claimant also stated she had not sent the respondent her witness statements because she did not have their email address, which was evidently not the case as the claimant had been communicating with the respondent’s solicitors by email.

38. Despite two requests sent to the claimant by the Tribunal on the first day of the liability hearing the claimant has not provided a cogent explanation for why her witness statements were not sent to the respondent. In addition to the above, the claimant also stated she did not have the Tribunal’s email address. Another explanation was given by the claimant, which was she did not send her documents and statement produced “last week” because the respondent on social media was “totally harassing me.” When asked to elaborate further the claimant provided a garbled account of helping someone look for a dog and being recorded on video which was placed on social media that had nothing to do with the respondent.

39. The claimant, when pressed for an explanation for her non-compliance, alleged Ms Rezaie had smiled sarcastically when she was giving her explanation. Ms Rezaie denied doing so, and on adjournment the panel members confirmed she had not; Ms Rezaie’s head was down writing as the claimant was giving her explanation and she had not “smiled sarcastically as alleged.” The claimant’s allegation was yet another attempt to deflect the questions she did not want to answer about non-compliance.

Law: strike out

40. The Tribunal’s power to strike out the Claim is set out in Employment Tribunals Rules of Procedure 2013 Rule 37(1) that “(a) *that it is scandalous or vexatious or has no reasonable prospect of success; (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant ... has been scandalous, unreasonable or vexatious*”.

41. A Tribunal can also strike out a claim under Rule 47 of the 2013 Rules if a party fails to attend a hearing and can take into account the Guidance on Seeking a Postponement of a Hearing issued by the President of Employment Tribunals (England & Wales) in December 2013.

Conclusion

42. Mr Rezaie provided a document titled “RESPONDENT’S OUTLINE SUBMISSIONS IN SUPPORT OF APPLICATION FOR STRIKE OUT OR DISMISSAL OF THE CASE” (“the Outline”) a copy of which was provided to the claimant. The Tribunal sent the claimant a strike out warning having heard the respondent’s oral application, and the claimant was invited to make submissions on the basis of the written documents after hearing Ms Razaie’s oral submissions on why the claim should be struck out.

43. The outline produced by counsel includes a full history the procedural background in this matter, which I do not intend to repeat other than to say it appears to be in accordance with the documents set out within the bundle and party-to-party correspondence.

44. The claimant submitted that she had the right to a trial under her Human Rights and did not understand the meaning of a strike out, despite the frequent references to strike out referenced in the respondent’s correspondence which made the position clear, as set out above, and the Tribunal’s strike out warning. The Tribunal is mindful the claimant has a right to a fair trial under Article 6 of the European Convention on Human Rights, and the right to both parties to a fair trial is pivotal in this case as set out below, balancing the adverse consequences for each party of striking out the claimant’s claim at this stage.

Rule 37(1)(a) – scandalous, vexatious or has no reasonable prospects of success

45. Ms Rezaie submitted the claimant has adduced no witness evidence whatsoever and cannot therefore meet the burden of proof to establish a prima facie case of discrimination; the Tribunal agreed that this was the case at the outset of day one of the liability hearing. The position has now changed as the claimant produced a “statement” albeit unsigned which she can affirm as true when giving evidence. After the oral judgment and reasons were given the claimant agreed to sign and date her statement.

46. Ms Rezaie submitted the respondent was still prejudiced because the “statement” was a copy, cut and paste from a solicitor’s letter, and for the Tribunal to allow the claimant to rely on a witness statement where she has intentionally held it back for a period of one-month she had taken no steps in the litigation and one day before the final hearing asked for a psychiatric report, she was clearly not actively pursuing her claim. The Tribunal agreed with counsel’s submission and her description of the claimant’s statement where she merely reiterates the further information provided earlier without addressing the list of issues. The Tribunal is aware that litigants in person can have difficulties drafting their statements and the claimant is aware that the statement she now relies upon shall stand as her evidence in chief, in other words, she cannot add to it when giving her oral evidence and take the respondent by surprise.

