EMPLOYMENT TRIBUNALS

Claimant: **Mr S Wood**

Respondent: **W Liddy & Co Ltd**

Heard at: **Remotely (by CVP)**

On: **01 March 2021**

Before: **Employment Judge Sweeney**

Representation: For the Claimant: In person
For the Respondent: Laith Dilaimi, counsel

JUDGMENT having been given to the parties on 01 March 2021 and a written record having been sent on that day and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

Background

1. By a Claim Form presented on 29 January 2021, the Claimant brought the following complaints:

    a. unfair dismissal;
    b. Disability discrimination;
    c. Victimisation
    d. Notice pay (wrongful dismissal)

2. I conducted a case management preliminary hearing in these proceedings on 09 April 2020 at which I set the matter down for a public preliminary hearing ('PUPH') in order to determine the following issues:

    a. Having regard to the effects of ACAS early conciliation, was the complaint of unfair dismissal presented to the Tribunal before the end of

the period of three months beginning with the effective date of termination?

b. If not, has the Claimant satisfied the Tribunal that it was not reasonably practicable for the complaint to be presented before the end of that period of three months?

c. If the Claimant has satisfied the Tribunal of this, was the complaint presented within such further period as the Tribunal considers reasonable?

d. Were the complaints under the Equality Act 2010 brought after the end of the period of 3 months starting with the date of the act to which the complaint relates?

e. If they were brought after that period, were they brought within such period as the Tribunal thinks just and equitable?

f. Further or alternatively, because of those time limits (and not for any other reason), should any complaint be struck out under rule 37 on the basis that it has no reasonable prospects of success and/or should one or more deposit orders be made under rule 39 on the basis of little reasonable prospects of success?

3. The Claim Form was struck out on 05 August 2020 pursuant to rule 37 Tribunal Rules 2013 and a judgment was issued accordingly. The Claimant subsequently applied for a reconsideration of that judgment. Upon review of the correspondence I was not of the view that the application for reconsideration had no reasonable prospects of success and I did not refuse it under rule 72(1). I directed that there would have to be a hearing at which the decision to strike out would be reconsidered. That application was heard by me on 01 March 2021 at a reconsideration hearing.

The Reconsideration Hearing

4. The Claimant represented himself and the Respondent was represented by Mr Dilaimi, counsel.

5. I had before me a bundle of documents prepared by the Respondent running to 118 pages consisting of the pleadings, orders and correspondence. The bundle had been sent to the Tribunal and to the Claimant on 26 February 2021. The Claimant was sworn in and gave oral evidence on the matters he wished to advance in support of his application for reconsideration. The issue was whether the judgment of 05 August 2020 should be revoked.

Findings of fact

6. On 09 April 2020, at a telephone preliminary hearing, I made a number of case management directions for the purposes of preparing for the issues to be determined at the PUPH (see above). In paragraph 3.1 of the orders, I directed the Claimant to send a copy of medical records, including a copy of a letter from his GP by 08 May 2020. I also made directions for the Claimant to provide a disability impact statement and further information on the complaint of victimisation by the same date. I gave directions for exchange of documents and preparation of a bundle of documents and, in paragraph 7.1, for the provision of witness statements by 12 June 2021. I identified the complaints and in paragraphs 27-31 set out a summary of the discussion on the 'time points', identifying the issues to be determined at the PUPH. I explained carefully to Mr Wood that he was required to serve a witness statement for the purposes of the PUPH and was confident that he fully understood what was required of him.

7. It was discussed at the hearing that the Claimant would be the only witness to give evidence given the nature of the issues to be determined at the PUPH and that no witness evidence was anticipated from the Respondent.

8. On 07 and 08 May 2020 there was an exchange of emails between the Claimant and Ms Bowden (solicitor for the Respondent) regarding preparation for the PUPH (page 50). Ms Bowden referred the Claimant to my April orders.

9. On 08 May 2020, the Claimant asked the Tribunal for an extension of time to comply with orders due that day – on the basis that he had not been able to go to the library to collate the information he needed. The Respondent did not object and said they expected to receive the documents in compliance with the orders by 22 May 2020 (page 53). He was given an extension of time to 22 May 2020 by the Tribunal.

