EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Timothy Paul Knight	**v**	**The Forestry Commission**

Heard at: Watford Video (CVP) **On**: 16 and 17 February 2021

Before: Employment Judge Bloch QC

Appearances

For the Claimant: In person, assisted by Mr Reynolds Hardiman
For the Respondent: Miss E Wheeler, Counsel

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"This has been a remote hearing. The form of remote hearing was by video (CVP). A face to face hearing was not held because all the issues could be determined fairly in a remote hearing. The claimant objected to the hearing being by video but for the reasons set out in my ruling on that point (below) the hearing proceeded by CVP.

RESERVED JUDGMENT

1. The claims are struck out the on the grounds that:

a. The manner in which the proceedings have been conducted on behalf of the claimant has been unreasonable, contrary to Rule 37 (1)(b) of the Employment Tribunal's (Constitution & Rules of Procedure) Regulations 2013 (the "Rules");
b. The claimant has deliberately not complied with orders of the tribunal, contrary to Rule 37(1)(c); and
c. The claim is not being actively pursued by the claimant, contrary to Rule 37(1)(d).

2. In the alternative to 1 above, the claims are unfounded and accordingly dismissed (save to the extent of the claim for one day's unpaid notice pay, which, but for being struck out, would have been upheld.

REASONS

Adjournment application/objection to hearing by video

1. At the outset of the hearing I refused the claimant's application for an adjournment of the full merits hearing. The claimant, who had previously objected to an in-person hearing at Aylesbury, now objected to attending the hearing by video. The principal ground put forward for this was his alleged autism. The reasons for my refusal appear below.

2. By the claimant's claim form (ET1), presented to the tribunal on 8 November 2019, he brought various claims of which the key one was unfair dismissal, the claimant having been dismissed (on the respondent's case) for redundancy. The claimant was employed by the respondent as a Computing Officer on 21 August 2000 (from April 2012 as Enterprise Systems Administrator). The claimant's day-to-day activities focussed on the management of the network on site.

3. At paragraph 12.1 of the form ET1 (in which Mr Hardiman was named as the claimant's representative), in response to the question at 12.1 "Do you have a disability?" the respondent answered in the affirmative. The next statement on the form was to the effect that if the answer was in the affirmative, it would be helpful if the claimant identified this disability and informed the tribunal what assistance, if any he would like "….as your claim progresses through the system, including for any hearings that may be held at tribunal premises". The claimant did not identify what assistance he required. In seeking to explain this omission Mr Hardiman sought to argue that "premises" did not include a hearing which was by video. That unhelpful submission, focussing on form and not substance, did not presage well for the expected co-operation required of tribunal litigants. At the time the claim was presented to the tribunal, there was no pandemic and the ET1 form did not look to the position where a hearing was held by video. However, in any event, the substance of what the tribunal was seeking was some suggestion from the claimant as to what assistance he might need, as a result of his disability - and he (presumably through Mr Hardiman) chose not to answer.

4. On 26 October 2020 there was a preliminary hearing before Employment Judge Cassel, sitting alone. In the Case Management Summary, the final hearing was determined to be before an Employment Judge, sitting alone at the Aylesbury Employment Tribunal, with a time estimate of two days. The Case Summary recorded that at the Case Management Hearing, Miss McQuaide appeared for the respondent but the claimant did not attend. The following was recorded: "I was provided with a note by our clerk that

the claimant had contacted the tribunal having been informed of the hearing date for today's hearing and made the following comment:

> "I have no personal and secure telephone and therefore cannot provide a contact number to the tribunal".

5. Judge Cassel went on to say that it was a matter of regret that not only did the claimant not attend - and that had he done so would have been able to explain what the other payments that he claimed amounted to - but the agenda for the case management sent to the claimant had not been returned.

6. At the preliminary hearing A date for the hearing was fixed and various orders of a routine nature were made, including that the claimant was by 13 November 2020 to provide to the respondent full details of the "other payments" referred to in section 8 of his claim form. It was also ordered that he provide a schedule of loss by 13 November 2020 and that documents should be exchanged between the parties on 4 December 2020. There was also provision for an agreement of the final hearing bundle by 18 December 2020 and an order that the claimant and the respondent exchange full written statements containing all of the evidence they and their witnesses intended to give at the final hearing and to provide copies of their written statements to each other on or before 15 January 2021. There was the usual provision: "No additional witness evidence will be allowed at the final hearing without the tribunal's permission." The claimant did not (and apparently did not seek to) comply with any of these orders.

7. By letter dated 11 February 2021, the tribunal informed the parties that the hearing listed for 16 and 17 February would now be heard by video using the cloud video platform (CVP). Attached to that letter was the usual guidance about the use of electronic equipment by parties, including advising the parties, as soon as possible, to ensure that they could access CVP without problems and that they could do this immediately and should not wait until the day of the hearing.

8. By e-mail dated 12 February 2021, the claimant (by his wife Elizabeth Knight) objected to the hearing being heard by CVP, concluding:

> "As I have noted previously, my venue request has always been for an in-person hearing to be held in central London and that remains my view and request."

9. Mrs Knight was there apparently referring to an earlier communication with the tribunal in which the claimant had said that he did not intend to attend the tribunal hearing in Aylesbury to give evidence.

10. By the claimant's written representations under Rule 42, served and filed on Monday 8 February, the claimant stated (at paragraph 7):

> "On the additional grounds of the Aylesbury Final Hearing venue being wholly unreasonable and much too distant for the claimant to safely and appropriately get to personally, and as the Claimant has not been Covid-19 vaccination called, nor vaccinated duly, and further, has been grossly hampered and constructively prevented from engaging legal representation by the Tribunal's said failures and/or gross delays (see the Tribunal file and this Rule 42 submission), the claimant relies on this Rule 42 submission in place of his attendance at final hearing. Appropriately, hereby the claimant *pro-tempore* seeks to protect his position and lawfully declines to attend the Final Hearing in these circumstances and reserves his position for statutory appeal and/or a Judicial Review challenge accordingly."

(I refer below to a complaint which the claimant had been actively pursuing that the Regional Employment Judge had been wrong to grant a general extension of time for respondents to file their responses in cases where the date for filing would otherwise fall between Christmas and New Year).

11. Again, this morning the claimant renewed his application for an adjournment, stating in particular (under paragraph 1 of his written communication):

> "I promptly gave notice to the tribunal last week so soon as the tribunal notified me that it had changed its mind at the last minute and instead of an in-person hearing, ordered a video link hearing. As I have clearly notified in the ET1 I have the disability of autism and that makes it exceedingly difficult for me to interact properly with others by video link."

12. When the hearing began today, while their presence on the CVP could be detected, Mr and Mrs Knight and Mr Hardiman did not activate their microphones or cameras with the effect that they could not be heard or seen. My clerk had a discussion with them and reported to me that the claimant did not want to be seen or be heard, wishing only to observe proceedings.

13. I gave the claimant and his adviser a chance to reconsider this stance, indicating that for the claimant wilfully not to appear today (in a manner in which he could actively participate) could lead to the possibility of negative inferences being drawn against him either in the course of the full merits hearing, if it proceeded, or indeed in any other applications including the adjournment application which he had submitted to the tribunal. Sometime later, my clerk reported to me that, although they were now willing to participate in the hearing, Mr Hardiman and his clients were having difficulty in communicating with the tribunal: they could see and hear, but not be seen or heard on the video link. Eventually Mrs Knight connected by phone with the tribunal so that the claimant and Mr Hardiman could speak to the tribunal by telephone and see and hear the tribunal proceedings – but not be seen or heard via the video link. No proper explanation was given for this and I was told on enquiry that Mrs Knight had in accordance with the guidance on conduct of video hearings tested the system when the notice of hearing by video was received and it had worked - but now for unexplained reasons, it did not. Mr Hardiman sought to explain this by reference to Mrs Knight's limited technical expertise.

When I pointed out that the claimant's day-to-day activities had focussed on the management of the computer network on site, so that he should have no difficulty in this regard, no further explanation could be elicited. I should add that in the many cases I have dealt with by video during the pandemic, the alleged difficulties of the claimant in not being able to speak and be seen via the video system have never occurred before. There have in some hearings been intermittent difficulties of connection but nothing on the scale alleged by the claimant. It is also noteworthy that the initial explanation given to my clerk was that the claimant "would not" take part in the hearing by video and microphone but that this was later changed to "could not" so participate. Taken in combination with the claimant's reported stance in relation to the preliminary hearing that he had no personal and secure telephone (and therefore could not provide a contact number to the tribunal) and that during the whole of the two day hearing the claimant made no video or audio connection with the tribunal and would not (despite my invitation) address me even to the limited extent of explaining his alleged disability and its effect on his participation in the hearing, it was difficult to conclude otherwise than that the claimant had decided, not to participate actively in the hearing, despite being able to do so.

14. Accordingly, the hearing was conducted over two days with my hearing only from Mr Hardiman (hearing him by telephone and briefly, on one or two occasions, Mrs Knight) but not seeing or hearing a word from the claimant directly.

15. I referred the parties to the Presidential Guidance on remote and in-person hearings and in particular to paragraphs 16 and 17 relating to the relevant factors which influence the judicial decision on the format of the hearing, in particular regarding the feasibility of holding a remote hearing.