47. The Tribunal also agreed with Ms Rezaie that the claimant would have been aware of the importance of witness statements. The preliminary hearing dealing with case management hearing attended by the claimant on 23 March 2020 made the position clear in the case management orders, and when the claimant failed to comply the respondent made it clear in numerous communications, a number of which are



referred to above including the 4 February 2020 email sent by the claimant. Unless orders were threatened and when the claimant still failed to provide a witness statement Employment Judge Johnson directed that if the claimant failed to provide witness statements by noon on 1 March 2021 she may not be permitted to give evidence at hearing on 4 March 2021, and still the witness statements were not provided with the claimant failing to give a cogent and credible explanation why this was the case.

48. It is notable the claimant did not produce her witness statement, instead she informed the Tribunal that she was not well enough to take part in the liability hearing that had been listed twelve months previously on the 23 March 2020, due to a bad back. The hearing was to take place by CVP and as a result the claimant did not have to leave her home, and could take part with breaks as and when required. The claimant was well enough to respond to the Tribunal's emails and yet she still failed to provide an explanation for the lack of a witness statement and non-compliance with orders to produce witness evidence until today, when she did appear in the knowledge that her claim could be struck out.

49. Ms Rezaie submitted that the respondent from the outset considered the claimant's claims to have little prospects of success and has communicated this to her at various stages in this litigation. The claimant has not produced any documents (despite indicating that she intended to do so) or any evidence of the alleged sexual harassment until today, the second day of the liability hearing. The Tribunal noted that documentary evidence, including written statements, appear to come from the respondent.

50. Taking into account the well-known case of Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330, the Court of Appeal held, as a general principle, cases should not be struck out on the ground of no reasonable prospect of success when the central facts are in dispute. On a striking-out application (as opposed to a hearing on the merits), the Tribunal is in no position to conduct a mini-trial, with the result that it is only in an exceptional case that it will be appropriate to strike out a claim on this ground where the issue to be decided is dependent on conflicting evidence. Such an exception might be where there is no real substance in the factual assertions made, particularly if contradicted by contemporary documents or, as it was put in Ezsias, where the facts sought to be established by the claimant were 'totally and inexplicably inconsistent with the undisputed contemporaneous documentation' (para 29, per Maurice Kay LJ).

51. The Tribunal is slow to strike out a claim of sexual harassment where in the word of Maurice Kay LJ in Ezsias, there is 'a crucial core of disputed facts' that was 'not susceptible to determination otherwise than by hearing and evaluating the evidence.' The problem for the claimant is that at day one of the liability hearing she has adduced no witness evidence despite being ordered to do so, with the result that exceptionally her case may fall into the category of having no reasonable prospects of success given the lack of any witness evidence necessary to meet the burden of proof to establish a prima facie case of discrimination. However, this was put right by day one when a document described by the claimant as her statement was produced.

52. The claimant was aware from the content of the case management orders paragraph 5.1 to 5.6 (providing a reference to Guidance Note 3 to the Presidential Guidance) the statement should set out the facts about which the witness wishes to tell

the Tribunal, it must address remedy with an explanation and witness statements disclosed after the date ordered may not be relied upon without permission from the Tribunal. The claimant's statement produced on the 3 March 2021 does not address remedy, it merely sets out a settlement figure. However, this is not fatal to whether a fair trial on liability can take place, as remedy if applicable, can be case managed to another hearing.

53. The central facts are in dispute, the claimant has now provided a witness statement which she intends to rely on as her evidence in chief, in other words, the claimant cannot expand on it and she will not be given leave to bring or refer to rape allegations at any stage during these proceedings given the fact that allegations of rape were not pleaded in her claim form or further and better particulars. The claimant's rape allegation was a matter which deeply concerned the respondent, understandably so, and the manner in which she has raised it today with the Tribunal for the first time is scandalous and vexatious and so the Tribunal finds. The respondent would be prejudiced if the claimant was given leave to amend her claim (which she has not sought) to include an allegation of rape made on the second day of what was to have been a liability hearing, and the balance of prejudice falls heavily in favour of the respondent.