10. On 21 May 2020 a Notice of Hearing was sent to the parties listing the PUPH for 10 July 2020. On 22 May 2020 the Claimant asked for the case to be delayed on the basis, sadly, that his father had passed away on 17 May 2020. He said that he had been unable to complete the orders due to helping his mother arrange the funeral and because of COVID restrictions preventing access to libraries. This was agreed to and on 11 June 2020, Employment Judge Johnson extended the case management directions by one month with the effect that the date for provision of witness statements was to be 12 July 2020. The PUPH was re-listed for 12 August 2020.

11. On 25 June 2020 the Respondent's solicitors wrote to the Claimant reminding him of the need to comply with the updated orders; that the extended deadlines (15 June and 22 June) had passed and that he had not complied with the extended orders. She asked for an update on compliance by return. She pointed out that he was to comply with para 7.1 (witness statement) by 12 July.

12. On 02 July 2021 the Claimant sent his impact statement and a copy of the GP letter (see paragraph 6 above). In his email to the Respondent he said that he appreciated the Respondent's patience regarding his delay in complying with orders. He noted that he had not received any witness statement from the Respondent and he referred to a request for documents that he had made on 07 April 2020, namely his entire personnel file, all return to work documents and '*CCTV in order to identify persons present when discrimination occurred, 14th September 2019 and 21st September 2019*.'. Ms Bowden responded on 03 July 2020; at the end of her email (page 75) she referred again to the direction regarding witness statements.

13. On 14 July 2020 Ms Bowden wrote to the Claimant to say she had not received a complete copy of the GP letter, his agreement to the chronology or his witness statement and referred him to para 7.2 of the Order of 09 April (page 77). Given the proximity to the PUPH, she asked for his witness statement to be sent by 4pm on 21 July 2020 and making it clear that no witness evidence was being called by the Respondent. She said that if the Claimant failed to provide his witness statement by then the Respondent would seek a strike out of his claim for failure to comply with orders of the tribunal. The Claimant did not respond or comply by that date.

14. On 21 July 2020 the Respondent wrote to the Claimant and the Tribunal to say that the Claimant had not complied with paragraph 3.1 of the case management orders in full (he had sent an incomplete copy of the GP letter) and had not complied with paragraphs 5.3.3 (a draft chronology) and 7 (provision of witness statement). It made an application to strike out the claims, or failing that, an unless order that the claims be dismissed without further order should the Claimant not comply by 29 July 2020.

15. Even that did not prompt the Claimant into action. He did not respond to the application and on 28 July 2020, Employment Judge Garnon issued a strike out warning to the Claimant, saying that he was considering striking out the claim because of the failure to comply with the orders of the Tribunal dated 09 April 2020. The Claimant was told that if he wished to object to this proposal he had to give his reasons in writing or request a hearing by 03 August 2021.

16. On 31 July 2020, the Claimant telephoned and left a message for Ms Bowden (page 84). He referred to there being no further medical evidence at this time but that there may be some after the PUPH which he will disclose. He said he had requested an original copy of the GP letter and that he was happy with the chronology. He asked for disclosure of the Respondent's documents. He did not mention a witness statement. Ms Bowden replied on 31 July (page 85) responding to the specific points raised by the Claimant.

17. The Claimant did not respond to the Tribunal's strike out warning. On 05 August 2020, one week before the PUPH, on consideration of the case file, his claims were struck out by me under rule 37(1)(c) of the Tribunal Rules of Procedure 2013, for failure to comply with tribunal orders having been given the opportunity to make representations but failing to do so by 03 August 2020.

18. On 05 August 2020, very quickly after receipt of the judgment striking the claims out, the Claimant emailed the Tribunal saying: '*I have been in clear communication with the respondent and complied with the orders set out by the tribunal last week and have confirmation from the respondent last Friday via email that I have complied with the unless order. This claim should not be struck on the basis that I have complied with the case management orders*.'

19. Nowhere in that email does the Clamant say that he has not been able to comply with the case management orders because of his ADHD, nor does he say he misunderstood what was expected of him. It was clearly wrong to say that he had complied with the case management orders as he had not provided a witness statement.

20. On 13 August 2020 I treated the email as an intention to apply for a reconsideration of the judgment and directed that he must make the application in writing, copy it to the Respondent and say why reconsideration is in the interests of justice.

