EMPLOYMENT TRIBUNALS

Claimant:	**Mr A Chauhan**
Respondent:	**University of Leicester**
Heard at:	Leicester Hearing Centre, Kings Court, 5A New Walk, Leicester, LE1 6TE
On:	19 July 2021
Before:	Employment Judge Adkinson sitting alone
Appearances	
For the Claimant:	Mr Echendu, barrister (non-practising)
For the Respondent:	Mr Chegwidden, Counsel

JUDGMENT having been sent to the parties on and written reasons having been requested in accordance with **Employment Tribunals Rules of Procedure 2013 rule 62(3)**, the following reasons are provided:

REASONS

Background, issues and hearing

1. The Tribunal is considering a number of procedural issues that have arisen in Mr Chauhan's case. Those issues were identified in an Order that I made at a telephone hearing with consent that took place on 11 May 2021 which both parties attended. I set out the issues in paragraph 7 of that Order. The parties agreed at the beginning of this hearing that I should deal only with the first 2 issues because the consequence of my decision on those issues would affect the whether the others needed to be dealt with, and if so, how.

2. Those first two issues are as follows:

   2.1. The Unless Order issue. Did the Claimant materially comply with Regional Employment Judge Swann's Unless Order that sent to the parties on 29 December 2020 (as varied by me on the papers) by 25 January 2021 which required him to provide further and better particulars?

   2.2. The relief from sanctions issue: If the Claimant did not comply with Regional Employment Judge Swann's order, should the Claimant be granted relief from sanctions under rule 38(2)?

3. These reasons relate only to those issues, therefore. I have not considered any of the other issues identified at the hearing on 11 May 2021.

4. The hearing has proceeded in person at the Tribunal hearing centre in Leicester. Mr Echendu appeared on behalf of Mr Chauhan and Mr Chegwidden appeared on behalf of the university. The parties have each made oral submissions on these issues and Mr Echendu has also prepared a written argument. I have taken all of those into account.

5. There was also an agreed bundle of documents which consist of just under 330 pages. I have taken into account those documents to which I have been referred.

Relevant factual background

6. The factual background so far as relevant is as follows.

7. The Claimant has had mental ill-health for some time. At about November 2019 he was referred to the “Let’s Talk Wellbeing Service” (which is a public mental health service in Leicester). He was assessed on 19 November 2020. At that point he was deemed clinically to have both low mood and anxiety. They put him forward for the low intensity cognitive behavioural therapy treatment within that service. That treatment commenced on 5 February 2021 and has been continuing at fortnightly sessions as of 9 April 2021.

8. As for his employment, Mr Chauhan was at all material times an employee of the University as a cleaner. It appears that he alleges he has been the victim of race discrimination during his employment.

9. He presented his claim to the Tribunal on 28 July 2019. At this point he represented himself.

10. The claim form in box 8.2 gives some detail of what the claim be about. It says
“July 2019 supervisor Fiona Flannagan picks argument with me deliberately. 30 July 2019 bully??? Christine McGovern harasses me on University Road. I am claiming racial discrimination, bullying including supervisor’s harassment, less favourable treatment and victimisation as then referenced to injury to feelings and say the university is covering up as a result of investigations and that they are supressing the results. Later on it continues. Forced to move from first site for absolute small crime, no verbal warning, no written warning, two days’ notice given, other people still at first site despite absolute heavy horrific crimes compared to mine. There are too many other factors e.g., Christine McGovern never moved in 6/8 moved, threatened three Indian people, one male demanded to be moved. Threatened four people in total.”

11. Thus, the detail of that claim clearly gives a hint that the Claimant is bringing claims that could be loosely described as race discrimination, but what it does not go to do is identify the key details to enable the reasonable reader to understand whether it is direct, indirect, harassment, if it is direct who the comparators are going to be, if it is indirect what the provision criterion or practice is going to be or how it is said to have put him at a substantial disadvantage because of race, or if harassment why it is his race that is the factor. If the claim is one of victimisation it lacks any detail of a protected act, yet alone detriment because of that act.

12. The Respondent presented their response on 20 September 2019. In the response at paragraph 3 they say the Respondent considers that the Claimant's allegations are so unclear to the extent it is not possible for the Respondent to respond properly. Notwithstanding this the Respondent made efforts to identify the issues which the Claimant appears to raise and commented as follows.

13. The response then goes on under various heading to set out their position. The response identifies what it believes (in its opinion) might be allegations in relation to John Holmes; allegations in relation to Christine McGovern; allegations in relation to Fiona Flannagan; allegations that the Respondent covered up the results of the investigation; allegations in relation to change to the Claimant's work location; allegations in relation to the change to Bill Jacksons work location; to set out a brief factual statement the Respondent believe the situation to be.

14. However, it cannot be said (and I rejected the Claimant's suggestion to this effect) that the response shows that the Respondent clearly understood both the factual and legal basis for the claim or that the Respondent was clearly able to identify the key legal elements or legal type of claim upon which the Claimant was advancing in relation to which particular allegations. That is quite apparent from the way it is drafted and also quite apparent from paragraph 3 of the response. In short, the Respondent was doing their best to set out as much as they could based upon the vague and borderline incoherent information provided.

15. The fact the Respondent was not conceding the claim is evidenced by their correspondence of 17 October 2019. The Respondent sent to Mr Chauhan a document in which they requested further and better particulars. The document itself is set out in the form of a table and although it appears as grey shading in the bundle in the original copy there were sections highlighted in yellow. A brief look at that document shows that down the left-hand side in each row the Respondent has identified the allegations as it understands them to be in relation to the particular people that Mr Chauhan has named in his claim, namely John Holmes, Christine McGovern, Fiona Flannagan, and the allegations that the Respondent covered upon the investigation and for the change of work location and the change to Bill Jackson's work location. In a column headed "Details of allegation", the Respondent set out the details as they understand them to be. They have then put a column for dates, filling in the ones they could gleam from the claim and highlighting where the Claimant needed to provide the date. Under "What was said or done" the Respondent has in relation to all but two of them asked the Claimant to provide exactly what was said or done, although in the latter two namely the change in work location and change to Bill Jackson's work location they have set out the claim as they understand it to be in the Claimant's claim. Under "who else was present" the Respondent has set out such details as they know in relation to one of the allegations and in relation to everything else it is for the Claimant to confirm if anyone else was present. In the column "How this related to the Claimant's race" they have indicated it is for the Claimant to set out how he believes the matters are related to race.