54. Ms Rezaie submitted the respondent has been prejudiced by the claimant's late production of her witness statement and she has not sought the Tribunal's leave to rely upon it. The Tribunal took the view the respondent was not caused any prejudice as the claimant's statement merely reiterates the further information provided last year, and its contents will not take the respondent by surprise, provided all references to without prejudice negotiations are deleted.

55. The claimant is a litigant in person, she has been at pains to emphasize to the Tribunal that she knows nothing of and does not understand these proceedings. It is the Tribunal's role as best as possible to ensure there is a level playing field between the claimant and respondent who is represented by counsel. Given the fact the claimant was not well enough to take part in the proceedings yesterday, the evidence is yet to be heard and the respondent confirmed to the Tribunal before the liability hearing that it was ready, the Tribunal concluded the liability hearing should proceed with the possibility that priority would be given to this case, even in the event of it going part heard. It would not be in the interests of either party for the claim to be adjourned to April 2022.

Rule 37(1)(b) – manner proceedings conducted has been scandalous, unreasonable or vexatious

56. On the face of the documents before the Tribunal it is apparent that there has been a persistent disregard by the claimant (including when professionally represented) of taking the required procedural steps, which culminated in the claimant's attitude evidenced in the email she sent to the Tribunal this morning at 8.36am requesting an adjournment for the first time with the reason given a bad back, and no explanation for the last minute request or the fact her witness statement had not been provided with the result that according to EJ Johnson, she may not be permitted to give evidence at the liability hearing in any event. However, this position changed on the 3 March 2021.

57. The Tribunal agrees with Ms Rezaie the claimant has failed at every turn to comply in time or at all with Employment Tribunal orders and directions, having ignored all correspondence from the Tribunal and the Respondent since 4 February 2021, and she can be criticised for her actions and the scandalous vexatious manner in which she has conducted these proceedings, including the periods when she represented herself, particularly from February 2021 leading to the liability hearing when witness statements and bundles were left to the last minute.

Rule 37(1)(c) – non-compliance with rules or orders

58. The claimant failed to comply with the Orders of EJ Allen, following which various extensions were agreed and then those deadlines were missed and totally ignored in the case of witness statements. The claimant was legally represented for part of these proceedings, and she could glean from the respondent's communications that non-compliance could result in the strike out of her claims and/or costs. She was given one last chance with the Order of EJ Johnson to provide a witness statement by noon on 1 March 2021 and still failed to comply. The claimant's explanation for her non-compliance has been less than satisfactory.

59. Ms Rezaie's submission that there had been no indication from the claimant when she would be producing a witness statement (if ever), and the Tribunal notes she has failed to provide a response to the emails sent by the Tribunal yesterday seeking an explanation, an act of further non-compliance. It was only until the claimant received the strike out warning that her witness statement was produced, the claimant giving contradictory and at times unintelligible information concerning when it was first produced, which may be a matter dealt with in cross-examination on the issue of credibility given the metadata produced by the respondent which will be inserted in to bundle marked "R1."

Rule 37(1)(d) – claim not actively pursued

60. It is apparent that the claimant, as submitted by Ms Rezaie, has played no role, let alone any active role, in the proceedings since 4 February 2021 a period of almost 4 weeks, and she has disregarded correspondence from the respondent and Tribunal.

61. The last communication from the claimant was on 4 February 2021 when she indicated to the respondent that she had additional documents to disclose. Ms Rezaie assured the Tribunal today that not one document has been disclosed by the claimant. She has also failed to adduce witness evidence in support of her claim and has produced no evidence of remedy/mitigation.

62. The claimant did not attempt to agree the Chronology and Cast List, whilst not fatal, is indicative of the fact that she was not actively pursuing her claim. The case management orders made on the 23 March 2020 in the claimant's presence and set out in the Summary sent to the parties on 31 March 2020 included an order that the claimant would provide the Tribunal with five copies of her witness statements, which has been totally disregarded.