16. On behalf of the claimant, it was represented that he has difficulties in a "group" setting in communicating as a result of his autism. However, Mr Hardiman accepted that there was no medical report relating to the claimant's autism and in particular no evidence about how the autism affects his ability to communicate, particularly amongst a group of people. However, Mr Hardiman's greatest difficulty was in dealing with the question of how a hearing in-person would be less stressful than a hearing by video, where the claimant was in a private area supported Mr Hardiman and his wife. Mr Hardiman made mention of the possibility of reasonable adjustments being made at an in-person hearing but, when questioned, made no specific suggestion as to what they might be. I asked Mr Hardiman how matters would proceed if an adjournment were not granted and he said that the claimant would not give evidence. The respondent's witnesses would give evidence and Mr Hardiman would ask questions of them. He indicated that he would be in a better position to do so on the second day after he had read himself back into the case. Mr Hardiman explained that for some time he had been representing the claimant but latterly not so. Some time in December he had been dis-instructed. On the basis that he would not have to ask questions until tomorrow Mr Hardiman

said that he would be able to cope with putting questions to the respondent's witnesses.

17. In dealing with the questions of the format of the hearing and the adjournment application I must (as both parties accepted) look at the interests of justice and consider the position of both parties. The core difficulty as I have indicated, was to imagine how an in-person hearing would be a more appropriate, less stressful format for the claimant to present his case. I pressed Mr Hardiman on this and asked him why (especially given the absence medical evidence) the claimant could not himself tell me what the answer to this question might be. The claimant was, however, not forthcoming. Nor could Mr Hardiman assist on this point. On the other side of the coin, of the respondent's two witnesses, Mr Maddock, lives in Bath and Miss England who is no longer employed by the respondent, lives in Somerset. So, while the claimant indicated that he was happy to attend a tribunal either in London Central, or Croydon or somewhere to the south of London, that seemed to be the extent of his flexibility on location.

18. The parties appeared to be ready to proceed with the claim which had been outstanding for a long time and, on enquiry, I was told by my clerk that there would be a very substantial delay if the hearing were to be held in-person rather than remotely. At the earliest, if the hearing were in Central London or Watford, the hearing would not be until November of this year but even that was not clear, so that the hearing might not be until early next year.

19. As indicated above, the claimant had the assistance of Mr Hardiman (who would be of greater assistance once he had got up to speed with the papers) and through him, the parties could engage meaningfully in a remote hearing. Having seen the nature of the dispute and the evidence to be given by the respondent, it did not seem to me that the evidence and in particular any disputed evidence was such that fairness and justice required it to be evaluated by the tribunal in a face-to-face environment. On the face of the witness statements, the evidence seemed to be largely document-based.

20. Indeed, given the claimant's refusal to connect actively with the tribunal (whether at the preliminary hearing or at the full merits hearing) it was in my judgment very uncertain whether the claimant would ever give live evidence himself.

21. Accordingly, in my judgment, if I were to accede to the request for an adjournment, the result would be a long delay, inconvenience to the respondent's witnesses and indeed inconvenience to the claimant himself by not having this case resolved in the near future. In late 2021 or early 2022, when the case would come on for hearing in-person, there were likely to be even greater problems in regard to the claimant's difficulties through alleged autism, especially since (he says) it affects his ability to operate properly in a crowded situation. Further, the claimant's failure to

engage with the tribunal's processes (though compliance with routine orders) does not bode well in term of the likelihood of his engaging in an in-person hearing. Further, if and insofar as any evidence were to be one of recollection, a delay would be likely to affect the witnesses' recollection of such events

22. For those reasons, and taking into account the Presidential Guidance I referred to above, I declined to grant the adjournment. In particular, I was guided by the following factors:

    22.1. The feasibility of the case proceeding by video including readiness of the case for hearing and the availability of the parties (including the respondent's witnesses, one of whom was no longer employed by it);
    22.2. The long delay that would result if the case were to be heard in person;
    22.3. The alleged disability of the claimant which (objectively speaking) would make it fairer to him for it to be conducted remotely, given his expressed concerns about being in a large group;
    22.4. The likelihood in my view that the claimant would not give live evidence at any in-person hearing – there being no reasonable adjustments suggested (or otherwise apparent) which would make this less stressful than a hearing by video; I was struck in particular by the refusal of the claimant to participate even to the limited extent of explaining his alleged disability and its effect on his ability to participate in the hearing, given especially that Mr Hardiman was unable to cast light in this, as well as his failure to comply with any earlier orders of the tribunal;
    22.5. That the claimant was represented by Mr Hardiman;
    22.6. That the claimant could (whether by Mr Hardiman or otherwise) engage meaningfully in a remote hearing at least to the same extent if not more than in an in-person hearing ;
    22.7. The nature of the evidence (most of which was documented) was not in my view such that fairness and justice required it to be evaluated by the tribunal in an in-person environment.

23. Immediately after my refusal of the adjournment application, Mr Hardiman announced that he intended to withdraw from the case on the grounds that he did not have instructions to deal with anything else. Insofar, as this would create difficulties for the claimant in participating in the hearing, as fully as he might wish to do, and especially by questioning the respondent's witnesses, that would be a matter of his or his representative's own making.

24. That stance appeared soon to have been reversed, since Mr Hardiman continued to represent the claimant.

<u>Strike out application</u>

25. The respondent made an application to strike-out the claim on the grounds:

25.1. The manner in which the proceedings had been conducted on behalf of the claimant has been scandalous, unreasonable or vexatious (Rule 37(1)(b));

25.2. The claimant had deliberately not complied with orders of the tribunal (Rule 37 (1)(c)); and

25.3. The claim had not been actively pursued by the claimant (Rule 37(1)(d)).

26. By the respondent's solicitors letter of 17 November 2020 to the Watford Employment Tribunal, the respondent set out its detailed reasons in support of its application to strike out the proceedings under rules 37(1)(b), (c) and (d).

27. The respondent's letter seeking strike-out of the claims contained (in my judgment) a good summary of what had occurred so far in this case and I quote in substantial part from it:

> "The respondent relies on the following actions of the claimant to support these grounss for strike out:
>
> 1) <u>The manner in which the proceedings have been conducted</u>
>
> The Claimant's representative has, at every opportunity sought to challenge the tribunal's judicial authority to manage the case and list directions. It is the Respondent's position that these applications are misconceived and are an abuse of the Tribunal process.
>
> In a series of correspondence (letters of 22 January, 24 January, further e-mail of 24 January, letter of 27 January and e-mail of 7 February 2020) the Claimant challenged Regional Employment Judge Byrne's authority to grant an automatic extension to the ET3 deadline which fell between the Christmas and New Year period 2019. The respondent filed the ET3/Grounds of Resistance on 6 January, in line with the Tribunal's deadline, and the Response was accepted by the Tribunal on 19 January 2020.
>
> The Employment Tribunal responded to the Claimant on 21 February 2020 confirming that the decision to grant an automatic extension was a judicial one and as the Respondent's response was received within the period of the extension, the Tribunal correctly accepted it. The Tribunal made clear that it would be a matter for the Claimant to decide how to proceed and the mechanism for challenging the judicial decision by was by way of an appeal to the Employment Appeal Tribunal.
>
> To our knowledge, the Claimant has not pursued this matter further, however, in recent correspondence, most notably his Application received by the Respondent on 16 November 2020, he continues to assert that the Respondent's ET3 was filed out of time, and the Respondent's involvement in the telephone preliminary hearing on 26 October 2020 was unlawful.
>
> 2) <u>The Claimant has deliberately not complied with orders of the Tribunal</u>

The Tribunal sent the parties notice of a preliminary hearing on 14 March 2020. The notice confirmed that a preliminary hearing would take place in Reading Employment Tribunal on Monday 26 October 2020, in private. The parties therefore had over six months' notice to prepare for the hearing. The notice circulated a copy of the draft agenda to be completed by both parties.

We tried to obtain the Claimant's representative's agreement to the preliminary hearing agenda by sending him a copy of the Respondent's agenda on 14 October. As the Claimant's representative did not provide any comments on the agenda, we circulated the Respondent's agenda to the tribunal on 19 October. On 21 October, the Tribunal confirmed that the hearing would be converted to a telephone hearing and both parties were requested to provide their telephone numbers. In light of the Coronavirus Pandemic, the Respondent considers that this was an appropriate and reasonable measure to enable the hearing to go ahead remotely.

On 22 October, the Claimant's representative responded to this stating *"I have no personal and secure telephone and therefore cannot provide a contact number to the tribunal.*[1]*"* He also asserted that the informal administrative notification of the conversion to a telephone hearing was unlawful. The Claimant's representative subsequently failed to attend the preliminary hearing on 26 October 2020. The Respondent's legal representative attended the preliminary hearing, which proceeded in the Claimant's absence. Employment Judge Cassell sent a case management summary to the Claimant and Respondent on 31 October 2020, listing various directions ahead of the substantive hearing on 16 and 17 February 2021. Employment Judge Cassell noted that *"It is a matter of regret'* that the Claimant's representative did not attend the hearing, or return the agenda".

The claimant was directed to provide a Schedule of Loss and full details of what "other payments" he referred to in section 8 of his claim form by 13 November 2020. The Claimant has failed to comply with this direction. On 16 November, the Respondent received a copy of the Claimant's application to set aside the telephone preliminary hearing which took place on 26 October 2020 and the written orders of Judge Cassell which was sent to the parties on 31 October. The Claimant refers to a "one sided" preliminary hearing throughout this application. However, the Claimant was afforded the exact same notice, and opportunity to attend the hearing as the Respondent; he deliberately chose not to attend the hearing and not to provide a written agenda or reasons for the Judge to consider.

3) <u>The claim is not being actively pursued by the Claimant</u>

As mentioned above, the Claimant failed to attend the preliminary hearing on 26 October, and has recently failed to comply with Judge Cassell's case management directions.

On 27 April 2020, the Claimant's legal representative indicated that "*in the prevailing circumstances my client is now considering terminating his Claim in the Employment Tribunal and re-issuing it directly in the High Court as a breach of contract, pre-GDPR/DPA 2018 data protection law and misrepresentation and defamation etc, claim".* While the Claimant's legal representative later confirmed that the Claimant does intend to continue proceedings in the Employment Tribunal, he has since demonstrated the lack of full engagement in the Tribunal process".