16. The form is a fair reading of the Claimant's case and in my opinion is a fair and reasonable summary of what appears in the claim. It is clear from the blanks that significant, crucial information is missing. It is also apparent that it is only their interpretation as to how the Claimant is setting out his claim. The Respondent is to be credited for taking this step. It enables both the Tribunal and Mr Chauhan to see more clearly the gaps and enables the Claimant to understand what information is needed. I acknowledge it is a Scott Schedule and that there is some unease in some quarters about Scott Schedules and how suitable they are for garnering further information and setting out factual allegations. However, that is not a universal view by far and they do have their place. The Claimant has not suggested it confused him or that it was unfair for some reason. I therefore have no reason to believe it did. In the circumstances I do not consider the idea of using this table was unfair, confusing or unreasonable. I consider it far better solution than a long letter with multiple questions in this case given what was missing.

17. After a request for an extension of time (which was agreed), Mr Chauhan replied on 1 November 2019 or thereabouts. In his reply it is apparent he does not have access to a computer. Therefore, he has numbered the individual boxes from 1 through to 41 in the format "Box 1" etc. Then he has attached a document headed e.g. "Box 1" and set out the information he wants to give in relation to that box. It is unusual but perfectly logical and is no different than if he had written for example "See sheet 1" or "annexe 1" or "see schedule 1" etc. rather than calling them boxes. That part is easy to follow.

18. However, although the Claimant has adopted a sensible labelling form, the information that has been provided in relation to those boxes is rather unclear to say the least.

19. I am not going to go through it all at length for it would be disproportionate to do so. However the following matters stand out to show the flavour of the problem.

20. What appears to be the answer to box 5 (which is about why he thinks John Holmes was racist) he says

"I don't recall calling John Holmes racist directly but racism was always under the table and then goes on to give examples – JH always thought ethnic minority must obey him. He was a manager of a shoe factory in the past. A person told me he was stricter, more official to blacks rather than whites. I will not name this witness to Leicester University but I will name them to the Judge. I was left without a supervisor for several months. I didn't need anybody's help or advice *inference." He then says "John Holmes had no authority legally over me he is not my supervisor or manager to give me orders, e.g. (4) because I challenged him other blacks did not. I became his target. (5) day of argument JH is forcing himself on me and I stuck to my guns. Clear refuse bag must be thrown out, got food in recycling bag. JH had no right to interfere on purpose and at the bottom of the page (6) I had passed my probation* [it is not clear why there is an asterisk] I had been there about nine months and we had no supervisor for several months."

21. None of that actually tells us really why he believes Mr Holmes was actually racist. It is no more than really complaints about Mr Holmes. It is just an assertion that racism was always under the table and an unsupported reference from a witness.

22. Similar problems happen in relation to the allegations against Ms Flannagan in that it simply does not give any detail as to why he believes that he has been treated as he has because of race. It contains merely bare assertions. For example,

"Fiona's attitude in conduct e.g., more polite when speaking to white people, less official, softer spoken, generally like J Holmes believes blacks should obey and get on with it although again like with Mr Holmes no evidence is supplied to support that assertion. Other black people have picked up on this [and then in capitals with a box around it] several black people can't be wrong."

It then goes on to say Fiona's attitude has

"cleaned up after [Mr Chauhan's] complaint of racism Employment Tribunal courts were involved. The vice principal is a black guy from Sri Lanka starting October/November. Must see "botanical gardens report" and "under the table racism"."

23. The detail is in my view no more than vague, ambiguous, difficult to decipher and certainly do not provide the information that the Respondent needs to understand why it is said that the claims have been brought against the university in relation to the named people or incidents.

24. After 1 November 2019 the Tribunal was due to have a preliminary hearing but that was vacated on the Claimant's request because he was investigating the possibility of getting legal representation or advice. Its re-listing was then affected by the impact to Covid-19 pandemic on the Tribunal's resources.

25. On 2 July 2020 there was a preliminary hearing that took place before me. At that point the Claimant was represented by a solicitor and the Respondent also attended represented by a solicitor. In the case management summary, I noted that it was quite clear something had gone wrong in the Claimant's employment in that he alleges it was because of race discrimination. But it was not clear what had gone wrong in spite of the Claimant's emails. I noted that the Claimant was now represented and that the parties had agreed that the way forward was to allow both parties to plead their cases and then re-list the matter for a further telephone case management hearing. That was an approach that I agreed with, noting that it had been a year since the claim was presented and the case was no clearer, but that it was a most proportionate way forward for all parties. I also made clear my view that, as far as the Tribunal was concerned the only claim that had been brought before the Tribunal was one of race discrimination, and that therefore if the Claimant had brought or meant to have brought a disability discrimination he would have to apply to amend. The mention of mental health led me to think that there might have been an intention to bring such a claim albeit one was not pleaded. No such application has been made.

26. I then ordered that the Claimant must by 30 July 2020 send to the Respondent and the Tribunal full details of the claim that the Claimant seeks to bring together with any application to amend, and the Respondent must by 27 August 2020 send to the Claimant and to the Tribunal its amended response and any response to any application to amend. I then re-listed the matter for a further closed preliminary hearing.

27. On 30 July 2020 the Claimant through his solicitors said that the parties had agreed to extend the time for the Claimant to submit his further and better particulars and application to amend.

28. On 11 August 2020 the Claimant's solicitors wrote to the Tribunal copying in the Respondent in the following terms:

"We act for the Claimant in this case. On 30 July 2020 I wrote to the Tribunal to confirm that the parties had agreed to extend the date by which the Claimant would submit his further and better particulars and any application to amend his claim to 11 August 2020. Through no fault of his own our client is wholly unable to provide detailed instructions of a sufficient nature to allow me to proceed to the next stage. I confirm the Respondent's solicitor has been copied into this email".

29. The Respondent responded to that setting out the procedural history and asking for the Tribunal either to strike the claim out or to make an Unless Order. The matter came before me again on 15 September 2020 where I noted the Claimant's solicitors were of the view the Claimant might lack capacity. I recorded that at the hearing they had explained that they had been asking narrow factual questions in order to take instructions, but the Claimant was unable to give relevant answers. They explained he was having difficulty retaining information. He would for example agree to something and then immediately forget it. The Claimant's solicitor also noted that in the claim form the Claimant himself referred to heavy mental health problems and to receiving counselling, as I noted at the start of this section on the relevant factual background.

30. At that hearing the Respondent accepted that it would be inappropriate at that stage to make an Unless Order and understood that strike out application could not proceed as the hearing was not in public. I noted there was a clear cause for concern. What is set out in the claim form taken with the difficulties with his solicitors having taken instructions and the memory difficulties are clearly indicated the Claimant might lack capacity. I therefore stayed the claim to 22 October 2020 to allow the Claimant to have his capacity to conduct litigation assessed and if needed to find a person to act as a litigation friend. The purpose of course behind that was that if the Claimant did not have capacity to conduct litigation, he would need a litigation friend lest decisions are made that affect his claim in which he is not able to properly take part.