Rule 37(1)(e) – whether fair trial possible

63. This in tandem with prejudice to the parties is the crux of the matter which the Tribunal has repeatedly taken the parties to. Ms Rezaie submitted that a fair trial was not possible. Ms Rezaie stated the claimant expended her claim to 18 wide-ranging allegations set out in further and better particulars provided on the 18 November 2020 dealing with allegations going as far back as May 2019 when the claimant commenced her employment and throughout the time she worked for the respondent until 30 September 2019. The Tribunal took the view the respondent was not prejudiced by this as it has had a number of months to deal with the allegations in its witness statements. It is notable that there has been no further expansion by the claimant allowed, and as things stand the evidence set out within the claimant “statement” will not take the respondent by surprise. The Tribunal did not give the claimant leave to amend her claim to include and/or and make any reference to alleged rape, on the grounds that a fair trial would not be possible especially given the fact that the pleadings, further information provided by the claimant and her witness statement makes no such reference and this case is now ready for trial as agreed by both parties.

64. The Tribunal accepts credibility and veracity of accounts is likely to be key in this case, and there was the prospect of prejudice to respondent who would have to wait until April 2022 at the earliest for a new hearing date if this case was adjourned as requested originally by the claimant. The Tribunal was minded to proceed with the trial today, but on hearing from Ms Rezaie her concern the case may go part-heard with consequences for a key witness who may be held over for a period of time, accepts that it should seek an early date was possible for the claim to be re-listed. Fortunately, it has managed as a matter of urgency given the issues in this case and the desirability that it is heard as soon as possible, to list it for the **12, 13 & 14 April 2021** taking into account counsel’s availability in order to minimise costs.

65. The respondent’s witnesses have produced statements which will assist memory retention, however, the sexual harassment allegations are made against one person only and the Tribunal accepts (a) they are serious allegations and (b) that have seriously impacted his life. Taking into account the difficulties re-listing the case which cannot be put down to the claimant exclusively as she was unwell on the first day of the hearing, there existed real issues as to whether a fair trial is possible April 2022 when memories will inevitably fade over time including that of the claimant bearing in mind the claim form did not include any specific allegations, the further and better particulars were produced 20 months after the first alleged act of harassment (May 2019) and the claimant’s witness statement approximately twenty-two months after the event. The claimant has produced no documents, which suggests no diary entries will be referred to as an aide memoire, and no contemporaneous evidence that would assist memory recall, and yet the claimant now after this lengthy period of time, maintains that she was raped.

66. Ms Rezaie submitted that the claimant does not have permission to rely on witness evidence and until an application is made by her (supported by evidence), will

not be adducing any evidence at any re-listed Final Hearing making a postponement redundant where the claimant cannot prove her claim. For the reasons set out above, the Tribunal gave the claimant leave to rely upon her witness statement on the basis that if the matter proceedings in April 2021 a fair trial is still possible.

67. With a view to ensuring that the claimant is fully prepared for the final hearing given the time pressures on this case and the undesirability that it will go part-heard, the Tribunal requested the respondent send to her in PDF format via email the four witness statements it intends to rely upon. The claimant was ordered to read the witness statements and the bundle, which she also be sent in PDF format and hard copy, so there is no excuse for the claimant not to be ready.

68. The Tribunal was sent an email at 9.19pm on 3 March 2021 by the respondent attaching the signed witness statements and Mr Lorimer indicated they had been sent to the claimant, and the respondent did not accept the claimant had any permission to rely on witness evidence, essentially repeating submissions made by Ms Rezaie earlier. Mr Lorimer referenced the need to consider the claimant's evidence "in full" and reserve the right to amend the statements as the respondent would have been entitled to had statements been exchanged sequentially. The Tribunal took the view that as the claimant has adopted the further and better particulars as her witness statement the effect of this was the respondent had the information before it produced their witness statements.