21. The Claimant did nothing in response to that email until 27 September 2020 when he wrote to the Tribunal, copying in the Respondent. saying:

> '*I am concerned that my recent application for reconsideration to strike out by the respondent has not been responded to.*
>
> *I am applying for reconsideration on the basis that I have complied with the case management orders. I am not legally trained and was unsure how to proceed with the unless order as I had already complied with them.*
>
> *I also lost my father in May and have been going through counselling and have been having worsening anxiety and panic attacks. I believe this case should proceed in the interests of justice to prove there needs to be adjustments to employees with disabilities from big companies and that they should be supported and not victimised*.'

22. The Respondent was asked for its comments and replied to this email on 12 October 2020. It stated that, contrary to what the Claimant said in his email, he had not in fact complied fully with paragraph 3.1 of the orders and had not complied with paragraph 7 at all. It stated that following the Tribunal's strike out warning of 28 July 2020 the Claimant had emailed the Respondent on 28 July 2020 to say that he had approved the chronology (only after extended deadlines and chasing). However, it noted that having been granted extensions by the Tribunal and afforded further extensions by the Respondent, the Claimant was still in breach of tribunal directions; that he was aware of the need to seek extensions if he needed

them but chose not to do so. They referred to the Claimant's failures as persistent non-compliance.

23. The Claimant responded the same day referring to a telephone message he had left with Ms Bowden's secretary and repeating that that he had complied with the outstanding case management orders and requested a hearing. This led to a further email from the Respondent on 13 October 2020 attaching an email from the Respondent to the Claimant on 31 July in response to his telephone message of that day.

The Claimant's evidence at today's hearing

24. The Claimant said in evidence that he was not aware that he had to send a witness statement in advance of the PUPH. He said he was not aware of any request for a witness statement. He said that this was due to his undiagnosed ADHD, which had just been diagnosed about 3 weeks before this hearing. He said that he started his medication only yesterday. The Claimant was then asked questions by Mr Dilaimi. He said that he recalled the discussion at the case management hearing on 09 April 2020 about the need for him to prepare a witness statement for the PUPH. He also confirmed that Ms Bowden emailed him on 03 July 2020 reminding him of the need for a witness statement by 12 July 2020 (the extended deadline).

25. The Claimant said that he got confused, that he was under the impression he did not need to provide the witness statement because '*you guys were trying to strike out my ET1 for being out of time*'. Mr Dilaimi took the Claimant to the case management summary explanation and the orders. The Claimant then said that until disclosure had taken place he did not feel he would be in a position to provide a statement as there may be some evidence in the documents. He added that probably now that he is medicated he can see that paragraph 7 of the orders was quite clear but because the Respondent did not give disclosure there may be something he would want to provide. The Claimant said that it was only now, during this hearing, that he realised he had been required to provide a witness statement.

26. When asked again about the case management discussion on 09 April 2020 that the statement was to be on the subject of the time point the Claimant said that he understands that is what it <u>seems</u> was ordered but that he had an unmedicated condition. He said had he been medicated he would have been in a different frame of mind to the one he is in now. He said that having started his medication he now feels fantastic and is feeling like his old self. When taken to Ms Bowden's email of 14 July 2020, the Claimant said that reading that email now he can see that it is 'crystal clear as day' and that he understands it but that he had unmedicated ADHD at the time and that these things are not clear to a person with ADHD.

27. At this point, the Claimant said he had a letter saying that he has been diagnosed with ADHD and another letter to his pharmacy regarding medication. He said he had only received these letters the previous Thursday. He asked whether he

should email the letters to the Tribunal but on confirming they were short I asked him simply to read what they said, which he did. One letter was from Paul Wilson, a clinical nurse specialist. It was dated 23 February 2021. The Claimant read it. He had been seen at St Nicholas Hospital on 11 February 2021 and it confirmed a diagnosis of ADHD. The other letter was dated 19 February 2021 and was to the pharmacy regarding his prescription.

28. When put to him by Mr Dilaimi that he had not responded to Ms Bowden's email of 14 July 2020, the Claimant said he could neither confirm nor deny that, nor could he confirm whether he had failed to respond to her further email of 21 July 2020 (the application for strike out). When asked why he did not reply to the Tribunal's strike out warning, the Claimant said that it was because of his undiagnosed ADHD.

29. I find that the Claimant understood perfectly what was required of him in advance of the PUPH, that he understood the emails that were sent to him and that he had put forward no good reason for failing to respond to the correspondence with either the Respondent or the Tribunal.

Relevant law

30. Under rule 37 Tribunal Rules 2013, at any stage of the proceedings a Tribunal may strike out all or part of a claim or response on any of five grounds, one of which (r37(1)(c)) is 'for non-compliance with any of these Rules or with an order of the Tribunal'. A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

31. In an application under rule 70, the key consideration is whether it is necessary in the interests of justice to reconsider the original decision (in this case, the decision to strike-out the claims). In applications for reconsideration, the applicant's objective is to have the original decision revoked or varied. If an employment judge considers the application to have no reasonable prospect of success, it must be refused. If the application is not refused under rule 72(1), the original decision must be reconsidered.

32. Having reconsidered the original decision, rule 70 provides that the employment judge may confirm, vary or revoke the original decision. Rule 70 does not expressly say what principles should be applied when reconsidering the application. However, it is well understood that the Tribunal should, again, be guided by the interests of justice – much as in cases of relief from sanction under rule 38((2) in respect of unless orders. Thus, the question for any tribunal will be whether it is in the interests of justice to revoke the original decision.

33. In the case of **Outasight VB Ltd v Brown** UKEAT/0253/14/LA, the EAT confirmed that although the 2013 Tribunal Rules contain only one ground (interests of justice) on which an application for reconsideration may be made, that does not give the

Tribunal any broader discretion than it had under the previous incarnation of the Rules. HHJ Eady QC (as she then was) observed that tribunals should consider the broader interests of justice, in particular the interest in finality of litigation.

34. Rule 38(1) of the Tribunal Rules 2013 provides that an order of the Tribunal may specify that, if it is not complied with by the date specified, the claim or part of it shall be dismissed without further order. Under rule 38(2) a party whose claim is dismissed as a result of such an order may apply to the Tribunal in writing to have the order set aside on the basis that it is in the interests of justice to do so. This is known as an application for relief from sanction.

35. There have been a number of cases in the EAT which have given guidance to Tribunals on the approach to be taken in applications for relief from sanction: Governing Body of **St Albans Girls School v Neary** [2010] IRLR 124; **Thind v Salveson Logistics** UKEAT/0487/09; **Opara v Partnerships in Care Ltd** (UKEAT/0368/09 **Hylton v Royal Mail Group Ltd** UKEAT/ 0369/14; **Enamejewa v British Gas Trading Ltd** UKEAT/0347/14; **Morgan Motor Company Ltd v Morgan** UKEAT/0128/15; **Singh v Singh (as representative of the Guru Nanak Gurdwara West Bromwich)** 2017 ICR D7.

36. Factors to consider are the reason and seriousness of the default, the explanation for it, the prejudice to the other party and whether a fair hearing is still possible. The tribunal may take account of facts that have happened since the unless order was made. There need be no compelling or special factor in order to obtain relief from sanction. Fundamentally, a tribunal is bound to determine applications for relief from sanction on the basis of what it considers to be in the interests of justice. This necessarily involves an exercise of judgement, which is to be exercised rationally, taking into account relevant factors and avoiding irrelevant factors. It involves a broad assessment of the particular case, balancing the relevant factors. It is ultimately a 'judgement call'.

Submissions

37. Mr Dilaimi referred me to the case of **Outasight VB Ltd v Brown** UKEAT/0253/14/LA and emphasised the importance of finality in litigation. He submitted it was not in the interests of justice to revoke the original decision in this case; that the orders were explained carefully and clearly at the telephone hearing in April 2020, on the face of the written orders and in email correspondence from the Respondent's solicitor, who was helpful to the Claimant in sending him reminders, extending deadlines, giving him warnings and a final opportunity before applying for strike out. He was not automatically struck out but given a chance to say why he should not be, but he did not respond. Mr Dilaimi submitted that the Claimant had been able to take a full part in the proceedings. He had written to ask for more time, to ask for a stay; he managed to comply with orders. He has shown that he understands but that there has been selective non-compliance.

38. Mr Dilaimi submitted that I should take into account what the Claimant says about having an unmedicated condition of ADHD. Nevertheless, he was able to comply with orders and to understand what was required. Looking at matters in the round, he submitted that the non-compliance must be seen to be deliberate, not due to any medical condition. Mr Dilaimi submitted that by not producing a witness statement the Respondent could not have a fair hearing. He added that the application for reconsideration was made out of time albeit I had an unfettered discretion to extend time.

39. The Claimant submitted that this was not a case of selective compliance. He said his non-compliance was down to his unmedicated ADHD. He accepted that the Respondent and the Tribunal granted extensions but his father passing away and COVID did not help matters. He said that it was in the interests of justice to revoke the judgment, that he is much better now he is on medication and he wishes to prove that big companies do not have the right to victimise disabled employees or treat them unfairly.

Conclusions

40. This was an application for a reconsideration of a judgment issued without a hearing on the merits. I was very conscious of that. For that reason, I have referred above to the principles applicable to relief from sanction cases as this application is very much like an application for a relief from sanction. Although presented out of time, I extended time to reconsider the judgment.

41. Mr Dilaimi had referred me the case of **Outasight**, emphasising the issue of finality in litigation. However, that case involved a reconsideration of a decision made after a full hearing. The interest in finality of litigation – although applicable - will, feature more prominently where there has been a full-merits hearing than in a case such as this, where the claims have been struck out without having tested them on the merits. This case is more akin to an application for relief from sanction under rule 38(2). It is for that reason that I considered the principles derived from sanction cases in the relevant law section above. I add that this was not an application for relief from sanction under rule 38, but the overriding principle of assessing what is in the interests of justice applies under rules 70 and 38, and many of the factors that a tribunal will consider in a relief from sanction case will be applicable in a case where a complaint has been struck out for failure to comply with orders of the tribunal.

42. There was nothing in what the Claimant said to me that led me to consider that it was unfair or unjust to send the strike our warning or to issue judgment striking out the claims. On the contrary, it was on a full appreciation of the events, right and proper to do both those things.

43. The concept of ‘the Interest of justice’ means interest to both sides. There is a need to observe directions, particularly those key directions which are carefully

explained and in respect of which reminders are sent and extensions afforded. Case management orders are an important feature of the administration of justice and they must be taken very seriously. Their effectiveness will be undermined if tribunals are too ready to overlook them and the interests of and administration of justice will be adversely affected. I remain satisfied that it was appropriate to issue the strike out order and the judgment striking the claims out.

44. I concluded that it was not in the interests of justice to revoke the judgment of 05 August 2020. The Claimant's explanations given today for his failure to comply with the order to provide a witness statement were inconsistent and contradictory and in my judgement lacked credibility and reliability. He said that he did not understand that he had to provide a statement and the first time that he understood this was today. He said this was down to the fact that he had undiagnosed and unmedicated ADHD and that today, as he is medicated, he can see that things were, in fact, clear; that this explains why he did not understand the orders or all of the emails from Ms Bowden, which he accepts were 'crystal' clear. However, I reject his explanation.

45. There was no medical evidence to show that ADHD was responsible for the Claimant's failure to comply with what were very clear and straightforward directions or for his failure to respond to correspondence or to suggest that he did not understand the clear words as they were expressed. The letter which the Claimant read out to me simply confirms a recent diagnosis. To be diagnosed with ADHD (which of course I accept) is one thing but it is a very different thing to say that such diagnosis or condition caused, contributed to or explains failures of the sort in this case. I note that the Claimant was perfectly able to comply with other directions. He was able to send an impact statement and he was able to question the Respondent about its disclosure obligations and about whether it was providing a witness statement. He showed no signs whatsoever that he did not understand what was expected of him in those respects. His ADHD did not affect his understanding of those matters. He did not express or convey any misunderstanding of anything at the preliminary hearing in April 2020.

46. The explanations given to the Claimant and the letters sent to him were extremely clear and not only were they extremely clear but I conclude that the Claimant perfectly understood them then as he does now. I reject his statement that medication which he started taking yesterday has had the effect of suddenly enabling him to understand one issue (provision of a witness statement) among many others, in respect of which others he had expressed no previous misunderstanding – especially when the requirement for a witness statement was explained a number of times in the clearest of terms. His evidence before me was neither credible nor reliable. He has provided inconsistent and contradictory explanations. The Claimant confirmed in evidence that he understood at the time the explanation given at the April 2020 preliminary hearing as to what was expected of him when he had been referred to the specific need for a witness statement to be prepared. Yet he also said that today was the first day he realised he had to

provide a witness statement at all. He also said that he did not provide a statement because he was waiting to see what disclosure would come from the Respondent. When asked by Mr Dilaimi to explain why he had not complied or responded to correspondence, he repeatedly answered simply that it was because of his ADHD. However, he did reply at times, when he wanted to – and at times quickly - and he made requests of the Respondent when he wanted to

47. Even taking account of undiagnosed ADHD – I conclude from the Claimant's evidence and from a reading of the correspondence as a whole that the Claimant understood perfectly what he was required to do but that he was waiting to see what documents were disclosed by the Respondent before he provided any statement, as he believed something might be disclosed of relevance to his statement. It was, in my judgement, a deliberate decision of his not to provide a witness statement. I reject as untruthful his evidence that it was only today, as a result of taking medication yesterday, that he was able to understand clearly what Ms Bowden's and the tribunal's directions meant. That flies in the face of everything that I have seen and heard. Without wishing to diminish the effects of the Claimant's ADHD, he has not satisfied me that this was the explanation for his failure, which I conclude was knowing and deliberate and – in light of the clear reminders sent to him – persistent.

48. In arriving at my decision I considered the following factors:

    a. The extent of non-compliance,
    b. the reason for the non-compliance,
    c. whether the default was deliberate,
    d. the seriousness of the default,
    e. whether there was persistent default,
    f. the Claimant's status as a litigant in person,
    g. the Claimant's personal circumstances,
    h. The prejudice to the Respondent,
    i. The draconian nature of strike out.

49. There were only 5 working days before the PUPH with no sign of compliance by the Claimant. To proceed to the hearing in such circumstances – where the evidence to be given in statement form was entirely within the knowledge of the Claimant - was unfair and prejudicial to the Respondent.

50. On a hearing to determine whether a complaint was presented in time, and whether time should be extended, the critical evidence is in the possession of the Claimant. Therefore, it is important that the Respondent understands his evidence in advance of the hearing. The failure of the Claimant was a failure to provide a statement on the very issues to be determined at the PUPH. It would not have been fair to the Respondent to expect it to proceed to a hearing in such circumstances. Therefore, the Claimant's non-compliance was serious. It was also significant in extent, having been granted an extension of time by the Tribunal and afforded further periods of

time by the Respondent. I have rejected the reason he advanced for non-compliance (that he had ADHD). His non-compliance was a deliberate choice. The Claimant deliberately chose not to provide a statement despite warnings that the Respondent would seek the strike out of his complaints and despite a warning from the Tribunal. Not only was it deliberate, it was persistent non-compliance.

51. I had regard to the fact that there had been no compliance by 05 August – and still none by 27 September which was the date of the application for a reconsideration (itself out of time and with no explanation having been given).

52. From the Claimant's perspective, I have had regard to the difficult circumstances faced by him with the passing of his father and the need to tend to funeral arrangements and the effects of COVID. However, accommodation was made by the Tribunal for these events by affording extensions of time. I also had regard to the Claimant's submissions on his unmedicated and undiagnosed ADHD and took account of the letters he read to me and of the information contained in the bundle. I also recognise that the Claimant is an unrepresented litigant and give him appropriate leeway for his unfamiliarity with tribunal procedures. I have also had regard to the draconian nature of the strike out, prior to testing the complaints on their merits.

53. In all the circumstance, however, it is not in the interests of justice to revoke my judgment. I found that the Claimant today was not being truthful as to the reason for not providing his witness statement and as to his understanding of what was required and these factors has weighed heavily in my conclusion. How, it might be asked (rhetorically), can it be justice to the Respondent (or to the wider administration of justice) to revoke a judgment given a finding that what led to the issuing of the judgment was a deliberate and persistent failure to comply with the direction of the Tribunal and a finding that the Claimant's attempted explanation for that failure has been rejected? On the other hand, how can it be justice to the Claimant not to revoke a judgment striking out a complaint that has not been determined on its merits? I have considered these questions and concluded that although the result is draconian, the interests of justice to both parties in litigation and to the wider administration of justice is not served by overturning a judgment in circumstances where I have rejected as untruthful the explanation advanced as the reason for the failures that led to the issuing of the judgment. To revoke the judgment might be 'in the interests' of the Claimant – but that does not equate to the interests of justice. A respondent would also have a legitimate concern that it would not have a fair hearing going forward were the tribunal to revoke a judgment properly issued in these circumstances.

54. For the above reasons, on reconsideration of the judgment I confirm the original decision to strike out the claims and this application is dismissed

Employment Judge Sweeney

29 March 2021