31. On 26 October 2020 the Tribunal was sent a letter from Dr S Ahmed, a doctor in what is known as the Pier Team Early Intervention Service which is part of the NHS Leicester Partnership Trust. He wrote as follows:

"In my opinion [the Claimant] did not present with a delusion of disorder. His ideas were formed logically and he was able to give a coherent account

of why he believes what he believes if there are indeed some discrepancies or inaccuracies of his beliefs this would fit into the context of having him overvalued ideas in the context of a neurotic disorder as opposed to a psychotic disorder. Due to this I am of the opinion that Mr Chauhan does have the capacity to make his own decisions."

32. Mr Chauhan dismissed the services of his solicitors and went back to representing himself. It is no concern of the Tribunal why that was. Mr Chauhan then wrote to the Tribunal on 27 October 2020. It is not clear whether that was at the same time he sent the doctor's letter or shortly after. It does not particularly matter. He asked for permission to be able to provide a response to the Respondent in the grid to which I have already referred. There was other information set out in that email which does not matter for now. Regional Employment Judge Swann had docketed the case to me. Unfortunately, because of the difficulties arising from the impact on the Tribunal system because of Covid-19, the correspondence was not referred to me until December 2020. As an aside I am quite satisfied regretfully that the matter would not have been dealt with before had the case not been specifically allocated to me. The impact on the administrative resources affected all cases and all judges in the Tribunal.

33. On 18 December 2020 I directed as follows so far as relevant:

"Further and better particulars. The Tribunal orders that the Claimant's further and better particulars must be provided by no later than 4 January 2021. They must be sent to the Respondent and the Tribunal.

"The reasons are as follows. This claim was presented on 28 November 2019. The claim still requires clarification before it can proceed. The Claimant has satisfied the Tribunal that he has capacity to represent himself. He has indicated he would like a further delay while he starts counselling with the NHS, which has been delayed. He suggests this should not be until February or March 2021. The Claimant has issued his claim some time ago and should now be in a position to present it to the Tribunal. He should be able to set out exactly what his claim is about. He has had the benefit of legal advice because he was for a while represented by solicitors. There is no reason or explanation why a delay awaiting counselling should stop him from providing the further and better particulars in respect of a claim he started nearly 1 and a half years ago. It would also be unfair to the Respondent. They are entitled to know the claim they have to meet and to a resolution without undue delay. Further delay would also be contrary to the overriding objective in the circumstances of this case…."

34. On 21 December 2020 Mr Chauhan requested a further extension of time from 4 January 2021 to 18 January 2021. The reasons do not matter. The Respondent's reply to that application and the application itself were referred to Regional Employment Judge Swann who dealt with the matter in my absence. On 29 December 2020 Employment Judge Swann ordered as follows:

"Unless by 18 January 2021 the Claimant provide further and better particulars of his claim to the Respondent and the Tribunal the claim will stand dismissed without further order. The Judge's reasons for making this

Order are set out in the letter from the Tribunal to the parties dated 18 December 2020. The claim is presented in November 2019 and the Respondent is entitled to know the facts it faces."

35. This is the relevant Unless Order. There was an immediate problem with the unless order in that the date for compliance was a year before the order was actually created. There was also a delay in sending it. In order to regularise matter I of my own motion on 13 January 2021 extended time for compliance to 22 January 2021 so as to avoid undue prejudice to Mr Chauhan. Later, on Mr Chauhan's application I finally extended it to 25 January 2021 so that he could have the weekend to finalise his amendments.

36. On 25 January 2021 Mr Chauhan emailed to the Tribunal a number of documents which he said were his further and better particulars. These again were set out in the form that the Respondent had produced at the beginning of the case in October 2019 where they had requested the further information from the Claimant in relation to certain parts of the claims that he brought. Again he had labelled them boxes 1, 2, 3 and so forth up to box 41, which is acceptable of course. There is no criticism of the fact that Mr Chauhan handwrote his responses, again.

37. However, on the form he had written:

"The whole case is to be reviewed by Law Society and Police if preliminary hearing has strike outs",

"dishonest solicitors will lose their license (CRB – DBS)".

"If any elsewhere if any strike outs re racial, disability, harassment, injury to feelings I go straight to the police summer 2019. "

There is then something written on the side of the form which unfortunately on my copy is difficult to read but I do not think I will take the case any further forward one way or the other.

38. Some of the information provided is comprehensible. For example box 3 deals with the first allegation made against Mr Holmes that he shouted out to Mr Chauhan aggressively. He gives the date on which it occurred Friday 14 August although it doesn't provide the year, but that is easily remediable. It provides some detail of the conversation that took place and how Mr Holmes spoke. It sets out a number of witnesses who were present he says perhaps the event.

39. Things become more difficult however to follow later. In box 5 where he has to set out why it is related to race, he writes (these are typed as a mirror of what Mr Chauhan has written, so far as possible)

"Mr Holmes had elite raced concept. What's in his head came VISIBLE IN HIS PHYSICAL ACTIONS."

"1. John Holmes

"2. Fiona Flannagan,

"3. Christine McGovern

"all had elite views of themselves.

“*(EVERYTHING IS ALL RIGHT IF YOU OBEY THEM)

“* MANY ETHNIC PEOPLE “PUT UP WITH IT”.

“John Holmes big green car private number plate “[it quotes the first three letters of the number plate---".

“Christine McGovern private number plate [it then quotes a number plate] meaning “BOSS”.

“* All 3 showed OVER CONFIDENT but they were “INSECURE” constant need to overbear people getting involved, interfering, seeking authority.

“* All 3 showed OVER CONFIDENT BUT they were INSECURE, CONSTANT NEED TO OVERBEAR PEOPLE, getting involved, interfering, seeking authority.

“e.g. Christine McGovern ordered [Someone whom it is suggested is of different ethnicity] “DO NOT DRINK IN CANTEEN!”. [They] challenged Christine saying “NO THIS IS A PUBLIC CANTEEN I WILL DRINK WHEREVER I WANT TO.” He threatened Christine’s AUTHORITY. ([Another person of alleged different ethnicity] threatened John Holmes AUTHORITY)]

“”Over PATRIOTIC ELITE RACE” concept was also Fiona Flannagan

“* I emailed Jan 2019 see email called “POST ROOM – I’M IN DANGER!”

“I wrote: Flanagan has pictures cut out and joined into her photo of PRINCE WILLIAM. HOW WEIRD ??? Summer 2019?