69. The Tribunal has granted the claimant leave to rely on her witness statement, taking into account the overriding objective including the right to a fair trial for the reasons already stated. The claimant is not given leave to elaborate upon her statement. The claimant is not given leave to produce her letter of instruction to Dr Hussain with a view to him preparing a report, which he did on the 28 February 2021 as this document is not relevant to liability. The claimant is not given leave to produce Dr Hussain's medical report for the liability hearing, and if the claimant succeeds in any of her claims the liability hearing will be followed by a private case management hearing in which the provision of expert medical evidence can be explored, possibly by way of a joint report. The Tribunal takes the view that a letter of instruction and medical report are not relevant to the agreed issues in this case dealing with liability, and the respondent would be severely prejudiced by their late disclosure made without consent of the Tribunal or agreement with the respondent.

70. The witness statement provided by the claimant's partner Dr Bhavish Patel, unsigned and undated will not take the respondent by surprise. Dr Patel was not a witness to any of the alleged incidents and records what he was told by the claimant largely concerning a disciplinary hearing. There is only one reference to harassment which does not provide details and he will not be granted leave to elaborate upon his witness statement other than in cross-examination. As indicated above, Dr Patel's evidence appears to be more relevant to remedy if applicable, given it touches upon the alleged effect on the claimant of the alleged sexual harassment.

71. In short, the Tribunal does not accept Mr Lorimer's contention that the respondent's witness statements require amending, and if an individual witness believes the claimant has raised a new allegation not previously dealt with (which does not appear to be the case) this can be dealt with in supplementary questions from counsel.

72. Turning to the claimant's explanation for her failure to provide her witness statement as ordered by the Tribunal and the fact she had ignored Employment Judge Johnson's order, this was not found to be credible. On the one hand the claimant did not know the difference between a witness statement and bundle (despite the clear directions in case management orders and correspondence from the respondent's solicitors), she maintained her solicitors had sent a copy of the statement to the respondent previously when it had not, and she did not trust the respondent or its solicitor and the basis of her lack of truck was their failure to complete settlement negotiations. The claimant appeared to suggest there was a video on social media which had prejudiced her, but it became apparent this had nothing to do with the respondent. The claimant was difficult to pin down and her explanations were far from satisfactory; in short, she had no credible explanation despite her attempts to circumvent the questions put to her by the judge and her attempt to deflect reality which showed her in bad light by references to her family, their social standing, the wealth of her parents, her brother's cancer and so on.

73. There were problems with the claimant accessing the bundle; she appeared to have difficulties dealing with technology and yet at one point proclaimed that she was used to access materials online through the shared drive used by the respondent when taking part in high profile medical meetings. The claimant indicated that, as a result of previously passwords she had used, she was unable to access the bundle on the shared drive. This was not a credible explanation as the claimant only required a password or access witness statements the respondent did not want to disclose until the claimant had sent her statements to it. It is notable the claimant did not contact the respondent or Tribunal at any stage for assistance to access the bundle, and her difficulties only became apparent today when she was seeking to explain why she took not steps in this litigation.

74. The claimant explained also she had not opened the respondent's emails because she had experienced domestic violence and identity theft, allegations made for the first time. It was not credible that the claimant, who in February emailed the respondent, could not tell when emails were sent to her either by the respondent or the Tribunal. The claimant also agreed to delete the final two paragraphs in her witness statement which refer to without prejudice communications, failing which she has been put on notice that her claim will be struck out and dismissed. The claimant indicated that she would make the deletions immediately, and was given until 18 March 2021 to do so, in order that she had sufficient time. The claimant appreciates that the deletions are to be made in the interests of justice.

75. After the Tribunal delivered oral judgment with reasons Case Management Orders were agreed after the Tribunal delivered its oral judgment with reasons which can be found in a Case Management Summary dated 4 March 2021. It is notable that at the preliminary hearing dealing with case management the claimant apologised to Ms Rezaie for her behavior, and to the Tribunal. The claimant agreed that she will sign and date her witness statement to include "I believe that the facts stated in my witness statement are true" and apart from deletion of the final two paraphrase the claimant understands she cannot add to her statement. The claimant indicated she had no further evidence to add in any event.