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[1] I note that in the record of the preliminary hearing, the claimant is said to have said the same thing to the tribunal clerk

28. I have heard nothing in the course of the hearing or submissions to cast any doubt on the material accuracy of the summary.

29. Moreover, there was nothing which occurred in the course of the hearing to cast more light on the reasons for the claimant's several failures to engage with the tribunal process or comply with the rules which govern its processes. Nor did I hear anything to cast more light on the alleged disability of the claimant and any connection which it might have with these procedural failings. Indeed, it seemed that much of that conduct involved the Claimant's representative, Mr Hardiman, himself. So, for instance, the refusal to engage in the preliminary hearing by telephone was that of Mr Hardiman himself (and the claimant) and it was not suggested (if such a submission could ever be tenable, if made) that Mr Hardiman suffered from the alleged disability himself. Further, throughout the hearing I gained the impression that Mr Hardiman was fully engaged in the conduct of the case and this is borne out by the style and language of the "Statement of Claim" (where he was named as Independent Consultant" in the ET1).

30. At the end of the hearing, in order to assist the claimant and Mr Hardiman, in particular to ensure that there was (as much as reasonably practicable) a "level playing field" (given Mr Hardiman's recent dis-instruction and then re-instruction in the case, albeit unexplained), I gave him permission within a short period of time to file supplementary written submissions (to which the respondent would be given a short amount of time to respond). I did so on the express basis that he would focus on the merits of the case and avoid further procedural points. The claimant then used the opportunity to seek to introduce further "evidence" and procedural points into the case, with which I shall deal below - on the basis of which he sought a "stay" of the proceedings.

31. The only real grounds of resistance to the strike-out application were procedural, Mr Hardiman submitting that the claimant had not been given proper notice of the strike out application. He made no other attempt to explain or justify the conduct of the claimant.

32. Mr Hardiman sought to argue that Rule 37 required the tribunal to notify the claimant of a hearing to strike out all or part of the claim.

33. Rule 37 states:

> "(1) at any stage of the proceeding, either on its own initiative or on the application of a party, the tribunal may strike out all or part of a claim or response on any of the following grounds …….
>
> (2) 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."

34. In response to the submission that there had been no proper notification of the strike-out application by the tribunal (or the respondent) the respondent submitted that:

34.1. Rule 37 (2) means simply that the claimant (in this case) must have opportunity to make representation and if he requests it, he should be allowed to make representations at a hearing;

34.2. The claimant was given ample notification of this hearing. In the Respondent's application for a strike-out dated 17 November 2020, (quoted above) the respondent's solicitors noted: "*We confirm that we have complied with Rules 30(2) and 92 of the ET Rules by providing the copy of this letter to the Claimant's representative and advising them that any objection to this application must be sent to the tribunal as soon as possible* ….." Mr Hardiman did not suggest that he had not received this letter;

34.3. This was repeated in the covering e-mail to the application dated 17 November;

34.4. The strike out application and covering e-mail were re-circulated to the claimant and his representative and the tribunal on 7 December 2020, 19 January 2021, 9 February 2021 and 11 February 2021. The claimant referred to the strike-out application twice in correspondence after 17 November indicating that he was aware that the application had been made, namely on 8 December 2020 and 20 January 2021. Neither of those messages dealt specifically with the claimant's objections to the strike-out but the claimant could have made his views clear at the time or asked for a hearing pursuant to Rule 37(2);

34.5. There was no basis for the suggestion advanced on behalf of the claimant that Rule 37(2) required the tribunal to issue some form of invitation requesting a response to the application. This did not accord with the wording of the rule. All that was required was that a party should be given reasonable notice of the strike out application and the communications referred to above constituted such notice.

35. In my judgment, for the reasons advanced by the respondent, there was nothing in the procedural point advanced on behalf of the claimant. It is based on a mis-reading and misunderstanding of the Rule.

36. In my initial judgment the proceedings had for all the reasons set out in in the respondent's letter dated 17 November 2020 (quoted above) indeed been conducted in an unreasonable manner (contrary to Rule 37 (1)(b)) and the claimant had deliberately not complied with orders of the tribunal (contrary to Rule 37 (1)(c)).

37. I was more troubled by the complaint that the claim has not been actively pursued, contrary to Rule 37(1) (d). It could be said that the claim has been pursued, albeit in a misguided manner without regard to and indeed in defiance of the tribunal's orders and rules. Is it to be implied into the Rule that the pursuit of the claim must be in accordance with or at least in purported compliance with the rules and orders of the Tribunal governing the pursuit of the claims? I was not shown any case authority on this point but in my judgment, on balance, a claim which is being pursued in serious and systematic disregard of the rules and orders of the tribunal is not a claim which is being actively pursued, within the meaning of the Rule. It is not every claim which is pursued in a misguided fashion to which this would apply but

here the level of disengagement from the tribunal process was of such a magnitude that my initial conclusion was that the claim fell to be struck out also on this ground. That was quite distinct from, and additional, to the strike-out application under Rules 37 (1)(b) and (c)).

38. Having heard the submissions of the parties on this application I deferring my decision on it for the following reasons:

    38.1. the application seemed well-founded, given especially the failure by the claimant to comply with any of the orders made at the preliminary hearing and to participate by phone in that hearing or by video at the hearing today; I was also concerned by the diversion of resources of the claimant by vigorously persisting in pursuing a complaint about the Regional Employment Judge's conduct in granting a general extension of time over Christmas/New Year for ET3's to be filed, instead of getting in with the case and complying with the rules for its conduct;
    38.2. That said, I was concerned by the highly unusual conduct of the case by the claimant (referred to above) and whether this might possibly be connected with his alleged disability, albeit that there was no evidence as to it or its effect on the claimant;
    38.3. I was also hopeful that if the hearing proceeded, the claimant's attitude might change so that he would participate in it, at least to some extent;
    38.4. There were various matters that needed to be further explained to me, based on a new bundle of correspondence sent to me in the course of the morning; getting to grips with this bundle would delay the start of the merits hearing and possibly jeopardise finishing it in the allotted two days;
    38.5. The parties were ready and present in order to proceed with the full merits hearing; and
    38.6. there was no objection to my deferring this decision until after the full merits hearing.

39.. I accordingly set out later (below) my (further) reasons for upholding the respondent's application to strike-out the claim.

Merits of the claim

40. Having heard the case, it seems appropriate for me to give my reasons for why I would in any event have dismissed the claim on the merits, on all aspects of it, save for a claim for one day's notice pay.

41. The claimant claimed:

    41.1. unfair dismissal, contrary to s.95 of the Employment Rights Act 1996 ("ERA") in particular, that he was unfairly dismissed on grounds that he was purportedly redundant;
    41.2. a redundancy payment;
    41.3. notice pay;
    41.4. holiday pay; and
    41.5. "other payments".

Background facts

42. The claimant was employed by the respondent as a computing officer on 21 August 2000. His role was assimilated in October 2011 to the role of LAN Manager and in April 2012 this title was changed to Enterprise Systems Administrator. All of these roles were within pay band PB4. The claimant's day-to-day activities focussed on the management of the network on site and he was based at the Forestry Research division site in Surrey for the duration of his employment.

43. The claimant received formal notice of compulsory redundancy on 25 October 2018. This purported to provide the claimant with nine months' notice of termination but made clear that his last day of employment would be 30 June 2019 and that he should receive pay in lieu of notice for the three weeks' and three days that he was not required to work. There was (it is now common ground) an error in calculation, so that he should have been paid three weeks and four days' notice, calculated to 25 July 2019 and not 24 July 2019. The stated ground of dismissal was redundancy.

44. The background was that a political decision had been taken by the respondent to devolve forestry powers fully to Scotland on 1 April 2019. Prior to this transfer the respondent operated a "shared services model". In anticipation for this change, the shared services were de-centralised, which resulted in staff in shared service roles being made redundant where a suitable redeployment opportunity could not be found. Many staff were redeployed into roles in the component parts of the centralised services, but the respondent was unable to secure jobs for all employees.

45. Under the Civil Service Compensation Scheme (CSCS) 2010, Guidance for employers, it states that employers should apply to the Cabinet Office to launch any early departure schemes. In addition, individuals should be offered voluntary redundancy, making it clear that they are at risk of compulsory redundancy, before employers move to the compulsory scheme. The Cabinet Office authorised the re-structure and redundancy programme.

46. In December 2017, Clare Atkins ("CA"), IT Services Delivery Manager and the claimant's supervisor and Lynn Carty ("LC") of Human Resources, conducted a telephone conference with the claimant to inform him that he had not been assimilated into a post in the new structure. However, the claimant was informed that there were PB4 ring-fenced vacancies for which he could apply. The claimant did not want to be considered for these positions as they were based in Scotland and he did not wish to relocate. On 28 June 2018, Sarah England ("SE"), Deputy Director, HR, wrote to the claimant to confirm that the post the claimant was currently occupying would not exist after 1 February 2019 and he was "at risk" of redundancy.

47. The claimant was invited to a meeting on 19 July 2018 to discuss redeployment in the Forestry Commission and wider Civil Service and the voluntary and compulsory redundancy process. A meeting took place between the claimant, CA and SE during which the claimant stated that he expected to be given a vacant PB5 role through the assimilation without

needing to apply. CA confirmed that the PB5 role bore no resemblance to the claimant's current role, so he could not simply be offered the downgraded role. The claimant confirmed that he had applied for a PB3 role, which was a higher graded position, but had scored low across the competencies in relation to his suitability and was rejected after screening. The claimant's application was reviewed against an objective screening matrix by the respondent but he was deemed unsuitable for the role.

48. SE asked why the claimant had not applied for the PB5 role, if he was interested, but he stated that he thought there was "no point" given his experience in applying for the PB3 role. SE explained that there was a large difference between a PB3 and a PB5 role. PB5 roles are normally technically/first line technical with limited or no people management whereas PB4 roles require more technical/IT applications knowledge; PB3 roles normally entail much broader team, budget and people management responsibilities.

49. During the meeting SE identified the next steps the respondent would take which included:

    49.1. The respondent would submit a business case for the claimant's post to be declared redundant, although redundancy remained the last resort;
    49.2. The claimant would receive indicative figures of pension, lump sum and redundancy and formal notice would be issued three months prior to 1 February 2019 (ie his proposed redundancy date if voluntary redundancy was accepted);
    49.3. The respondent would remain committed to supporting the claimant to find suitable alternative employment.

50. CA had made enquiries with the development advisor about support for the claimant in respect of his job applications and organised interview practice, CV writing and "how to sell yourself at interview" training. The claimant was also provided with access to "placement support".

51. In line with the CSCS 2010 Guidance for employers, the respondent applied to the Cabinet Office for approval to launch an early departure scheme. An application was made to the Cabinet Office for the claimant's voluntary redundancy on 21 August 2018 with an intended leaving date of 1 February 2019. This was approved by the Cabinet Office on 22 August 2018. The respondent prepared a business case to accompany the voluntary redundancy application which set out the background, aims, terms, notice and affordability of the proposed redundancy. This confirmed that consultation with the Trade Union side had taken place regarding the decentralisation programme and that there would not be a shared service centre in the future. In addition, it confirmed that consultation had taken place on a one-to-one basis with individuals personally affected by the changes proposed.

52. On 25 September 2018, LC wrote to the claimant enclosing a letter from Civil Service Pensions which explained the compensation the claimant would receive under the voluntary redundancy scheme. LC confirmed that if the

claimant accepted the voluntary redundancy offer, his final day of service with the respondent would be 1 February 2019. However, on 9 October 2018, the claimant returned the relevant document confirming that he did not accept the offer of voluntary redundancy. This was received by the respondent on 11 October 2018.

53. On 17 October 2018, SE wrote to the claimant explaining that the respondent would now move towards compulsory redundancy. She explained that she would conduct a redundancy review meeting with the claimant, alongside CA, to establish formally whether there was anything further that could be done to find the claimant alternative employment. The claimant was reminded that he had a duty and responsibility to look pro-actively for suitable work across the Civil Service, if he was keen to secure to another job rather than being made redundant.

54. On 18 October 2018, the claimant confirmed that he had not applied for any jobs because there had not been any which were close enough by location and the right salary.

55. On 24 October 2018 there was (as alleged by the respondent and I find) a redundancy mitigation review meeting attended by SE, CA and the claimant.

56. On 25 October 2018, the claimant received formal notice of compulsory redundancy. His last day of employment would be 30 June 2019 and he would be paid the remainder which they stated as three weeks and three days in lieu of notice. The letter confirmed that out-placement support remained available for the claimant during his notice period and he would be entitled to take a reasonable amount of time off work to look for alternative employment and attend job interviews or make arrangements for future employment. He was also provided with details of the Employee Assistance Programme and during the notice period the claimant retained access to the Civil Service Job website. The respondent continued to monitor any suitable alternative vacancies.

57. The respondent applied for authorisation to utilise compulsory redundancy terms for the claimant with the Cabinet Office on 7 November 2018. (As set out above) the respondent had, according to the CSCS 2010 Guidance for Employers, already requested authorisation in August 2018 for the restructure and redundancy programme more generally. The Cabinet Office approved compulsory redundancy terms with respect to the claimant on 15 November 2018. It is immediately apparent that this approval post-dated the redundancy letter dated 25 October 2018 and I shall return to this point below.

58. The claimant did not raise any challenge or appeal to his redundancy.

The Grounds of Response

59. It is convenient to refer first to the Grounds of Response (the ET1/"Statement of Claim" is referred to below).

60. The respondent's position was that the claimant was dismissed because he was redundant, a reason falling within ERA s.98(2) Act 1996 and that the decision was fair and reasonable in all the circumstances for the purposes of ERA s. 98(4). However, in the alternative, the reason for the dismissal was a business reorganisation, which was a substantial reason of a kind satisfactory to justify the dismissal of an employee holding the position which the claimant had held.

61. In support of its position that the respondent acted reasonably in treating redundancy/reorganisation as a sufficient reason for dismissing the claimant in the circumstances, it relied on the following:

    61.1. The respondent applied and followed the redundancy procedure as set out in the CSCS 2020 Guidance, which was available to all employees on the staff intranet;
    61.2. The respondent acted reasonably in identifying the pool of potential candidates for redundancy. Due to the decentralisation of shared services, the claimant's job no longer existed. The claimant was provided with the option but did not want to apply for the ring-fenced vacancies because they were based in Scotland;
    61.3. The respondent chose fair selection criteria, namely the respondent attempted to find alternative roles for all employees whose roles were removed due to the business restructure. All employees with the same role as the claimant were "at risk" of redundancy;
    61.4. The respondent applied the selection criteria fairly. All employees with the same role as the claimant were "at risk" of redundancy. The claimant applied for a PB3 role but was unsuccessful. In that exercise the claimant scored lower than his colleagues. In addition, the claimant refused to apply for the ring-fenced PB4 roles as they were based in Scotland;
    61.5. The claimant was given ample warning of the potential for redundancy having been first made aware of that fact in December 2017 and receiving an "at risk" letter on 28 June 2018;
    61.6. The respondent consulted with the claimant about his provisional selection for redundancy in December 2017, 19 July 2018 and 24 October 2018. That consultation included confirmation of the basis on which the claim was selected and opportunity for the claimant to comment on his selection assessment, consideration of alternative vacancies and an opportunity to discuss any other matters the claimant considered relevant;
    61.7. The claimant investigated the possibility of alternative employment for the claimant, which continued after confirmation of this redundancy during the time that he worked his notice period. The claimant was asked to apply for PB4 ring-fenced vacancies but he was unwilling to relocate to Bristol or Scotland. The claimant also applied for a PB3 position but was not successful. The respondent also arranged interview practice for the claimant and provided him with access to work placement support.

The hearing

62. The above pleaded Grounds of Resistance were supported in all material respects by the respondent's witnesses, SE and Richard Maddock, both of whom were cross examined by Mr Hardiman.

63. During the hearing I was mindful of the fact that the claimant had asserted in his ET1 that he suffered from autism. I could make no judgment on this myself, given the absence of any medical evidence and the fact that throughout the hearing I did not hear from the claimant himself. Nonetheless I took into account the possibility alleged disability and asked Mr Hardiman if there were any reasonable adjustments that were required in relation to the conduct of the hearing. He did not identify any. Nonetheless, I was careful throughout the hearing to make sure that everything was audible and where on occasion Mr Hardiman said that he had missed a word or even a sentence through poor internet connection, I ensured that the matters were repeated until Mr Hardiman expressed the satisfaction that he was fully appraised of what had been said. I offered adjournments as and when the claimant needed one and again Mr Hardiman did not take that up. I made enquiries from time to time to make sure Mr Hardiman and the claimant were aware of what was being said during the course of the hearing and was satisfied that he and Mr Hardiman were in no way prejudiced by the hearing being by video. In any event, most of the evidence was in the substantial bundle of documents which had been produced by the respondent and shared with the claimant. I also enquired whether the claimant had copies of the witness statements of the respondent's witnesses when they were giving evidence and this was confirmed to me by Mr Hardiman.

64. Further, most of the evidence on behalf of the respondent was contained in their written statements and supplementary evidence was short, as was the cross examination by Mr Hardiman.

65. Finally, given that the claimant had for reasons unknown to me, dispensed with Mr Hardiman's services from a date in December, I gave Mr Hardiman an additional opportunity to supplement his oral closing submissions by written document, to which the respondent would be allowed to reply.

The Respondent's evidence

Sarah England ("SE")

66. In her written statement SE stated that she commenced employment with the respondent in May 2007 and she was herself made redundant on 31 March 2019. In her role as Deputy HR Director between April 2018 and up until her redundancy in March 2019, she was responsible for supporting the wider redundancy process that was taking place as a result of the devolution of shared services. She referred to the detailed background of the decision to decentralise, supported by documents in the bundle. As the claimant's role of Enterprise Systems Administrator fell within Information Services ('IS') his role was one of the last in the shared services to be made redundant. This was

because IS was responsible for making sure that systems ran in parallel while new decentralised systems were established and for decommissioning and closing down of the existing Forestry Commission IT services. Every role within shared services, which was approximately 300 employees, (including SE's own role) was at risk of redundancy, if the role could not be assimilated into a new role in the new devolved structure. The claimant was based at the Forestry Research Station at Wrecclesham near Farnham in Surrey for the duration of his employment. The vast majority of his IS division colleagues were physically located in Edinburgh, Scotland and only he and one other employee from the IS division were located at the Forestry Research Station near Farnham.

67. As part of managing the wider redundancy process within shared services, the respondent wrote to employees at the start of 2017 to consider whether they would be open to relocating to Bristol following formal consultation with the relevant trade union.

68. The claimant was sent a staff location exercise which he returned on the 12 January 2017 confirming that he would not relocate to Bristol. This exercise was conducted to provide employees with as many options as possible and for the HR team to navigate redeployment options for all shared services staff. Following the devolution of shared services, the majority of new roles were going to be relocated in Scotland but a small number of roles would be located in Bristol.

69. New roles and structures for various departments including IT were determined by the "recipient" parts of the Forestry Commission, ie The Forestry Commission, Scotland (with IT based out of Edinburgh), The Forestry Commission, England (with IT based out of Bristol) and Forestry Research (with IT based out of Roslin near Edinburgh). For Forest Research, the existing IT mainframe and equipment to run the systems once decentralised was already installed at the Northern Forestry Research Station at Roslin. Accordingly, from a business perspective the decision was taken by Forest Research to run their main IT from Roslin. There were no PB4 IT job opportunities at Forest Research based at Alice Holt in Wrecclesham in the new structure. Opportunities for the claimant were limited, given that he had already indicated that he was not willing to relocate to Bristol or to Edinburgh. The only opportunity that would have possibly have been available to him in Farnham would have been the new PB3 IT role for which he applied but was not successful. The Forest Research in Farnham was a predominantly scientific workforce, so opportunities for redeployment would be limited.

70. SE explained that the meeting in December of 2017 between CA, LC and the claimant took place by tele-conference as both CA and LC were based in Edinburgh. To her knowledge there were no notes of the conversation. This meeting would have taken place with all employees who were or were not assimilated.

71. From January 2018 shared services employees were invited to regular bi-monthly meetings to discuss the progress of devolution and the phased

redundancy. There were regular update meetings which all shared service staff were invited to attend. Updates were provided on an informal regular basis. SE was not certain whether the claimant had attended these meetings by telephone conference but all shared service employees were invited and encouraged to engage and participate.

72. SE wrote to the claimant on 28 June 2018 to confirm that his role would not exist after 1 February 2019 and he was at risk of redundancy. She invited the claimant to a meeting on 19 July 2018 (referred to above) to discuss redeployment and the redundancy process and he was sent a redeployment form to complete which followed an "at risk" of redundancy meeting between SE, CA and the claimant on 19 July 2018. SE requested feedback as to why the claimant was unsuccessful in the application process for the PB3 role. He had not scored well across the list of competencies and the feedback was that the claimant did not appear to have made much effort in his application which was of poor quality and failed to demonstrate his suitability for the role. The claimant had a right to appeal his unsuccessful application but he chose not to do so. During the meeting the claimant mentioned that he thought that through assimilation he would be given a vacant PB5 role which was a grade lower than his current role. SE confirmed that the new role bore no resemblance to the claimant's role, so he could not simply be offered a down-graded role. However, the claimant was encouraged to apply if he wished to do so - but he did not. Minutes the meeting were sent to the claimant for approval on 23 July 2018 and he confirmed that they were accurate.

73. There followed the business case to the Cabinet Office for voluntary redundancy as set out above.

74. To SE's knowledge, the claimant was not a member of the recognised trade union, however the trade unions were fully consulted throughout. The respondent also informed employees through the bi-monthly briefings if they were not a union member that they could still make representations to their line manager. SE was surprised that the claimant rejected the voluntary redundancy offered to him, as he had never indicated that he intended to do this during their previous meetings. There followed the move to compulsory redundancy referred to above.

75. On 18 October, the claimant e-mailed SE stating that he had been looking at the Civil Service website for roles but he had not applied for any jobs because he had not seen one that was in the right location or salary. SE did not think that the claimant took steps actively to seek or apply for jobs despite the substantial support the respondent offered him. The respondent offered him time off for job interviews but he did not appear to take advantage of that.

76. The redundancy mitigation review meeting on 24 October 2018 (referred to above) was attended by SE, CA and the claimant. SE said that these meetings were conducted with employees prior to their redundancy but she had been unable to locate the notes of that meeting.

77. There followed the notice of compulsory redundancy on 25 October 2018 and the application by the respondent on 7 November 2018 Cabinet Office for

authorisation to utilise the compulsory redundancy terms. The Cabinet Office approved the compulsory redundancy terms on 15 November 2018. SE referred to documents in the bundle showing that even after 31 March 2019, by which time she had been made redundant, the respondent continued to seek suitable alternative roles for the claimant.

78. In her evidence in chief, in relation to the mitigation review meeting on 24 October 2018, SE said that the respondent considered everything in its reasonable powers to find other employment for the claimant and to support him in his application for other jobs.

79. In his limited cross examination of SE, Mr Hardiman pressed SE on the absence of a note of the mitigation review meeting on 24 October but she could not recall why she had not provided a copy of those minutes or notes to the claimant. SE said that there were two stages in relation to the review meeting. The first was to discuss mitigation review with the trades union and then there was a further meeting with the claimant who was not a member of the trade union. She could not recall whether the latter meeting was more likely to have been by telephone.

80. The letter of 25 October 2018 had been signed by LC but SE had conducted the meeting. They acted as a 'team'. She was not given express authority to send out the formal notice of compulsory redundancy but did not feel she needed express authority. In her view authority flowed from the business case put to the Cabinet Office and the authority given earlier by the Cabinet Office. It was for her to follow through on HR procedures. The authority went from the business case through to the Cabinet authority for voluntary redundancy which followed on to compulsory redundancy. In her view, the Cabinet Office had already approved the business case for all redundancies. The redundancy situation had not changed and the application for authority in relation for compulsory redundancy was simply a procedural requirement but one which was necessary, given that the redundancy had initially envisaged that the claimant would be made redundant in February 2019. There was now a change of the figures given that the redundancy was now to take place with effect from the end of June.

Richard Maddock ("RM")

81. In RM's witness statement he stated that he had been employed by the respondents since 14 February 2017. His role was Reward & Pension Manager for Forestry England and was responsible for the administration of the Civil Service pension scheme, employee payroll, expenses and overseeing redundancy payments. He referred to the devolution of shared services and that consequently all shared service roles in HR, Finance and IT were at risk of redundancy. Where roles could not be aligned with the new devolved structure or when employees were not willing to relocate, it resulted in redundancies. He spent 18 months working with his predecessor, George Prior (HR Pensions) to complete a full handover leading up to his redundancy on 30 June 2019. On 30 March 2019, RM took over responsibility for the remaining redundancies including that of the claimant, which resulted from the devolution of shared services. The payroll for shared services did not exist

after 30 March 2019, as those staff who transferred to Forest and Land Scotland moved across to a new payroll, and those remaining staff of shared services transferred to the Forestry Commission (England) payroll until their individual end dates between 1 April 2019 and 30 June 2019. There were approximately 20 employees who were due to be made redundant between April and June 2019 including the claimant, whose last day of employment was 30 June 2019 (with payment in lieu of his remaining three weeks and three days of notice). It was RM's understanding that all shared services redundancies were completed by 30 June 2019, as this was the approval date received from Cabinet Office to finalise the scheme. He stated that redundancies at the Forestry Commission had be run in line with the Civil Service Compensation Scheme ("CSCS"). He referred to a copy of the Guidance for employers to be founded in the bundle. Under the CSCS the respondent had to apply for Cabinet Office approval for voluntary redundancies before it could proceed with any compulsory redundancies. The scheme identifier code for the voluntary redundancy was VRFC26. RM also referred to the business case to run the voluntary business scheme which was in the bundle.

82. The scheme identifier code was required to liaise with the Civil Pension Scheme's Early Retirement Team to obtain individual redundancy quotes. The claimant had reviewed the CSCS Information Form (CSCS1) which included details of his pensionable service and this had been sent to the "My Civil Service Pension (MyCSP)" team requesting an early exit quote. The MyCSP team would not calculate an early exit quote without the scheme identifier which demonstrated that the correct Civil Service process had been followed.

83. After the claimant had on 11 October 2018 confirmed that he did not accept voluntary redundancy, on 17 October 2018 Mr Prior had written to the claimant acknowledging that he had not accepted voluntary redundancy. The claimant was asked to complete an additional form (CDF4) confirming his rejection of the voluntary redundancy terms. On 24 October Mr Prior wrote to MyCSP Early Retirement Team confirming that the claimant had not accepted voluntary redundancy and requesting them to close the voluntary scheme. Thereafter, the claimant had received the formal notice of redundancy on 25 October 2018. The application for compulsory redundancy was made on 7 November 2018 and the Cabinet Office approved the compulsory redundancy terms on 15 November 2018, as set out above.

84. RM referred to the application form for Cabinet Office approval (at page 193 and following off the bundle). There the abbreviation 'CR' was now used for compulsory redundancy with an intended compulsory redundancy date of 30 June 2019. The same business case was made as for the voluntary redundancy and the scheme identifier was CRFC26 (bundle page 198) instead of the earlier scheme identifier of VRFC26 which applied to the voluntary redundancy stage.

85. In relation to the reference at bundle page 88 to "Before you can launch any scheme you will need approval from Cabinet Office" (part of the Guidance referred to above) RM stated that the scheme was a single scheme, namely a

redundancy programme which utilises either voluntary exit, voluntary redundancy or compulsory redundancy. It was all part of the scheme for which authority was given at the outset of the programme. Authority flowed automatically from the voluntary redundancy to the compulsory redundancy. The reason for the further application in relation to compulsory redundancy was that the documents required a different tariff to be calculated for redundancy on an already agreed business case. He made the same point regarding the statement at paragraph 4 of the same document (bundle page 93); “All redundancies schemes will require Cabinet Office approval”.

86. He referred to the tariffs at page 113 of the bundle which showed how the tariff was differently calculated depending upon whether there was a voluntary exit, voluntary redundancy or compulsory redundancy.

87. RM was briefly cross-examined by Mr Hardiman. RM confirmed that in his view the respondent could serve a redundancy notice prior to getting the compulsory redundancy code identifier. He had applied for authority for the redundancy scheme at the voluntary redundancy stage and therefore the redundancy was approved. However, payment would not be made without the relevant authorisation code. That was necessary to confirm which terms and which tariffs would be used. It would be unusual for the redundancy notice to be sent out before the compulsory redundancy code had been received but he had seen it done before in other parts of the Civil Service.

The claim form (ET1)

88. As set out above, the claimant (who apparently could hear and see the entirety of the proceedings via video) did not wish give evidence. Mr Hardiman on his behalf confirmed this to the tribunal.

89. Accordingly, I took into account what was set out in his ET1 claim form. In the “Statement of Claim”, it was stated that the claimant was entitled to notice up until 25 July 2019, not the 24 July 2019 a matter which was subsequently conceded by the respondent. Various claims were put forward under the Human Rights Act and the Data Protection Legislation which were not (as the statement of claim itself appeared to envisage) judiciable by this tribunal.

90. The claimant claimed that the respondent had pre-decided his redundancy:

> “..to ease the Claimant out by manipulation of its material new graded structure, as it affected the Claimant’s post such that his Grade 4 post would be abolished and reassigned and/or shared (in various guises) to and/or by at least two persons being a new lower grade 5 and a new (upper) Grade 3 post at the same Surrey local office location and substantially in the same function that the Claimant had been employed at, and in, for the entire 19 years service in the Forest Commission”.

91. The claimant claimed also that in addition to the averred manipulations, the respondent had consulted and agreed the restructuring with unionised employees (via union representation) but as a non-union directly affected employee, the claimant was not consulted in any way whatsoever. The claimant claimed that upon the new replacement posts being advertised, the

claimant was obliged to apply for the new grade 3 post as its role and performance requirements were almost identical to his then existing grade 4 post and that the new grade 3 post should have been offered to him in the event. There was no need for the respondent to have adopted any process of external advertising to fill the new grade 3 post when the claimant, with his then 18 years relevant expertise in his grade 4 post, was suitable for it as an appropriate candidate. The claimant went on to allege that by the respondent's processes the claimant was therefore effectively required to reapply for his own job and was refused even an interview for it (as that new grade 3 post) which decision (not to interview him) was "materially biased".

92. The claimant also claimed that he had not been "materially notified" of his rights of internal appeal that were available for him to challenge the interview rejection selection decision. He also maintained the respondent had failed to disclose anything of its comparative interview selection assessments of others and how many candidates had applied for and been interviewed for the new grade 3 post. He alleged further that there was no genuine consultation with him and that he was given next to no appropriate notice of important decisions regarding the redundancy process, or given an opportunity to be accompanied by a knowledgeable person in such a redundancy process. He complained about short notice meetings, materially disadvantaging the claimant.

93. At paragraph 23 of the "Statement of Claim" the claimant alleged:

> .. "Subsequent to the Respondent's decision not to appoint the Claimant to the new Grade 3 post….. an officer for the respondent further notified the Claimant that his employment continued to be at risk of being terminated on the Respondent's ground of redundancy, but which ground and which authority for such redundancy the Respondent was obliged to first agree with, and then gain the consent of, The Cabinet Office and/or material others".

94. I indicated at an early stage of the hearing to the claimant and his representative that if the claimant chose mere "observer status" at the hearing, and did not give evidence to contradict that on behalf of the respondent's witnesses (who had submitted witness statements and who were prepared gave "live evidence"), that where there was a conflict between the evidence of those witnesses and the claimant's case, and absent documents to contradict the respondent's case, I would be inclined to give credence to evidence of the respondents witnesses (upon which they were prepared to be cross-examined) against unsupported assertions in ET1/Statement of Claim.

95. It is clear that the version of events in the Statement of Claim is strikingly at odds with the evidence of SE and RM, in respect of which they provided the tribunal with signed witness statement (with statements of truth) and had given evidence to the tribunal by reference to a substantial bundle of supporting documents. In contrast, as set out above, the claimant produced no witness statement and gave no "live evidence" on which he could be tested by cross examination. As appears above, cross examination of the

respondent's witnesses was very limited and (in particular) did not suggest the "manipulation" and other wrongdoing set out in the ET1 Statement of Claim.

96. In my judgment SE and RM were witnesses of truth doing the best they could to recollect matters, assisted by the documents. Indeed, Mr Hardiman did not appear to suggest otherwise. Insofar as there were conflicts between their evidence and what is set out in the Statement of Claim, for the reasons I have set out above, I prefer the evidence of SE and RM and find their narrative of the events accurate in all material respects.

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The law

97. The law in relation to the principal claim of unfair dismissal is well known and not in dispute. Under ERA s.95 an employee has a right not to be unfairly dismissed. Under ERA s.98 it is for the employer to show that the reason for dismissal is one referred to ERA s.98(2) (of which redundancy of the relevant employee is one) and if so, the tribunal must determine whether the dismissal is fair or unfair (having regard to the reason shown by the employer) which depends on whether in the circumstances the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. This decision falls to be determined in accordance with equity and the substantial merits of the case.

98.. In the ET1 the claimant also claimed a redundancy payment, notice pay, holiday pay and "other payments". It is not necessary to set out the applicable law for those claims.

Submissions

Claimant's (first) submissions

99. A substantial part of the brief submissions by Mr Hardiman made orally concerned the calculation of the nine months' notice period, ie as ending on 25 July and not 24 July 2019. He also maintained that the claimant was owed 2 ½ days holiday pay although no particulars had ever been provided of this, as ordered by the tribunal many months ago. He also maintained there was no lawful authority for the compulsory redundancy which was therefore "invalid" or "void ab initio", and in particular that SE was not authorised to send the compulsory redundancy notice.

Respondent's (first) submissions

100. The Respondent provided written submissions which were supplemented orally by Ms Wheeler:

100.1. As to the complaint regarding unfair selection for redundancy, the respondent submitted that the claimant's redundancy had to be seen in the context of the wider restructuring of the respondent; every employee in shared services, some 300 people, were at risk of redundancy. Further, approximately 20 employers were made redundant between April and June 2019. The claimant was a grade 4 employee. Appropriate

grade 4 roles were ring-fenced in Edinburgh but the claimant indicated that he did not wish to relocate. He also confirmed that he did not want to move Bristol where some of the remaining Forestry Commission England services were to be located;

100.2. As to the allegation that the claimant was eased out by manipulation of the wider redundancy process, SE had given evidence that individuals for each role in the old structure were considered by an assimilation panel consisting of the employee's current line manager, a current manager from the receiving department and HR representatives. This was a considered process which applied to all employees and the claimant's situation. SE's evidence had been that there was no obvious role the claimant could be assimilated into but he was free to apply for any vacancies both with the respondent and in the wider Civil Service;

100.3. Dealing with the allegation that the claimant was not given a fair chance to apply for a PB3 role (a more senior role) in the new structure, as SE explained in her statement, this would have been a promotion. It was a higher pay grade and involved budget management and a wider people management remit. This was explained to the claimant in the meeting of 19 July 2018. The claimant's application failed at the first sift and this decision was taken by someone outside the claimant's team;

100.4. As regards the allegation that the respondent failed to disclose interview criteria /assessments of others who went for the PB3 role, the criteria used to score all applicants for the role was clearly set out in the application form (bundle page 252 onwards);

100.5. The claimant did not apply for any other job roles and confirmed this in e-mail correspondence (bundle page 180). This was despite receiving out-placement support, help with CV writing and interview training in September 2018 (bundle page 179). During the meeting with SE and CA on 19 July 2018, he said he would not apply for a PB5 job that had become available as there "was no point" (bundle page 151). It was clear from the correspondence disclosed that efforts were made to source alternative employment for the claimant after he had opted for compulsory redundancy and up until his exit date (bundle page 231 – 232);

100.6. Regarding the allegation that the respondent failed to obtain Cabinet Office approval for redundancy, the claimant went so far as to allege that the redundancy process was "rooted in illegality and/or fraud" which was strenuously denied. There seemed to be no dispute that the Cabinet Office's authorisation for voluntary redundancy was obtained appropriately. It was clear that the Cabinet Office gave authorisation for this redundancy as it created the code VRFC26 (bundle page 154). RM had explained that MyCSP would not calculate an early exit quote unless the proper procedures had been followed. Both SE and RM had given evidence to the effect that the redundancy was seen as a continuous process. Once an employee rejected voluntary and redundancy, the next step automatically was compulsory redundancy. The business case used for voluntary redundancy was the same as was used for compulsory redundancy. The overall redundancy programme had been approved and the respondent could serve notice prior to the application for compulsory redundance going through or the CR code being received. He explained that "You have applied for the redundancy scheme under the voluntary

business case, so therefore the redundancy has been approved". The need for approval of the compulsory redundancy was in his view "to confirm which terms / tariffs should be used". As to an allegation that the form used by the respondent was in some way incorrect, RM had given evidence that the format of the form had changed in the last six months or so;

100.7. As regards the allegation that the claim was not consulted about the restructure, the claimant was first informed that he was at risk of redundancy on 28 June 2018. SE asserted that from January 2018 all SS staff were invited to by-monthly meetings to discuss the structure. The claimant attended a meeting with SE and CA on 19 July 2018 (bundle 150 – 151). Further, SE held a mitigation meeting with the claimant on 24 October 2018. She confirmed that at the same time as this meeting, she had a second mitigation review with the chair of the respondent's trade union's which was standard practice for all employees being made redundant; the claimant was given notice of redundancy in writing on 25 October 2018. He was informed of his voluntary redundancy payment figures on 21 September 2018 (bundle page 168) and his compulsory payment figures on 4 December 2018 (bundle page 205). It was not understood how the claimant said he had not been consulted about the redundancy;

100.8. As regards the holiday payment claim, this was completely unparticularised. Notwithstanding that, RM gave evidence that he was not requested to make any adjustments to the claimant's final pay to reflect any untaken annual leave. There was no documentary evidence to suggest that the claimant raised the issue of unpaid holiday with RM or anyone else at the time;

100.9. With regard to a claim for "other payments" in the claim form, despite the Order of Employment Judge Cassell dated 26 October 2020, the claimant had provided no particulars in respect of that claim. The respondent could not sensibly respond to it. The respondent submitted that it should be struck out.

Claimant's (further) written submissions and application to stay the proceedings

101. After the hearing (in the circumstances I have described) the claimant himself filed a document entitled:

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"Part 1 Claimant's Written Submissions filed and served Friday 19 February 2021 in accordance with Judge Bloch QC's oral order of 16:11 hours GMT, Wednesday 17 February 2021 only as to the elements actually dealt with in the Final Hearing by HMCTS video link in the hours 15:44 until 16:49 GMT, Tuesday 16 February and 10:15 until 12:51 and 14:52until 16:13 Wednesday 17 February 2021.

The claimant entered an appearance at the Final Hearing, expressly under oral protest notice to the Judge."

102. The claimant went on to raise various procedural matters stating in particular that the final hearing bundle was not agreed and had not been served. I find that there is no basis for this contention: the claimant was given every reasonable opportunity to agree the bundle but chose not to do so.

The claimant went on to say that he was represented under protest by a lay person, Mr Reynolds Hardiman - but that was his decision.

103. In this document the claimant went on to attack the redundancy process root and branch relying on matters about which he had chosen not to give evidence (and on which there was no proper cross-examination) including a failure to consult him and singling him out for redundancy.

104. The claimant laid particular emphasis on the redundancy mitigation review meeting of 24 October 2018 referring to SE's letter of 17 October 2018, to the effect that it would be necessary for her to conduct a redundancy mitigation review under the Civil Service Employee Policy policy alongside CA, the departmental secretary for the FCTU, Sam Telford, and SE as the human resources representative. That would enable the respondent formally to establish whether there was anything further that could be done from their perspective as employer to find the claimant suitable alternative employment. She anticipated that meeting would take place within the next 5 – 10 working days. The claimant questioned whether that review meeting was "lawfully held" or indeed held at all?". Later in these submissions he alleges (in my judgment without proper foundation) that SE was "grossly evasive" regarding the meeting of 24 October. However, the claimant had chosen to give no evidence on whether he had attended such a meeting or not.

105. I have read the entirety of these written submissions and will refer only to those submissions which appear possibly to raise something different from those made orally and which appear to be possibly relevant. Many of these submissions could not be supported, absent evidence from the claimant, and cross-examination of the respondent's witnesses on the relevant points. For example:

105.1. The claimant made the bold submission that he had not been consulted "in collective bargaining" in the respondent's redundancy process and that the respondent's employers did not shut either partially wholly, partially or temporarily the Forest Research Unit or its IT facility at which the claimant had worked in Surrey for his entire 19 year employment with the respondent. These submissions could not stand absent evidence from the respondent and proper cross-examination of the respondent's witnesses on these points;

105.2. The same applies to his submissions that the claimant was the sole and only employee of the 300 people at risk to be made compulsorily redundant and was therefore singled out for the redundancy - and that he was singled out by his pay band grading, the claimant referring to 10 PB4 posts being retained;

105.3. The same applies to the submission that (paragraph 6 of the written submissions) that the respondent had adopted contradictory reasons for redundancy of the PB4 posts. There was no evidence or cross-examination to make clear what the claimant was making of this point and how it undermined fatally or otherwise the respondent's reasons for making the claimant redundant;

105.4. It was vital to hear the respondent's evidence as to whether the meeting of 24 October was lawfully held or indeed held at all. Absent

evidence from the claimant it is not clear at all whether he was refuting that such a meeting took place or that he was saying that the meeting did take place but was not lawfully held. I was satisfied with the evidence of SE in this regard and do not consider that there was any contradiction in her position. She explained that there were two stages of the meeting, one involved Sam Telford, the Departmental Secretary for FCTU and one which the claimant was present. Both were attended by Clare Atkins;

105.5. The claimant made a further point about the relevance scheme identifier all which was not raised at the hearing and which, in any event, does not appear to take the matter much further given especially the unchallenged evidence of the claimant in regard to relevance of the identifiers ie VRFC26 and CRFC26;

105.6. In my judgment the further point by the claimant under the heading of "Contract and Warranty of Authority Breaches" did take the matter any further.

106. The claimant at the same time sought (belatedly) to rely upon a document which was not in the bundle, describing it as "concealed" material, namely a public document "2016 protocol – Civil Service Redundancy Principles" dated November 2016:

106.1. No proper explanation was given as to why this document was not put into the bundle by the claimant at an earlier stage, when invited to agree the bundle. This document had (it was alleged by the claimant) become known to the claimant early on 18 February 2021, the day after the hearing but no explanation was provided as to the circumstances under which this public document came to the claimant's attention immediately after the second day of the hearing, why it was not (or could not reasonably have been) found earlier or how (being a public document) it could properly be said to have been concealed by the respondent. This document was relied on by the claimant to found an application to "stay" the proceedings;

106.2. The claimant appeared to rely upon this document as indicating that there was no authority to issue the compulsory redundancy notice. This was entirely at odds with the documentation in the bundle approving the compulsory redundancy and the evidence which was given in support by the respondent's witnesses. In my judgment it would be contrary to the overriding objective and to fairness to the parties to delay the judgment in order to reopen this matter;

106.3. By letter dated 5 March 2021 to the tribunal the claimant persisted in his application to stay the proceedings on the basis that documents showed that the Cabinet Office "retrospective approval" had been obtained by "fraudulent concealment and/or material non-disclosure and/or direct fraud". The claimant's compulsory redundancy was therefore a fraud on him and a "mala fide" practice on this tribunal by the respondent. The claimant went on to say:

> "We are not yet in a position to provide our full evidence to the Tribunal but will do so soon as may be practicable and will write to you then further."

107. I have no hesitation in rejecting the application for a stay or for allowing the claimant to introduce this documentation at this late stage. This document

should have been part of the claimant's evidence to the tribunal and for it to be introduced at this late stage appears to be a continuation of the kind of conduct of which the respondent complains its application to strike out the claim. The point is made even more unrealistic and unpalatable by the apparent need for and intention of the claimant to lead further evidence on the point as soon "as may be practicable", in circumstances in which the claim was presented in November 2019, with a preliminary hearing ordered in March 2020 for hearing on 26 October 2020.

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Respondent's further written submissions

108. In its (responsive) second written submissions:

108.1. As to the respondent's genuine belief in a redundancy situation, the respondent answered the claimant's point in which he referred to the chart entitled "Operating Model – from October 19 onwards" (bundle page 241) which shows PB4 employees in the new business model. It had never been the respondent's case that no PB4 roles remained in the new structure. Indeed, appropriate PB4 roles were ringfenced for the claimant in Edinburgh (as indicated in SE's witness statement). The respondent's case was that the claimant was not assimilated into any post in the New Forestry Commission England as the remaining roles were not sufficiently similar to his own (as set out in SE's witness statement);

108.2. The claimant accepted that the "corresponding date" rule, as set down by the House of Lords in Dodds v Walker [1981] 1WLR 1027HR applied in principle. Therefore, reference to a number of months as to be taken as a reference to that date in the later months. There had been a genuine error on the respondent's part based on its reading of Rule 43 of the Employment Tribunal Rules of Procedure and in which the time for presentation of unfair dismissal claims is calculated (three months less one day of the effective date of termination);

108.3. The respondent dealt with SE's evidence regarding the mitigation review meeting and counsel's note of Ms England's cross-examination was set out. The note is materially similar to my own note;

108.4. Objection was taken to the late introduction of 2016 protocol which was not in evidence and the contents of which were not put to SE during cross examination;

108.5. As regards the scheme identifiers, (the claimant taking issue with the respondent's interpretation of the relevant scheme identified (as between VRFC26 and CRFC26)) this was not put to either of the respondent's witnesses. It was possible, for example, that the "relevant" part of the scheme identifier is C26 which applied to both codes. However, this was not addressed by the claimant's representative during the hearing. Ms Wheeler referred to RM's evidence who identified the document in the bundle page 193-198 as the submission to the Cabinet Office asking for authority to use the Compulsory Redundancy Scheme, which is linked to the Initial Voluntary Scheme. He continued:

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> "A document at 197 is returned from the Cabinet Office. They've checked it is linked to the former identifier. So, the Cabinet Office can see those 2 activities are linked […] MyCSP do the calculations and provide final figures. They will only do that once they

have those codes […]. The code changes, the tariff also changes, but the authority is given at the outset of the programme."

109. As regard the holiday pay claim, the respondent made the point that the reference to a claim for two and a half days outstanding pay was only made in the written submissions following the hearing. In any event, there was no evidence (and it was not asserted) that the claimant had informed the respondent that he was unable to take his leave entitlement or raised this as an issue with anyone prior to initiating this claim, notwithstanding the respondent's letter dated 25 October 2018 [Bundle page 188] which stated:

"You will be expected to take all annual leave due to you before 30th June 2019 as payment will only be made for accrued untaken leave if you have been unable to take it for exceptional operation reasons. Annual leave remains subject to approval by your line manager"

Claimant's further written submission

110. On 19 February 2021 the claimant had filed a further written document headed "Part 2":

"Claimant's decision not to make any additional *Written Submissions* and on the issue of the Respondent's Claimed Strike-Out "Applications" in the Claim beyond those in his Rule 42 Written Submission on 8 February 2021 pre-hearing (which includes anything and everything filed on the Tribunal file as at 10:00 GMT Tuesday 16th February 2021)

111. The submissions did not appear to add anything material to the points he made by Mr Hardiman (which I have rejected) regarding the requirement for notice to be given of a strike out application.

Response to Claimant's further written submission

112. In the response to those further written submissions, the respondent drew attention to the fact that the claimant had tendered no evidence whatsoever in the proceedings (apart from set out in his ET1). They submitted that this reinforced the respondent's application to strike out the claim under Rule 37(1)(c) or 37 (1)(d) Complaint was made that the basis and scope of the claimant's claim had changed throughout the proceedings, that the respondents and its witnesses had been required to respond to matters raised for the first time during the hearing and after it.

113. The Respondent asked the tribunal to have regard to the fact that the claimant had:

113.1. Failed to provide further and better particulars;
113.2. Failed to provide a schedule of loss;
113.3. Failed to attend the preliminary hearing;
113.4. Failed to provide disclosure;
113.5. Failed to agree the bundle;
113.6. Failed to provide witness evidence;
113.7. Challenged the tribunal's decision to extend time for presentation of the ET3 long after receiving a reasoned response from the tribunal;

113.8. Challenged the authority of the tribunal to make straightforward case management orders;
113.9. Failed to instruct Mr Hardiman so as to enable him to represent the claimant effectively; and
113.10. Refused to be seen or heard during the remote hearing.

Conclusions on merits

114. In my judgment there is ample evidence that there was a genuine redundancy in regard to the claimant's employment. More pertinently, I have no doubt that the reason for the claimant's dismissal was the genuinely held belief by the respondent that the claimant was so redundant.

115. There was no serious challenge to the existence of such belief on the part of the respondent and no evidence by the claimant to the contrary. There was no basis before me for the allegations of fraud and other acts of bad faith on the part of the respondent claimed by the claimant in relation to the claimant's redundancy.

116. In my judgment, the respondent acted reasonably in treating redundancy as a sufficient reason for dismissal. It engaged in a detailed process involving consultation with the trade unions and individual consultation with the claimant. In the nature of the wide scale redundancies taking place, it is unsurprising that the claimant would not have been individually consulted regards the policy reasons behind the redundancy which flowed from devolution process referred to above. However, I accepted the evidence that there were meetings with the claimant and, in particular, a mitigation review meeting. The respondent appears to have done all that was reasonable and appropriate to assist the claimant with regard to alternative job opportunities even to the extent of offering him assistance with his interviewing capabilities. The claimant however submitted only one job application which for reasons (which were not seriously challenged) he did not make the "sift". I accepted the evidence that the claimant was not a viable candidate for this more senior role.

117. I accepted the evidence that the claimant was somewhat passive with regard to looking for alternative jobs. He believed that he should simply have been assimilated into an appropriate role. I accepted the evidence on behalf of the respondent as to why this was not reasonably appropriate.

118. The claimant made much of the alleged failure on the part of SE to consult the claimant individually. As set out above, I accepted SE's evidence in this regard. However, I should add that it is not clear at all on the claimant's case as to what it was that SE should have consulted the claimant about but which she did not. It was part of the claimant's general stance in the case to put forward no positive case but to allege procedural failings on the respondent's part. It is appropriate that I should say that, given that there was no evidence as to it was that SE should have consulted about and the effect that it might have had, had it been properly done, if I had found there had been some failure in this regard by SE, given all the other aspects of the process to which I have referred and the claimant's passivity regard to his redundancy, I would

have been likely to find that any such failure was likely to have affected the overall reasonableness of the process adopted.

119. With regard to the detailed submissions of the parties referred to above, in broad terms I accepted the respondent's submissions. The only matter which gave me particular concern was that the redundancy notice was issued before the compulsory authorisation being authorised by the Cabinet Office. It was necessary to read the relevant Guidance with care:

119.1. As set out above, in the Guidance it was stated (bundle page 88):
. "Before you can launch any scheme you will need approval from Cabinet Office."

while (at paragraph 2(c) of the Guidance, headed "Cabinet Office Approval") it stated:

"Employers must apply to Cabinet Office, ……for approval to launch any early departure scheme."

119.2. At paragraph 3 (headed "Voluntary Redundancy") it stated that:

"Voluntary Redundancy terms must be offered where the employer has begun formal consultation with the Unions about possible redundancies…There is no compulsion on staff to apply for Voluntary Redundancy at this stage but they must be aware that they could be made compulsorily redundant **at a later stage of the same scheme** [2]

119.3. Under paragraph 4 of the Guidance, under the heading Compulsory redundancy it stated:

"All Redundancy Schemes will require Cabinet Office approval. Individuals must be offered voluntary redundancy, making it clear that they are at risk of compulsory redundancy, before employers launch a Compulsory Scheme. Compulsory Redundancy Scheme can only cover the same staff as were included **in the preceding Voluntary Redundancy scheme.** The scheme identifier for the Compulsory Scheme will therefore be linked to a specific scheme identifier for the Voluntary Redundancy Scheme". [3]

120. It was not entirely clear from these extracts whether compulsory redundancy following an offer of voluntary redundancy involves one scheme or two. Paragraph 3 above seems quite clear in this regard in that it refers to an employee being made compulsorily redundant at a later stage of the same scheme (ie voluntary redundancy"). Paragraph 4 seems possibly to lead in the opposite direction.

121. While paragraph 4 can be read literally as saying that the Compulsory Redundancy scheme is separate from the preceding Voluntary Redundancy scheme, its emphasis in my judgment is more on the requirement that compulsory redundancy can only apply to staff to whom a preceding offer of

[2] My emphasis
[3] My emphasis

voluntary redundancy has been made. This linkage of the compulsory redundancy to the preceding voluntary redundancy offer and the linkage of the scheme identifiers indicates that in truth there is only one scheme with two stages.

122. I am fortified in reading these paragraphs in that way by the evidence of RM (and SE). In any event, I remind myself that the Guidance is for guidance only and is not to be read as if it were a statute. I am satisfied that the compulsory redundancy following a voluntary redundancy (as it must) is one and the same scheme. I therefore accept RM's evidence in this regard, in particular that authorisation for the scheme as a whole had already been given by the time the dismissal redundancy notice was issued.

123. In any event, in my judgment the Guidance could reasonably be understood (as it was) by the respondent in the above sense. I should add in the alternative, that if I had found that the authorisation of for compulsory redundancy was under the Guidance a prerequisite to the issuing of the redundancy notice, then, applying the *Polkey* principle, I would have found that the notice would have been properly issued within seven days of the obtaining of the Cabinet Office approval for the compulsory redundancy. I did not understand Mr Hardiman to be suggesting (additionally) that the redundancy notice was invalid because of the miscalculation of the last date of employment, but, if he had submitted this, I would have rejected that submission. It was plain that the respondent intended to give the claimant the requisite period of notice but made a genuine mis-calculation of one day. Objectively, on the face of the notice (and subjectively, on the other evidence) its intention was clearly to comply with its contractual obligations.

124. Accordingly, I find that the claimant's claim of unfair dismissal is unfounded, as was his claim for holiday pay (for the reasons submitted on behalf of the respondent). No grounds were advanced for entitlement to any sums by way of redundancy beyond that the claimant had already received, which claim is also dismissed.

<u>Decision on the strike-out application</u>

125. For the reasons set out above, I gained a strong impression that the claimant would not give evidence in support of his claim, no matter what the form of the hearing was. While that is something the claimant is entitled to do, it substantially undermined the genuineness of his reason for applying for an adjournment to an in-person hearing. Further, as submitted on behalf of the respondent, the whole approach of the claimant seemed to be "procedural" avoiding engaging in testing the underlying merits of the case, while refusing to comply with the orders of the tribunal. This conduct continued into and after the hearing, the claimant purporting to attended the hearing "under protest" and attempting thereafter to introduce new "evidence" to "stay" the proceedings as set out in a letter to the tribunal dated 5 March 2021 (and referred to also in correspondence addressed to the tribunal of 24 February and 1 March 2021).

126. The list of defaults listed by the respondent which I have quoted at paragraph 113 above, constitutes in my judgment a devasting indictment of

the way in which the case has been conducted by the claimant. That is the case whether or not I take into account the matters which occurred during and after the hearing. In any event they did not militate against such a conclusion (as I had hoped) but rather (as the respondent submitted) served to confirm and extend it.

127. I am of course conscious that striking out is an extremely serious sanction to be reserved for only the most serious conduct. In this case the claimant has (in the unusual circumstances of this case) not in fact been “driven from the judgment seat”. I have heard the evidence and concluded that (but for one minor matter) the claims are unfounded. So, it might be said that striking out serves no purpose. However, in my judgment the overriding objective is best served by striking out the claims, given the seriousness of the conduct of the claimant and in particular his (and seemingly to at least some extent, his representative’s) compete disregard of the tribunal’s procedures. They appear to have adopted a tactic of not co-operating with the normal progress and presentation of the case, ignoring tribunal rules and orders, of making serious unsupported allegations against the respondent and its witnesses and, generally, fighting a procedural war of attrition, all without taking the risk of the claimant giving evidence himself. This has cast an unequal and unfair burden on the respondent. Moreover, their conduct after the hearing, indicates an intention to continue to conduct themselves this manner, causing further cost and disruption to the respondent.

128. In all the circumstances, while I could equally dismiss the claims (in all but one minor respect) on the merits, it seems more appropriate to strike them out, while making it clear, that on the merits I have in any event found that the claims are (save in that one respect) unfounded.

Disposal

129. Accordingly, I find that the claims fall to be struck out, under Rule 37(1)(b) because the manner in which the proceedings have been conducted by or on behalf of the claimant has been unreasonable, under Rule 37(1)(c) for non-compliance with the tribunal Rules in the respects complained of by the respondent (as set out above) and that it has not been actively pursued (under Rule 37(1)(d) in the sense that I have referred to above. I accordingly strike out the claims under Rule 37(1)(b)(c) and (d).

Alternative findings

1. In the alternative, having heard the case, I find that the claimant’s complaints:
   1.1. of unfair dismissal was not well founded and should accordingly be dismissed;
   1.2. regarding under-payment of notice pay was upheld to the extent of one day’s unpaid notice pay; and
   1.3. of entitlement to holiday pay was not well-founded and should be dismissed;

1.4. of entitlement to redundancy or other sums was not well-founded and should be dismissed.

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Employment Judge Bloch QC

Date: 23 April 2021

26/4/21

Sent to the parties on: ....

J Moossavi

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For the Tribunal Office