“1) THIS IS NOT 1 BUT 2 PICTURES

“2) DRECTLY BEHIND HER HEAD SO EVERYONE LOOKING AT HER WOULD AUTOMATICALLY SEE “THE ROYAL PICTURES”

“VITAL INFO

“NOTE

“Out of hundreds of WHITE/CAUCASIAN PEOPLE at the University why do ETHNIC PEOPLE

“PICK THE SAME CAUCASIAN PEOPLE , BUT NEVER SPEAK BAD OF THE OTHER CAUCASIAN PEOPLE

“* Why do Black/Asian people all choose the SAME WHITE PERSON NOT THE OTHER CAUCASIAN PEOPLE

“WHY SO MANY SAY THE SAME THING!”

40. None of that on any reasonable interpretation explains why it is said to be down race. There is no explanation of what is meant by “elite race concepts”. It is not clear why Prince William’s photos are relevant to race discrimination. There is no detail of who the “same Caucasian people”, who is being interviewed or why they are chosen.

41. This is in my view a typical flavour of the answers provided. They are often lengthy, incoherent and make little sense.

42. However, lest I am unfair or wrong about that, as one goes further into the details of the claims things become less and less clear.

43. For example in box 10 relates to allegations that Mr Holmes told him off in public about emptying recycling bags. Mr Chauhan's reply is as follows Box 10 set outs why the Claimant believes it was related to race. It reads as follows:

"BETTERS AND PARTICULARS:

"BOX NO 10 WHY I CONSIDER JOHN HOLMES TO BE RACIST

"John Holmes (2015) "DOOR LOCK INCIDENTS"

"1. RACISM

"2. BULLYING

"3. HARASSMENT

"4. VICTIMISATION

"5. TREATED DIFFERENT

"* Superiors DID NOT ACT QUICKLY TO RESOLVE MATTERS ALLOWING HARASSMENT TO CONTINUE AND ESCALATE. Over 2-3 month PERIOD *

"*No duty of care *no company policies "ANTI BULLYING" IN PRACTICE FOR ME

"Commencing employment, Brookfield 2015.

"The porter's room door where we meet and sign in at 7 → 10am HAD A KEY LOCK – NOT CODE NUMBER LOCK.

"* WITNESSES (Can be Court Ordered in)

"1. Supervisor [a person is named]

"2. Cleaners [a person is named] 3. [another person is named]

"4. Head Supervisor [a person is named] (WIFE OF THEN MANAGER [a person is named]

"Only 2 porters had keys to the premises 1. John Holmes 2. [another person] ?

"*BOTTH IMMEDIATELY HAD PROBLEMS WITH INDIAN SUPERIOR [a person is named] ("see "PEN ON TABLE INCIDENT" FILES. THEY GAVE HIM A VERY HARD TIME AT START. HE TOLD ME FACE TO FACE.

"I was placed in Reception area/Kitchen -Restaurant & Large Lecture Theatre, very busy and unpredictable to volume of people & mess, including BUSIEST TOILETS IN THE BUILDING

"I was late 1-3 minutes about 1-2 times a week

"THERE WERE NO CLEARNERS ONCE I HAD LEFT THE BUILDING.

"*Large green areas front and back of building

"(HEAVY TRAFFIC OF GRASS, MUD, DRY MUD COMING OFF AS PEOPLE WALKED – Bits everywhere)

"*John Holmes (AFTER SITTING DOWN 15-20 MINS PER HOUR – everybody aware including supervisors * WITH SEVERAL LIGHTS ON IN WHOLE BUILDING – BUT HE IS "DOZING OFF". (ONLY 1 PERSON IN WHOLE BUILDING, BUT SEVERAL LIGHTS ON). WASTING MONEY.

"(LATER puts in statement to investigator [named person] ABOUT [another named person] USING TOO MANY RUBISH BAGS

"I was saying to [person named] re black refuse bags – "I WAS TRYING TO SAVE COMPANY MONEY"!!

"PUNCHLINE: SEVERAL LIGHTS LEFT ON FOR FULL 8-10 HOUR SHIFT (and he's worried about me using too many back refuse bags)

"WITNESSES: EVERYONE IS AWARE!"

Pausing there I note that the Claimant does not actually allege in this text he was spoken to about using too many black refuse bags, his allegation is that he was spoken to about recycling bags.

It continues

"AT 10:00 am he would wait outside the door, keys in hand he would say

"Hurry up! I'm waiting for you! WHAT KEPT YOU! I'VE GOT OTHER IMPORTANT THINGS TO DO THEAN WAIT FOR YOU OTHER PEOPLE ARE WAITING FOR ME"…

"NOTE: COMPANY POLICY: PUNCHLINE!

"If there is a problem – you CANNOT APPROACH THE OTHER PERSON

"COMPANY PROCEDURE IS;

"1. John reports company to His Manager

"2. His manager complaints to MY MANAGER

"3. My manager complaints to me

"*NO DIRECT APPROACH ALLOWED

"* WE WERE ALL TOLD THAT COLLECTIVELY WHEN COMMENCING EMPLOYMENT

"QUOTE FROM [a person is named]

""DO NOT APPROACH THE PROBLEM PERSON DIRECTLY – GO THROUGH YOUR MANAGER

"PUNCHLINE:

"[Named Person] AND SUPERVISOR [person named] (BOTH WHITE/CAUCASIAN) DID NOT APPLY TO "COMPANY POLICY" TO WHITE CAUCASION JOHN HOLMES

"RACISM because

"1. I noticed (so did other ETHNIC PEOPLE): HIS ATTITUDE WAS STRICTER, SERIOUS AND MORE "OFFICIAL" TO ETHNIC MINORITY PEOPLE.

“2. SERGENT MAJOR ATTITUDE IN SPEECH, CONDUCT, LOUDNESS OF VOICE.

“3. WHO DO YOU THINK TOU ARE (ATTITUDE) COMPARED TO ME.

“4. DISTANCE WHEN TALKING TO ETHNIC PEOPLE

“5 DURATION OF CHAT:

“ETHNIC PEOPLE: SHORT OFFICIAL ONLY.

“WHITE/CAUCASIAN PEOPLE: LONG – “PERSONAL CHATS”

“6. “BEND THE KNEE” and “BOW YOUR HEAD” CONCEPT

“DOCTRINE AND DRACONIAN

“* JOHN HOLMES, SUPERVISOR FIONA FLANAGAN * AND BULLY (2019) CHRISTINE MCGOVERN SHOWED * THESE SAME VITAL POINTS!!!

“JOHN HOLMES AND FIONA FLANAGAN USED

“Their PHYSICAL ACTS SHOWED WHAT THEY FELT IN THEIR HEADS (superiority Race). Belittling manner.

“*Other white/Caucasian people DID NOT BEHAVE IN THIS WAY.

“RACISM PROOF:

“MANY, MANY TIMES, I would find John at the front door with keys in hand (I HAVE TO GO INTO BUILDING TO SIGN OUT)

“I CAUGHT JOHN “REGULARLY – ALMOST DAILY, AFTER PARTING IMMEDIATELY AFTER 10am (signing out time), I WOULD SEE HIM “QUITE HAPPILY STANDING – CHATTING TO VARIOUS (ALWAYS WHITE – CAUCASIAN) PEOPLE, IN AND OUT OF THE BUILDING

“Question

“What happened to, quote:

“HURRY UP! I’VE GOT VERY IMPORTANT THINGS TO DO THAN WAIT FOR YOU! OTHER PEOPLE ARE WAITING!

“OVER THE TOP – SCOLDING DRACONIAN

“PUNCHLINE:

“THIS “OVER THE TOP” SCOLDING WAS TO REPEAT ITSELF AGAIN EG 100% MIRROR IMAGE, LATER I WAS THROWN OUT OF BROOKFIELD FOR USING GTEC HOOVER IN ENTRANCE ONLY OF TOILETS (NOT INSIDE TOILETS – DOORWAY ONLY)

“quote: “ASH! OH MY GOD WHAT YOU DOING! CONTAMINATION!

“* I WAS MOVED WITHIN 2 DAYS

“BUT IN FEB 2020 I.T. STAFF([person named]) WASHING HIS FEET IN MEN’S TOILET SINK,

“DID NOT GET MOVED AT ALL!

“Q WHAT HAPPENED TO “OH MY GOD! CONTAMINATION! NOW

“WITNESSES

“I had reported everything to supervisor [person named] she reported to SENIOR SUPERVISOR (AND WIFE OF MANAGER [person named]) I SPOKE TO [person named] ON PHONED ALSO ALSO FACE TO FACE

“* As urgency I BEGGED FOR KEY LOCK TO BE CHANGED TO NUMBER LOCK (SO WE CLEANERS ARE “NOT AT THE MERCY OF SCOLDING OF JOHN HOLMES”)

“RACISM

“John felt in AUTHORITY BERCAUSE HE WAS THE KEY HOLDER (Premises Officer) AND “I SHOULD OBEY HIM”

“MATTERS ESCALATED OVER 2-3 MONTH PERIOD

“NOTE: AS MANY TIME TO COME: **

“* EMPLOYERS FULLY WAWARE, BUT STILL, “NO REAL” DUTY OF CARE” PROTECTION AND NO COMPANY POLICY OF “ANTI BULLYING”

“* MANAGEMENT “ALLOWED IT TO HAPPEN” & “ALLOWED IT TO CONTINUE AND ESCALATE”

“(NO PROTECTION FOR ETHNIC MINORITIES)

“PROOF: Later [illegible] v Christine McGovern

“Manager does NOT PROTECT ETHNIC PERSON, INSTEAD MANAGER TELLS [person named] “GO AWAY!”

“(I have 100% STRONG EVIDENCE OF THIS) *

“WITNESSES

“[person named] and [another person named], we spoke DAILY ABOUT JOHN’S HARASSMENT

“* PROOF CAN BE “COURT ORDERED” IN *

“MANAGEMENT “EXPOSES ME TO DANGER”

“BY NO DEALING WITH JOHN HOLMES QUICKLY

“Trainee Supervisors not always on site, NO SUPERVISOR FOR LONG PERIODS OF TIME

“FEAR OF REPURCUSSIONS (BOTH FROM JOHN HOLMES AND MANAGEMENT)

“African males ([person named]) and 2 Indian females [names] ALL ETHNIC MINORITY CAN SEE “FAVOURITISM AND BULLYING CULTURE” (INSTITUTIONAL)

“BUT YES THEY “BEND THE KNEE” AND “BOW THEIR HEADS” TO EG JOHN HOLMES (ESPECIALLY SUPERVISOR FIONA FLANAGAN) AS NOT TOO EDUCATION AND “VERY RELIANT ON JOB – FAMILIES TO SUPPORT)”

44. None of that really explains why the Claimant asserts Mr Holmes “telling [the Claimant] off in public in relation to the emptying of recycling bags” is

related to his race. It requires a reader to decode, dissect and make inferences from what appears to be (as the Respondent characterised it) "a stream of consciousness" that ultimately sheds no light on why Mr Chauhan is alleging race discrimination.

45. Matters deteriorate in my opinion from there.

45.1. Box 18 should explain exactly what Mr Chauhan says Ms Flanagan has done that he described as "Fiona Flanagan picks arguments with me". He has not produced any document that sets out the information for box 18 and it is not apparent where else that information is. The Claimant could not direct me to it, and I could not find it.

45.2. The same is true of box 19 (Claimant to confirm who was present at these arguments.

45.3. The same is true of box 20 (Claimant to explain why he believes it relates to his race)

46. Box 28 is supposed to say how the Claimant says the allegations were covered up. It is 5 pages. It is impossible to transcribe these pages (which are at 121-125 of the bundle that was before the Tribunal). The first and second page is an email. Handwritten all over it are notes with arrows pointed to other handwritten paragraphs. The ink is red. Some parts are highlighted in green or red. There are 2 double-headed red arrows down the side pointing from 1 at the top, to 2 to 3 at the bottom. They do not appear to number any actual points. It is impossible to read that in a reasonable way that even begins to provide any useful information. The third page is handwritten notes that does appear to convey any information. The fourth and fifth are extracts from an interview between JH and TC. Again, it is marked up with arrows point to paragraphs, handwritten text in red, blue, black and grey and asterisks with some parts highlighted in green. It is impossible to discern with reasonable effort any relevant or useful information from it.

47. Box 30 is where the Claimant is to explain why he believes the allegation "The Respondent has covered up the results of 2 investigations and brushed results under the carpet" is related to his race. For box 30 the Claimant has attached the first page of a letter of 30 November 2015 from Tom Crabbe, described as the "RM Manager" in the university address. It is the first page of an invite to a formal grievance hearing to deal with a grievance the Claimant has raised. The Claimant written on it as follows

Top page: "PROOF RACISM QUOTE: "AS THOROUGHLY AS POSSIBLE" ← (2) See quote at bottom of page"

On the address lines: "NEVER INTERVIEWED ANYONE FACE TO FACE→ only John Holmes for questions and answers (only reason)"

Next to the salutation: "(3) JOHN HOLMES STATEMETNS AND MANAGER (EX) [name supplied] BOTH "JUST A FEW LINES – 1 PARAGRAPH"!"

He has then circled the date Wednesday 9 December 2015 in the 4th paragraph, but it does not explain why and likewise underlined the name of the Human Resources advisor who will be there.

As to the 5th paragraph there is encircled and highlighted the words “The investigation will be conducted as swiftly as thoroughly as possible, accordance with the University’s grievance procedure”

Pointing at the highlighted words in that paragraph is an arrow from the left margin in which Mr Chauhan has written “LIAR!”

Pointing down from those words to the foot of the page is another arrow and Mr Chauhan has written

“(1) “THOROUGHLY”? IS THAT WHY YOU NEVER QUESTIONED 2 BLACK PEOPLE WHO WERE “AT THE TABLE DURING INCIDENT [names provided]”

The second page of box 30 is the last page of an interview between “TC” and “JH” – the inference is that is it the grievance investigation report between Mr Crabbe and Mr Holmes but that is not clear. Mr Chauhan has written at the top

“Q why did the interviewer Tom Crabbe NOT GO THROUGH THESE LIST OF ISSUES (A) THESE ISSUES WOULD SHOW CONTINUOUS PROBLEMS WITH 1 WHITE/CAUCASIAN NOT OTHER CAUCASION PEOPLE – ONLY HIM!

And at the foot of the page

“NOTE JOHN HOLMES SAME AS FIONA FLANAGAN AND CHRISTINE MCGOVERN “FANCIED THEMSELVES” AND THAT OTHER PEOPLE (MAINLY ETHNIC MINORITY SHOULD “BEND THE KNEE/BOW THEIR HEADS” AND SHOW RESPECT (OTHER INDIAN/BLACK PEOPLE DID THIS THROUGH “FEAR OF REPURCUSSIONS

“* PUNCHLINE: OTHER WHITE/CAUCASIAN PEOPLE NOT LIKE THIS

48. It is again impossible to comprehend how the Claimant is saying that the alleged cover up of the results of the investigation is connect to his race based on these comments around parts of documents.

49. Box 32 is supposed to tell the reader the dates on which he says he was forced to change his work location. Instead, it says:

“? SEE EMPLOYERS ? DEC 2015 ?”

50. Box 35 is supposed to say how that change in location was linked to race. It simply invites the reader to see the prior boxes.

51. Similar answers can be found in, for example, box 41 which is supposed to explain how the failure to give him a permanent site role (whereas another was) was connected to race. It is just under 6 pages but does not answer that question.

52. All in all it seems to me even giving it the fairest reading and the most general interpretation to Mr Chauhan as possible, and recognising that Mr Chauhan is doing the best he can to represent himself and to convey information to the Tribunal, these documents do not provide further and

better particulars that addresses the information that the Tribunal ordered him to provide. The Claimant submitted it provided some but as the Respondent also fairly points out in submissions today it does not provide all of the information sought and indeed there are still big gaps.

53. As if to prove the point, on 25 January 2021 and after this information had been sent in, Mr Chauhan emailed the Tribunal saying the actual claim was

"disability discrimination physical and mental, race discrimination, direct and indirect."

54. As I observed at the first case management hearing, there is no disability discrimination claim. There has never been an application to add one. There any reference in the further and better particulars to disability discrimination. As for indirect discrimination there is no mention anywhere of anything that might be a provision criterion or practice, how it puts people of his race at a substantial disadvantage compared to people who are not of that race or how he personally was put a disadvantage.

55. He added to this email:

"Must include anything that is already on your screen. Harassment less favourable treatment, injury to feelings, treated differently. I will be requesting disclosure orders and whistle blowing protection and then crucially please note there will be very slight adjustments in the better and particulars or notify you of these changes. Apologies to all parties."

56. It seems to be an indication and accepted by Mr Chauhan himself that the further and better particulars he submitted were in fact not the complete further and better particulars.

57. The Respondent on 28 January 2021 sent the Tribunal a lengthy letter. For present purposes it can be summarised as they believe the Unless Order has not been complied with.

58. On 1 February 2021 Mr Chauhan emailed the Tribunal saying as follows:

"Slight simplification of my better and particulars referring to typed documents not handwritten.

"Section 14 line 7 says "prompted argument…" This was without words, body and facial gestures only.

"Section 16 line 5 "allow contract for one person". Correction, 2 people BUT THE SITE WAS TO GO TO OADBY OFFICE. IT NEVER DID. IT WENT TO [name supplied] MY WHITE COLLEAGUE INSTEAD. WE WERE BOTH ALREADY ON CONTRACT, BUT I FOUGHT FOR EVERYTHING [HE] DID NOT.

"All explained in my hand notes detail."

59. The typed document to which Mr Chauhan was referring was sent to the Tribunal on 4 February 2021. In the covering email he wrote:

60. "I rely on this typed copy consisting of seven pages and 23 paragraphs already sent in 25 January 2021 at 08:34. Respondent copied in."

The Tribunal did not receive that on 25 January at 08:34. It only received the handwritten documents to which I have already alluded and it has not been suggested that this document was sent on time today.

61. The document attached is a typed document entitled "Claimant's Better Particulars". It has the tenor and appearance of a document prepared by a professional lawyer. It is certainly a lot shorter and on the face of it a lot clearer than the documents that Mr Chauhan had presented to the Tribunal. There are however a number of things that stand out immediately from it. The first is that in the summary of allegations that appear at paragraph 22, 22(a) (allegation that the Respondent stopped the Claimant's wages because of race), 22(b) (the Respondent only paid his sick pay reluctantly because of race) and 22(h) (the movement of the Claimant's place of work on 6 January 2021 because of race) are new allegations. The second thing is that Mr Holmes, who the Claimant has alleged throughout was an antagonist and perpetrator of the alleged discrimination, has been completely dropped from the Claimant's proceedings.

62. The Claimant made no application made with their submission to amend the claim, however. The Claimant did however on 8 February 2021 apply to add Fiona Flanagan and Christine McGovern as Respondent.

63. The typed document does not still identify the types of action relied on, though I accept it is pretty easy to work out and, indeed the Claimant and Tribunal clarified that in correspondence around 25 February 2021.

64. There has been no written application made by the Claimant for relief from sanctions. However, the Claimant did orally seek relief from sanctions, and it was identified as one of the issues for me to consider today. Neither party has sought to persuade me not to consider it therefore I have considered whether I would grant relief from the strike out if the claim were in fact struck out pursuant to the unless order.

Relevant legal framework

65. The law as I understand it is as follows. **Rule 38** entitles Tribunals to make Unless Orders and provides that if a person does not comply with the Unless Orders, their case shall be dismissed without further Order. **Rule 38.2** provides a party whose claim or response has been dismissed in whole or in part as a result of such order may apply to the Tribunal in writing within 14 days of the date the notice confirming the strike out was sent to have the strike out set aside on the basis it is in the interests of justice to do so. **Rule 5** empowers me to extend or shorten time, e.g. to consider an application that is otherwise too late. **Rule 6** allows me to waive the failure to comply with a provision of the rules. While it does not allow me to waive the failure to comply with an unless order, it does allow me to waive the requirement to submit an application for relief from sanctions in writing.

66. The overriding objective in **rule 2** provides amongst other things I should proceed as flexibly as possible in a way that is fair to all parties.

67. As a matter of law, the starting point is that when an Unless Order has not been complied with its effect is automatic. There is no scope for me to investigate whether or not I would have made the Unless Order – I am not an appellate body. Thus, a person subject to an unless order must either

comply with it, apply for it to be varied or set aside or to appeal to the appropriate appellant body (as may be appropriate procedurally). The Unless Order will have effect unless the Tribunal or Court grants for a leave from sanctions. It is all or nothing. A party complies or does not. There is no scope for partial compliance: **Marcan Shipping (London) Ltd and Kefalas and Another [2007] 1 WLR 1864 CA**.

68. I derive the following principles from the cases of **Johnson v Oldham Metropolitan Council [2013] Eq. L.R. 866 EAT**, **Uwhubetine v NHS Commissioning Board England UKEAT/0264/18 EAT**, **Klukowska v Bridge of Weir Leather Company UKEATS/0038/18 EAT(S)** and **Wentworth-Wood and Others v Maritime Transport Limited UKEAT/0316/15**:

68.1. In deciding whether it not there has been compliance, the Tribunal has to consider the order itself which may need careful construction of the terms of the order both as to what was required and the scope in terms of the consequence of non-compliance.

68.2. If there is ambiguity in the order, I should be facilitative rather than punitive.

68.3. If there is still ambiguity, I must resolve it in favour of the party who is required to comply – in this case the Claimant. Words should be construed in context. What I cannot do however is re-draft the order or construe it to have a meaning that it will not bear.

68.4. The test to be applied is whether there has been material non-compliance. That is a qualitive rather than a quantitative test.

68.5. Where the order required some further particulars to be given, the benchmark is whether the particulars have sufficiently enabled the other party or parties to know the case they must meet. The Tribunal is not concerned with the legal or factual merits of the case advanced but only whether or not sufficient particulars have been given. Parties and the Tribunal are required to read documents in a way that it is realistic and not be overly technical or prescriptive. As long as it materially complies that is all that is required.

68.6. I must apply the overriding objective in this case management process.

69. I have considered the case of **Polyclear Ltd v Wezowicz UKEAT/0183/20 EAT** which in turn affirmed the approach in **Thind v Salvesen Logistics Limited UKEAT/0487/09 EAT** remained correct. In **Thind** the Employment Appeal Tribunal said

"The Tribunal must decide whether it is right, in the interests of justice and the overriding objective, to grant relief to the party in default notwithstanding the breach of the unless order. That involves a broad assessment of what is in the interests of justice, and the factors which may be material to that assessment will vary considerably according to the circumstances of the

case and cannot be neatly categorised. They will generally include, but may not be limited to, the reason for the default, and in particular whether it is deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. The fact that an unless order has been made, which of course puts the party in question squarely on notice of the importance of complying with the order and the consequences if he does not do so, will always be an important consideration. Unless orders are an important part of the Tribunal's procedural armoury (albeit one not to be used lightly), and they must be taken very seriously; their effectiveness will be undermined if Tribunals are too ready to set them aside. But that is nevertheless no more than one consideration. No one factor is necessarily determinative of the course which the Tribunal should take. Each case will depend on its own facts."

70. I have also borne in mind that in **Marcan** the Court of Appeal quoted **Civil Procedure Rule 3.9** as it then stood which identifies the factors that a Tribunal should consider. These included administration of justice, whether the application was made promptly, whether the failure to comply was intentional, whether there was a good explanation, the extent to which the party in default has complied with other rules, practice directions and court orders, whether the failure is caused by the party or legal representative, whether the trial date or likely trial date can still be met, the effects the default has had on each party and the effect of granting relief would have on each party.

71. I have also borne in mind the case of **Singh v Singh [2017] ICR D7 EAT** which again emphasises the broad assessment of what is in the interests of justice and the particular case under consideration. It is not a tick box exercise to be employed or reduceable to a formula but required weighing of relevant factors in the balance.

72. Finally Mr Echendu has cited to me the case of **Keziora v Servest Group Limited UKEAT/2016/99 EAT**. That is a decision where a claim had been rejected on the grounds that it could not sensibly be responded to. The Employment Appeal Tribunal in that case emphasised again the need to take a sensible reading of the claim form. It does not in my view add anything to the sum of understanding disclosed by the cases I have already referred to. It seems to me confined otherwise to its facts.

Conclusions

73. The first issue is what the Unless Order required the Claimant to do. In my view the reasonable litigant in the claimant's position would understand that the Claimant was required to provide details of the claims that he brought as requested by the Respondent back on 17 October 2019. I believe that this the correct and fair interpretation for the following reasons:

    73.1. On 17 October 2019 the Respondent set out what information was missing and what was required to fill the gaps and forwarded the request to the Claimant.

    73.2. The Claimant provided one response using the form, but it was inadequate.

73.3. In July 2019 the parties (and Claimant in particular) agreed that the Claimant had to provide the further information to fill those gaps in his pleaded case. He had received a copy of the request by this time and so knew what was missing.

73.4. The Claimant himself asked on 27 October 2020 for more time to provide a response to the request for further information. He did not indicate he was not aware of what he was meant to do.

73.5. The Unless Order is clear expressly refers to the prior order I issued on 18 December 2020. That in turn referred clearly to the need for the further information to clarify his claim.

73.6. The Claimant eventually on the final day submitted his alleged further information by expressly relying on the form that the Respondent had created and sent to him in October 2019.

73.7. At no point does the Claimant indicate that he does not understand the order, what is expected of him or that he does not understand what information he needs to provide. Indeed, his conduct shows he is all to well aware of what he was being asked to send – albeit he did not (as I say below) send in information that qualitatively enabled the Respondent to understand the case they substantially had to meet.

74. The next issue is whether there has been non-material compliance with the Unless Order. In my view the answer is yes.

74.1. Although the Claimant sought to argue that he had provided sufficient information in the first place to understand what the case was about, that clearly is something that cannot stand up to scrutiny. The Claimant himself repeatedly agreed that he was to provide further and better information. This is not only in reply to correspondence from the Respondent at the beginning of the case but also in the case management discussion before me on 2 July 2020, his own further information and that after submitted his further and better particulars he then continued to submit more clarification on 25 January 2021, 1 February 2021 and 4 February 2021. In this short time after the deadline, he appears to try to add (but then abandons) claims for indirect discrimination and disability discrimination. What is provided on 4 February of course is significantly different to what has been provided previously. The claims against Mr Holmes disappear and three new claims are added. Qualitatively even on his own case the claim is not clarified by the deadline because he continues to seek to clarify and to change it (albeit without an application for permission to amend).

74.2. It is quite clear more information was needed to understand what he was relying upon for the purposes of the claims he sought to put before the Tribunal. What he presented made little sense and missed out significant information. In essence on 2 July 2020 the Claimant conceded through his solicitor that further information was needed. At that hearing neither party in particular the

Claimant raised any query as to what further information was required.

74.3. When Mr Chauhan submitted the grid filled in with the boxes as I have described on 25 January 2021 he has before him details of what information is required from him. However, he has something that qualitatively does not provide the information that is clear, yet alone sufficient to enable the Respondent (or Tribunal) to understand his case.

74.4. Taking a step back, bearing in mind that one has to accommodate the fact that those who represent themselves will not express things as clearly as those who are legally representative and that a little more leeway might be needed and then looking at what provided by the deadline, I do not agree what was provided can be described as qualitative compliance. I have described some of it above that in my view demonstrates the quality of what Mr Chauhan submitted. It cannot in my view on any fair reading be said to enable sufficiently the Respondent or Tribunal to understand the claim. I acknowledge that parties sometimes use narrative styles. This goes well beyond that. It is incoherent and in places, to use the Respondent's words "a stream of consciousness". Thus, I conclude no reasonable person could say that the Claimant has complied with the Unless Order of Regional Employment Judge Swann and therefore the Unless Order took effect on 25 January and as things stand the claim is struck out automatically.

75. I will now go on to consider whether or not to grant relief from sanctions. I noted at the beginning that there has been no written application made to grant relief from sanctions nor any evidence formally adduced to justify why relief from sanctions should be granted. However, I believe that I should exercise my case management powers to waive any failure to comply with the Tribunal's rules on applying for relief and also to extend time by as much as is necessary in order I have jurisdiction to consider it. Neither the Respondent nor the Claimant objected to me determining the issue. I described this at the hearing there was no formal application (by which I mean written application in accordance with the rules within the time limit the rules prescribe). However, as it was identified as an issue at a previous case management order as an issue so neither party could argue that they were surprised that the issue of relief from sanctions was a live issue. It is therefore sensible and fair to consider the issue. Both parties made submissions on the issue, and I have therefore determined it

76. In this particular case I firstly consider what the reasons for the default might be. Again, no clear evidence has been given on this, but I do take into account from the notes of the previous case management hearings and the letter that the Claimant has produced that was written on 9 April 2021 that the Claimant has had mental health difficulties. They are also referred to occasionally in his applications for extensions of time. However, one has to reflect that the requests to extend time have been granted pretty much as and when requested, this case has been going on since 2019 and that the

Claimant is simply being asked ultimately to set out what his case is – nothing more but simply to set out what it is that he complains about and why. These must be things that are within the Claimant's knowledge. I accept his mental health will have had some impact and cause of the delay. However, there is no reason to believe it meant he could not comply with the unless order. In fact, the medical evidence the Claimant has adduced suggests he could. The numerous delays when his capacity was not in doubt in my view this weighs against the grant of relief from sanctions.

77. I do not believe for one moment the Claimant's failure to comply is deliberate. However, I do not believe that in itself militates against the adverse effect of the delays.

78. The seriousness of the default is something that clearly weighs against the Claimant. This is not something minor but fundamental in that the Respondent does not know still what the Claimant's case is. This is despite the Respondent setting out what was required and numerous orders from the Tribunal extending time to provide that information. The Claimant himself acknowledged further information was required both in person and through solicitors. The Claimant has never suggested he did not understand what was expected of him. That makes the default more serious in my view.

79. In terms of the prejudice to the parties it seems to me it can be analysed as follows.

    79.1. In terms of the prejudice to the Claimant the fact his case has now been struck out is clearly seriously prejudicial. He is no longer able to pursue the claims the Tribunal that he no doubt believes is one that is fair and properly brought. Against that one must set out the fact that the Claimant is the one who presented this claim and must know the detail of what it is he wanted to allege when he presented it back on 28 July 2019 and he has had many opportunities to provide clarity. Therefore, the prejudice that the Claimant would face has to be balanced in my view against the fact that it he has had significant time to set out his claim with sufficient clarity.

    79.2. As to the Respondent if I were to grant relief from sanction the Respondent would still face a claim where they did not know what the claim against them was and would incur further expense that they are unlikely to recover. The money they have expended so far would be wasted since no progress has been made.

    79.3. Overall, I think this weighs against the Claimant.

80. In terms of whether a fair trial remains possible, the Respondent fairly concedes that this is not a case where documents have been lost or witnesses' testimony has deteriorated with the passage of time. However, the Respondent clearly do face the difficulty which goes to a fair trial which is they still do not know what the claim is. The Respondent is entitled to know the claim that they are going to have to meet and in this particular case they will not know that.

81. I also reflect on the following facts which I believe weigh against the Claimant. The Claimant was asked by the Respondent without the need for a Tribunal Order to provide further information and he agreed to do so. That was in October 2019. In July 2020 it was conceded by the Claimant himself he still needed to provide more information. That did not come about because there were concerns and that is not the Claimant's fault. But on 7 October 2020 the Claimant realised he still needed to provide more information and asked for the stay to be lifted and an opportunity to grant that. He has asked for a number of extensions in order to provide the information to the Tribunal and to the Respondent and indicated his instructing solicitors from time to time, but what is important is that he has been provided with those occasions and those extensions and yet still we do not know what the case is. That shows why an Unless Order was necessary in this case to progress things towards a final conclusion either by getting the case to progress or bringing it to an end.

82. If I were to grant relief from sanctions, I would also have to reflect on the fact that the trial date is not going to be met now realistically until either the latter part of 2022 or more realistically the beginning of 2023. This case would require more time and Tribunal resources which other litigants and parties are seeking in order to have their own cases resolved. This is not just time for the final hearing but for case management. It seems to me that it would be unfair to allocate more resources to this case at the expense of delaying the other cases. It would also increase the expense in this case for both parties and it would result in further delay before this case is heard because we still need to clarify what the claim is if it were allowed to proceed.

83. I do make this observation in the Claimant's favour in that the Claimant has always met the deadlines that have been set of him and if he has not been able to meet them then he has always communicated with the Tribunal promptly to ask for an extension of time. He has always communicated with the Respondent. That does stand to his credit and it certainly something that distinguishes him from sadly many parties who come before the Tribunal. However, in my view that is not something in the circumstances of this case that can outweigh all the other difficulties and all the other factors that point against a grant in relief from sanctions.

84. Therefore, the Order will be that the claim stands struck out pursuant to the Unless Order that was made by Regional Employment Judge Swann as varied by me, and that relief from sanctions is refused.

Employment Judge Adkinson

Date: 23 August 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment Tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the Claimant(s) and Respondent(s) in a case.