76. Ms Rezaie indicated after oral judgment and reasons had been given that the respondent may wish to cross-examine the claimant on the documents she has produced today, namely the letter of instruction and medical report. The Tribunal has agreed to these documents being inserted in the bundle and the respondent will ensure the claimant is provided with a hard copy of the new bundle.

77. It was agreed with the respondent the claimant will be provided with PDF bundle directly to her email account, and with the respondent's witness statements without the need for a password. She will also be sent hard copies of all the documents. It is unfortunate the claimant was not provided with a hard copy of the bundle given the order in paragraph 3.2 in the case management summary that paper copies of some documents will be provided by the respondent given the difficulties she had accessing it, which would have made continuing with the liability hearing today very difficult.

78. The claimant is in a position to take part in the final hearing set down for April 2021 with breaks, and she has not referred the Tribunal to any of the conditions set out in the 28 February 2021 as the reason for her not taking an active part in these proceedings and not being able to conduct the hearing. The reason for the claimant's failure to appear yesterday was put down to her bad back, a non-epileptic fit brought about by the stress of the litigation (which was not referenced in the MED3) and the medication prescribed for her back. The claimant confirmed today that the medication was working and she was able to take part in the trial.

79. The claimant is aware that had the trial been put back to April 2022 her claim could then have been struck out for all the reasons set out above including a fair trial no longer being possible if the hearing was delayed for fourteen months, and it is imperative the final hearing takes place as listed in April 2021 without delay and the claimant complies with the observations made about her behavior in the case management summary to which she has agreed.

80. Turning to the respondent's prejudice, if the hearing was adjourned to the next available date before any Tribunal on 11 to 13 April 2022 both parties will be prejudiced by the delay, and the delay has been caused in part by the claimant's failure to progress this litigation, on the first day of the hearing, her ill-health i.e. back condition and the difficulties with the claimant accessing documents. The fact that the earliest listing before any panel would have been over 13-months' time cannot be put down to the parties. The Tribunal has offered the parties a number of early dates, unfortunately Ms Rezaie were unavailable. Ordinarily the Tribunal would list on the basis that another counsel could be instructed, however, it was minded fitting as best as possible the dates around Counsel's availability given Ms Rezaie was prepared for the final hearing which will now take place after a very short delay as opposed to over the 13-months originally envisaged.

81. On the basis that the claimant's evidence is limited to the witness statement she relies upon today, there are no allegations of rape to be decided and the claimant is not given leave to elaborate upon her statement when giving evidence in chief, a fair hearing can take place with both parties concentrating on the evidence of key witnesses and the agreed issues.

82. There is no doubt in the Tribunal's mind that the claimant has behaved badly, however, it is still possible for a fair trial to take place providing both parties assist the Tribunal in meeting the overriding objective. The claimant has been put on notice that this is her very last chance, taking into account the fact she is a litigant in person and was unwell for the first day of the liability hearing.

83. The claimant has been difficult, she has not actively pursued her case until today and she has behaved unreasonably. There will be a cost hearing in the future about these matters. When this liability hearing reconvenes, the claimant will need to change her behavior in order that the time can be used effectively. The claimant must make a big effort to answer the questions put her by the Tribunal and by counsel on cross-examination directly, without going off on a tangent or deflecting because she does not like the question. The respondent has already been put to an additional expense, and it is encumerant on the claimant to ensure her behaviour is such that this case is completed without any further delay, failing which the Tribunal may look at striking out the claimant's claim as a result of her behaviour. The claimant is now put on notice that her claim can still be struck out for the reasons set out above if she fails to assist the Tribunal in ensuring the evidence is heard without delay.

84. The respondent's cost application will be listed to take place after the liability hearing and case management orders will be made leading to it.

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17.3.2021  
Employment Judge Shotter

Judgment and reasons SENT TO THE PARTIES ON  
18 March 2021

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS