EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: **4105478/2020**

Claimant: Mr D Dawson

Respondent: University Of Aberdeen

CERTIFICATE OF CORRECTION

Employment Tribunals Rules of Procedure 2013

In accordance with the power set out in Rule 69 of the Employment Tribunal Rules of Procedure 2013, I hereby correct the clerical mistake(s), error(s) or omissions(s) in the Judgment sent to the parties on 26 November 2021,

Add after Neil McLean where it appears in line 24, page 1 after the word ‘‘Solicitor’’ the following: ‘‘accompanied by Ms S Leslie Solicitor and Mrs D Dyker Director of People University of Aberdeen’’

An amended version of the Judgment is attached.

Important note to parties:
Any dates for the filing of appeals or reconsideration are not changed by this certificate of correction or the amended Judgment or Case Management Order. These time limits still run from the date of the original Judgment or Case Management Order, or if reasons were provided later, from the date that those were sent to you.

Employment Judge **J Hendry**

Date **13 January 2022**

Sent to parties **13 January 2022**

E.T. Z4 (WR)

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105478/2020

Held on 1 & 2 November 2021

Employment Judge J M Hendry

Mr D Dawson	**Claimant** **In Person**
University of Aberdeen	**Respondent** **Represented by** **Mr N Maclean,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal finds as follows:

1. **The Respondent's Reconsideration is granted and the Judgment dated and sent to parties on the 12 July 2021 is revoked and repromulgated but varied as follows:**

A) to change reference at order 4 of the first page of the Judgment from Section 20 of the Equality Act to Section 15.

B) Order or point number 5 on the first page of the Judgment shall be deleted and shall now read as follows:
''5A The claim under Section 100 of the Employment Rights Act is struck out as having no reasonable prospects of success. 5B The claim for automatically unfair dismissal under Section 103A of the Employment Rights Act having little reasonable prospects of success shall be subject to a Deposit Order in the sum of £500''.

C) The Judgment shall be varied to delete order number 9 and substitute: ''The claim for reasonable adjustment in Paragraph 35 relating to prolonged delay and uncertainty in concluding the claimant's grievance

shall be allowed as an amendment and shall proceed to a hearing reserving time bar and subject to a Deposit Order in the sum of £500.''

D) The Judgment shall be varied to add on the first page a further order 9 B in the following terms namely: ''The claims in paragraph 40 relating to reasonable adjustments over supervision and line management having little reasonable prospects of success shall be subject to a Deposit Order in the sum of £500''.

E) The Judgment shall be amended to add an additional order 9C namely: ''9C Any claims arising from Paragraph 62 having no reasonable prospects of success are struck out''. The Judgment shall be amended to add an additional order as follows:''10A Other than the claims referred to in points 1 to 9 of the Judgment all other claims for reasonable adjustments are struck out''.

F) The Judgment shall be varied to delete the last sentence in paragraph 62 at 11.

G) The Judgment shall be varied to add the following to the end of paragraph 74: ''Paragraph 62 seems to summarise earlier claims and adds no new facts. I have dealt with these matters which I regard as having no reasonable prospects of success. However, for the avoidance of doubt if it is meant to set out separate claims for harassment, detriment or disability discrimination it fails to do so adequately and they are struck out''.

2. The claimant's reconsideration is allowed to the extent:

A) The order or point number 10 of the Judgment is varied to delete ''on October 2019'' and to substitute ''at or around October and November 2019''.

B) At page 21 of the Judgment line reference to Mrs Dyker shall be deleted and Mrs Inglis substituted.

C) At Paragraph 39 line 20 and 21 the words ''neither appealed nor was a reconsideration sought'' shall be deleted and the following substituted ''appealed to the EAT unsuccessfully''.

D) At Paragraph 75 line 18 delete ''two years earlier'' and substitute ''some 19 months earlier''.

3) The Respondent's application for expenses succeeds and the claimant shall pay the Respondent the sum of Seven Thousand Pounds (£7000) as expenses.

REASONS

1. A preliminary hearing took place on 1 November 2021 in order to consider reconsideration applications from both parties arising from the Employment Tribunal's judgment dated 12 July 2021 (''May PH Judgment''). The respondent's lawyers had set out the basis for their application in their email to the Tribunal dated 22 July 2021 found at pages 131-134 of the Reconsideration Bundle (RB).

2. The submissions were slightly confusing sometimes referring to Paragraphs in various Judgments and Better and Further Particulars. There were two folders of documents forming the Reconsideration Joint Bundle the first Inventory covering pages 1-153 lodged by the respondent and the second lodged by the claimant covering pages 155-699. The latter contained an earlier strike out Judgment dated 14 August 2020 which was issued following a PH in June (''June Judgment''). This was helpful as it contained details of the various ''Incidents'' that the claimant originally founded upon.

3. The claimant sought reconsideration by email dated 24 July 2021 (RBp135-146) of the most recent Strike out Judgment dated 12 July 2021 issued following a hearing in May 2021 (''May Judgment''). The two Judgments dealt with consideration of the claimant's Better and Further Particulars which articulated the pleadings of the various conjoined claims in place before the June PH Judgment (''BFP20'') and the May Judgment 2021 (''BFP21'') The Tribunal had to consider if the BFP21 were in part an amendment introducing new claims. This matter fell by the wayside when the claimant stated that he was not pursuing amendment. The Tribunal also had to consider the respondent's application for expenses/deposit orders.

4. I will deal with the respondent's application first as it was dealt with first at the hearing being the first application lodged. It was also convenient to allow Mr McLean to present the application first as it allowed the claimant to consider the legal basis underpinning reconsideration applications before presenting his own application.

5. The procedural history of the case is important and requires some explanation. The respondent's made an earlier strike out application which led to the Tribunal issuing the June Judgment. That Judgment did not deal with all the claims raised by the claimant in his BFP20 and left the issue of

deposit orders to another day whilst giving the claimant a limited opportunity of recasting his pleadings in relation to specific named matters. The claimant responded by lodging the BFP21 in December/January (RBp25-41) which the second strike out hearing in May 2021 addressed. That Judgment left open both the issue of deposit orders and expenses to allow the claimant to make representations in person. It is the May Judgment that is the subject of the applications for reconsideration.

6. Before the hearing began I invited parties to take part in a discussion about the way in which we should address the various issues. It was agreed that the reconsideration applications should be dealt with first and then the question of the level of any deposit order granted and finally the expenses application.

Respondent's Submissions

7. Mr Maclean first of all reminded the Tribunal about the terms of Rule 70 which deals with reconsideration of Judgments. He also made reference to the "old Rules" which gave examples of the sort of circumstances in which reconsiderations could be sought. He stressed that the reconsideration was not an opportunity for a party to reopen the hearing and have a ''second bite of the cherry''. He made reference to the importance of the finality of Judgments, to *res judicata* and also to rules regarding the admission of new evidence. The respondent's solicitor then made reference to the written application that had been lodged and worked his way through the application. At suitable junctures there was discussion about the points being made.

8. I narrate the application using the same headings as the written application and setting out Mr Maclean's position. (Where there is reference to the claimant's ''Submissions'' that was reference to the claimant's pleadings namely his Better and Further Particulars. It was also agreed that reference to ''paragraphs'' of the Judgment, when the reference was to the orders or awards contained in the operative part of the Judgment, should be referred to as ''points'' or the number of the particular award/order).

Point 4 (Award number 4) of the Judgment – ***Any claims for detriment or discrimination under Section 20 of the Equality Act 2010 arising from Paragraph 77 are struck out as having no reasonable prospects of success.***

9. The respondent's solicitor made reference to Paragraph 77 of the June PH Judgment and to the BFP20. The stated claim was for discrimination arising from disability under section 15 of the Equality Act 2010, and the respondent believed the reference in Point/Award 4 of the Judgment should therefore be to Section 15 of the Equality Act 2010. The same legislative reference was made at Paragraph 78 of the reasons.

   (This matter was common ground and both parties agreed that this should be allowed)

Point 5 of the Judgment – ***The claim for automatically unfair dismissal in terms of Section 100 or otherwise having little reasonable prospects of success will be subject to a Deposit Order the amount of which to be afterwards ascertained.***

10. In Paragraph 80 of the reasons in the Judgment it is stated that: "*There is no basis pled for dismissal under Section 100 of the ERA. These allegations are struck out as having no reasonable prospects of success."*

    Mr Mclean pointed to Paragraph 75 where it was stated that the claim for automatically unfair dismissal because of whistleblowing "*has little prospects of success and will be subject to a Deposit Order in a sum to [be] ascertained later".*

11. Mr Mclean submitted that both claims had been considered and that the order at point 5 of the Judgment should be split, and reflect that the claim for automatically unfair dismissal in terms of Section 100 of the ERA has been struck out; whereas the claim for automatically unfair dismissal because of whistleblowing under Section 103A of the ERA should be subject to a deposit order of an amount to be afterwards ascertained.

12. The claimant did not object to the clarification that was proposed but argued that both claims should proceed. He argued that there was a basis for his claim

for unfair dismissal under Section 100 which related to leaving work for health and safety reasons as he thought it was unsafe for him to stay. He submitted that it would be preferable to make a deposit order rather than strike out this claim.

Point 9 of the Judgment – *The claim for a reasonable adjustment in Paragraph 35 relating to delay in concluding the claimant's grievance shall be allowed as an amendment and shall proceed to a hearing reserving the issue of time bar.*

13. The respondent had noted that Paragraph 62 of the reasons stated in relation to the alleged delay in concluding the grievance process that the Judge "*cannot assess whether it has little reasonable prospects of success or not as much will depend on the factual reasons for the delay*". However, Paragraph 69 of the reasons stated that as "*there is no reference to a PCP or to what the substantial disadvantage is […] In the circumstances I am of the view that there are little reasonable prospects of success*", and stated that this aspect of the claimant's claim was to be made subject to a deposit order. This was not, however, reflected in order 9 of the Judgment. Given that Paragraph 62 and 69 of the Judgment both deal with the claimant's claim for a failure to make reasonable adjustments in relation to concluding internal processes and procedures, he sought clarification as to whether order 9 of the Judgment should be altered to refer to this aspect of the claim also being subject to a deposit order of an amount to be afterwards ascertained. He referred to paragraph 22 of the respondent's submissions contending that the failure to disclose a substantial disadvantage suffered by the claimant by virtue of any alleged provision, criterion, or practice of the respondent's, means that this aspect of the claim has at best little reasonable prospect of success, and so should be subject to a deposit order of up to £1,000.

14. The claimant argued that the claim should proceed and that there was no basis to seek a deposit order. He had not made reference to PCP's or substantial disadvantage because the Preliminary Hearing order (RBp16) did not require him to do so.

Paragraphs 63, 65, and 72 of the Reasons in the Judgment, dealing with Paragraphs 36, 38, 41, 42, 46, 47, 48, and 49 of the Claimant's Submissions (BFP21).

15. The respondent's solicitor noted that in Paragraph 63, the Judgment referenced paragraphs 36 and 38 of the claimant's submissions or BFP21 (RBp121) which are new and require amendment. In Paragraph 65, the Judge noted that paragraphs 41- 43 were new, and that 43 did not amount to a valid adjustment. In Paragraph 72 it was noted that paragraphs 46, 47, 48, and 49 of these particulars were new and required amendment. The respondent was unclear as to the outcome of these claims, and whether the amendment has been permitted in relation to the claims outlined in paragraphs 36, 38, 41, 42, 46, 47, 48, and 49 of BFP21, or refused for the reasons outlined in paragraphs 21 and 24 of the respondent's submissions. The respondent contended that the amendments should be refused for the reasons given in paragraphs 21 and 24 of the respondent's submissions, which failing only allowed to proceed subject to the issue of time-bar and a deposit order being fixed of an amount to be afterwards ascertained.

Paragraph 74 of the Reasons in the Judgment, dealing with Paragraph 62 (and sub-paragraphs) of the Claimant's submissions.

16. In Paragraph 74 of the May PH Judgment it is noted *that "there is no linkage or nexus with the disclosures"*; *"interactions with Mr Lynch that seem unremarkable and again no indication of how this could relate to the disclosures"*. The respondent was unclear as to the outcome of these claims, and whether given the lack of such "*linkage or nexus"*, and the *"unremarkable"* nature of the interactions, the claims made in Paragraph 62 are to be struck out. The respondent contended these claims should also be struck out for having no reasonable prospects of success for the reasons given in Paragraph 25 of the respondent's submissions, which failing only allowed to proceed subject to the issue of time-bar and a deposit order being fixed of an amount to be afterwards ascertained.

17. To the extent that the above issues should be considered to be grounds for a reconsideration rather than an accidental omission, the respondent submitted

that the requests are in the interests of justice as it appeared that administrative errors may have resulted in an erroneous recording of a decision. In addition, they will enable a proper consideration of the key issues brought by the claimant, while complying with the overriding objective including dealing with the case in a manner proportionate to the complexity and importance of the issues and saving expense.

Reasonable Adjustment Paragraph 40 BFP21

18. In addition the respondent requested reconsideration of decision to allow the claim for a failure to make reasonable adjustments under section 20 of the Equality Act 2010, brought by the claimant at Paragraph 40 (formerly 58 and 59) and dealt with at Paragraphs 70 and 71 of the Reasons in the Judgment, to proceed without the setting of a deposit order. The respondent believes this request is in the interests of justice as it will enable a proper consideration of the key issue brought by the claimant, while complying with the overriding objective including dealing with the case in a manner proportionate to the complexity and importance of the issues and saving expense.

19. It was submitted that at Paragraphs 70 and 71 of the Reasons in relation to this aspect of the claim it was held, "*We have no clear PCP and what appear to be discrete one-off decisions […] It is not clear what the substantial disadvantage is that would be avoided other than the general assertion that having the same line manager was stressful*". The respondent contended that given the lack of substantial disadvantage alleged by the claimant as a result of the respondent not changing the line manager, this aspect of the claim has, at most, little reasonable prospects of success. It was therefore submitted that, as with the other claims for reasonable adjustments brought the claim should only be allowed to proceed subject to a deposit order under Rule 39 of up to £1,000.

20. Mr Maclean concluded his submissions by indicating that in his view it was helpful to look at the claims that were left. He summarised these as follows:

(a) 'Ordinary' unfair dismissal claim.

(b) A claim that the principal reason for dismissal was the claimant's whistleblowing, and therefore that it was automatically unfair under section 103A of ERA 1996 (subject to deposit order).

(c) A claim of failure to make reasonable adjustments under section 20 of the Equality Act 2010 in relation to the change in the claimant's line manager around October/November 2019 (subject to deposit order).

(d) A claim of failure to make reasonable adjustments under section 20 of the Equality Act 2010 in relation to delays in concluding the grievance process (subject to deposit order).

21. Mr Maclean explained that he had initially asked for a deposit order in relation to the claim for detriment under s.47(B)(1) of the Employment Rights Act 1996 in relation to the events surrounding the claimant being asked to find out what was happening during a student occupation in March 2018 but this should be subject to a deposit order but in the interim period the claimant had agreed that this claim would not be pursued.

22. The respondent's agent suggested that in his view there were still preliminary issues namely the level of any deposit order if granted and whether the claimant was disabled for the purposes of the Equality Act, whether he made a protected whistleblowing disclosure and if so, what to whom and when. He noted that Mr Lynch continued to be listed as a party and that the claims had been struck out and that he should be formally removed from the process.

Claimant's Submissions

23. The claimant was then invited to respond and then take the Tribunal through his application for reconsideration (JB153-146). He asked to be allowed to start with the points made by the respondent's lawyers on 2 August 2021 in their e-mail to him (RBp147). There was no objection to this course of action and the claimant began with paragraph 4 which dealt with the issue of whether the claim being made arose from Section 15 or 20 of the Equality

Act. He began by indicating that in his view the Judgment was void of any reference to the ET1 and to what he repeatedly described as the ‘‘core documents’’ contained in the various ET1 applications lodged including his earlier reconsideration that he had made which had been refused. He could not understand why the Tribunal was not familiar with those documents. He suggested that the Tribunal had become confused and not realised that the “parking photograph” incident had been dropped and had never in his view been a separate claim. Accordingly, when the June 2020 Judgment dismissed the detriment claims it dismissed this “supposed claim” and the actual claim that was being made which related to a whistleblowing on the 7 November. (This led to a discussion of the Judgment during which I indicated to the claimant that whatever his feelings might be we were left with the June 2020 Judgment which was undisturbed as his appeal to the EAT had been unsuccessful and his reconsideration refused). The claimant suggested that the July 2021 Judgment compounded errors made in the earlier Judgment.

24. At one point he suggested that he was not allowed to criticise the solicitor who had been tasked to deal with his grievance and that I had a ‘‘professional’’ or “personal” involvement with her. I stopped the claimant at this point and told him that I had no personal knowledge of, relationship with or other involvement with the solicitor nor any professional one other than her appearing as a representative in cases before me. The claimant had checked the matter and told me that she had appeared in a recent case that I had dealt with at or around the time of the strike out hearing. Despite my suggestion that he should not persist with this he repeated the allegation, effectively of bias, at a later point.

25. The claimant’s position was that he did not accept that the better and further particulars (sometimes referred to as the Submissions) that both the June 20 and July 2021 Judgments considered should have been taken as the totality of his pled claims. A letter he said attached to one of his ET1s had been ignored and that this was again a core document. I pointed out that he had lodged numerous claims with many attached documents and he had been asked to put all his pleadings in the BFPs. He denied this.

26. The claimant advised that he tried to have the first strike out Judgment reconsidered but this had been refused. He pointed out what he thought was an inconsistency in the Tribunal's reasoning namely reference to him disparaging Mrs Kinmond professionally when this pleading detriments that he was complaining of. In his view the causal link had been clearly set out. It all went back he said to the whistleblowing on 7 November 2018. It was absolutely clear from the better and further particulars that he had lodged that his claims arose from this incident and not from earlier ones. He made reference to (pages 104, 195). The detriment ultimately ended up in dismissal.

27. The claimant's position was that the Tribunal had no right to strike-out this claim (detriment) and that it had gone "too far, too fast". He referred to paragraph 23 (RBp28). His view was that it should have been quite clear that it was a detriment claim. He continued referring to the past procedure and the Judgment in June 2020. He believed that it was unclear and that it's terms allowed him to lodge better and further particulars in relation to claims arising both from detriment (7 November whistleblowing) and reasonable adjustments.

28. We discussed paragraphs 20 to 29 of the BFP21 (RBp20-29). He did not believe they should be seen in isolation. It boiled down in his view to the fact that he was entitled to recast his pleadings and was not restricted from doing so.

29. The claimant made reference to the failure of the respondent to give him a particular stress risk assessment (Paragraph 39 RBp109). I indicated that I had I considered the matter in Paragraph 64 of the July PH 2021 Judgment. I should have made it clearer that obtaining a stress risk assessment is not in any event an adjustment. I explained what was meant by this. The employers had in any event taken the view that they could deal with the matter by way of a stress questionnaire. I appreciated that the claimant believed this was inadequate but the stress assessment is just a means of identifying reasonable adjustments. He should have said what he thought the stress assessment would have led to or identified. He said he could not tell what it would have led to. Nevertheless, I indicated that if there was any claim for

adjustment he would have had to set out what that adjustment actually should have been. The fact that there was a failure to provide him with a particular type of risk assessment was not in itself, as far as I could see, an adjustment. Mr Maclean intervened and indicated that in any event the right to make such claims had gone as they had been dealt with in the first strike out Judgment.

30. The claimant commented that he had not mentioned PCPs in his BFP21 because they had not been mentioned in the order for better and further particulars. The incident that set matters off occurred during the third day of a student occupation (paragraphs 37 to 39). He felt he had been victimised from the earlier parking incident onwards. I suggested that his position was broadly that because of this incident it could be said that he had fallen out with some managers and had become *persona non grata*. He agreed that this described how he came to be regarded. He believed that his claims had been buried in the confusion over whether matters were PIDS or protected acts. In his view he should be entitled to proceed with a lesser sanction being applied namely that of a deposit order. I explained to him that a deposit order was only appropriate if there was a claim in existence.

31. We then looked at the reconsideration application (RBp144) relating to harassment. The claimant asked me to allow this to proceed.

32. Turning to the application for expenses he suggested that in relation to this matter the Judgment disclosed that I was doing the job of the respondent. He stressed that he was a party litigant. In his view he had always obeyed the Tribunal orders. He went over the various claims that he had made. Mr Maclean had indicated that the first strike out Judgment was as he put it a line in the sand but three of his ET1s had been lodged after the Judgment which had been sent out to parties in September. It had been agreed that no expenses would be sought in relation to the fifth claim. He had thought reading the June 2020 Judgment he was entitled to persist with the matter of reasonable adjustments and this is what he had done. He asked the Tribunal to stand by the earlier Judgment. He argued that there was no such thing as an average party litigant. (Although the claimant did not make the overt suggestion of bias he indicated that he thought that I had done the respondent's job for them).

33. We looked at paragraphs 12, 13, 14, 15, 16 in order. The claimant's position was that the burden of proof should move to the respondent. We discussed the data breach. This again was something he said he had been excluded from by his managers because they wouldn't welcome his opinion. It was a detriment in his view. I queried that if the managers did not want his opinion (I took it that it would be likely to be contrary to theirs) did that not provide a reason or explanation for their actions other than the somewhat historic whistleblowing. I also asked him to explain how it could be in any event amount to a detriment and his response was that the fact that his name was associated with the data breach was itself a detriment. I took from this he believed that he would in some way be cast in a poor light). He again made reference to a cover up and the leaking of reports.

34. At this point on the first day I indicated to the claimant that we were moving very slowly. He had asked to start with the respondent's email dated 3 August (RBp147-148) we had only now finished that and started on his reconsideration. I suggested that overnight he read his submissions and try and summarise his position. I advised him that I would give him some guidance and I suggested that he should try and summarise his position and conclude before 12pm if possible. Mr Maclean would then respond and then we could then move on to the question of expenses. I advised the claimant that we should not get too tied up in the rights and wrongs of the various incidents but look at what the pleadings say. I said that I fully understood that it might be difficult for him to summarise and that I didn't want to put any undue pressure on him but indicated that if at all possible we should make every effort to try and finish within the two days allocated.

35. On the following day the claimant observed at the outset that he thought that I had become frustrated and annoyed at the lack of progress and accordingly he was not now going to go through his reconsideration point by point but adopt a different way of approaching matters. I apologised if that had been the impression I had given but I had a duty to conduct proceedings expeditiously and reiterated that I had thought that I had made it clear that while I did not want to put any undue pressure on him I had asked him to

consider the presentation of his case overnight to think about ways of summarising the points he was going to make. If, as he now indicated, he was not going to go through the reconsideration point by point I cautioned that it might be to his disadvantage. I reminded him that although I said I would give him two hours to complete his submissions I had said that there was some flexibility in that. The claimant was undaunted. He wanted to adopt what he described as a different approach.

36. The claimant then returned to the 2020 Judgment on which he wanted to focus. He had been victimised in his view because he was a trade unionist and once he raised the question of protected acts in incidents 3 and 5. We explored this once more. It appears from what he says is that the protected act he made in relation to disability discrimination amounted to him raising with his employers the fact that students in the occupation were not allowed to use the disabled toilet. (He was unaware if any actually were disabled). I asked him to consider whether or not students had any right to be in the building in the first place as it was after all an occupation of a university administration building. I queried whether he would accept as a principle that if the students did not have a right to be in the building, except for engaging with the administration staff, whether in this situation they could have any right to use the disabled toilet. The claimant declined to engage in this discussion indicating that he was not legally qualified to do so.

37. We discussed the disabled parking bay again and in the course of this discussion it was clear that there was no actual disabled person refused access to the disabled bay he was aware of or the disabled toilet in the administration building. The claimant then took me to page 682 of the June PH Judgment. He felt that I had not taken the claim there at it's highest. In relation to expenses he had always complied with the orders and prepared the better and further particulars in good faith. He had suffered detriment through the actions of his employers. He asked me to ''stand by'' the June 2020 Judgment.

38. We turned to page 67 of the June PH Judgment (RBp627). In his view this gave him authority to recast his pleadings and this is what he did. He did not add anything that had not been present before. The whistleblowing that had

led to his dismissal was after 7 November 2018. The claimant wanted the section 100 claim to proceed. I intervened and said that my understanding was that the June 2020 Judgment had dismissed all the claims (including any Section 100 claim) and as that had not been appealed it was closed. In any event I was unsure how the claimant believed that such a claim could be made. He had not resigned and not been sacked at the time of these events. I asked how what he was saying squared with the statutory terms of this section which I read out. He indicated that he left work because he felt it was an unsafe environment. He was ultimately dismissed for leaving work. He complained that a colleague had approached him visibly upset because allegations had been made against himself by managers that he had damaged the IT system as part of the bullying that was going on. It got back to him that managers were saying that although he was off ill he had been drunk and dancing at a wedding. The claimant concluded that the work environment was “dangerous and unsafe” (On a number of occasions during the presentation I asked the claimant to take a step back and try and look at events objectively. I explained that what the Tribunal was interested in was not in general his subjective experience but what he said he could prove about the motivation of his employers for the various actions complained about).

39. I suggested to the claimant that perhaps his position was that there was a thread between the various incidents namely starting with incident 3 and 5 (actually following Incident 1 he said that there were various difficulties with his managers which led to a deterioration in his relationship with them). The claimant then said he was sure that Incidents 3 and 5 had nothing to do with his later dismissal. I found this hard to square with what he had been saying earlier. The claimant then referred me to pages 628 and 629 of his Reconsideration Bundle which were pages from the June Judgment and asked me to substitute this grievance for the grievance that I had allowed to proceed.

40. The claimant then turned to reasonable adjustments. He suggested that the failure to make reasonable adjustments was both a detriment and also a failure in terms of section 15 of the Equalities Act. In his view tying matters

to the grievance of 4 October was too restrictive. There had been a number of interactions between him and his employers when he raised these difficulties. (Mr Maclean intervened and indicated that the respondent had no difficulty with this being amended. He accepted that there was not one grievance on 4 October but a number of grievances extending from 4 October until November. We discussed and agreed that irrespective of any of the other arguments the Judgment would be amended accordingly to indicate that the grievances at issue were made at or around October or November.

41. Referring to paragraph 88. (RBp128) he said that I was doing the respondent's lawyers job for them. I had, he argued, no right to make the observations I had made in that paragraph. This led to some discussion and I asked Mr Dawson whether he could indicate which of the observations he thought was wrong. I advised him that this was his opportunity to set out his own position. He declined my suggestion but said that there was no "average Employment Tribunal applicant".

42. The claimant then made reference to various adjustments being suggested by Occupational Health Reports (incidents 50, 59, 60 and 61). As he had said earlier these disclosed detriments and a failure to make adjustments and they formed the basis of the claim for automatically unfair dismissal and it was only fair that these claims were allowed to proceed. The claimant did not advance any further arguments. I allowed a short break giving him an opportunity of checking his notes in case he had missed any matter. On his return he advised that he had nothing to add.

Respondent's Response

43. Mr Maclean first of all responded to the claimant's submissions in support of his reconsideration application. He started by pointing out that the June 2020 Judgment was in force and had not been successfully appealed. Incidents 3 and 5 were "out". In any event there was no legal basis for the claims arising from purported protected acts. He referred to the July 2021 judgment. It was quite wrong he suggested for Mr Dawson to suggest that the reasoning was infected by some misunderstanding. The reasoning was adequately set out.

It was quite clear the claim made was under the Equality Act and TULCRA had been considered and had been struck out: only whistleblowing survived.

44. The solicitor took issue with the claimant's position that the better and further particulars prepared and lodged by him were not intended and known to be intended to be the full measure of his claims. It was quite clear from exchanges of correspondence that he understood this to be the position (RBp44 and 45). He then took the Tribunal though those exchanges.

45. Turning to matters that he believed were *res judicata* Mr Maclean pointed out that the June 2020 Judgment allowed Mr Dawson only limited opportunity to recast his position in relation to the matters specifically mentioned. (There was then had a discussion in relation to Incident 56, (RB p626) which overlapped with Incident 51). It was Mr McLean's position that they had been struck out.

46. Turning briefly to the issue of the correct claims under sections 15/20 Equality Act claims it was clear that this was a typographical error and that the section 20 claim had been considered and rejected. In relation to any claim under Section 100 there was clear reasoning why this should not proceed from the June 2020 Judgment. The only matter that was left was whistleblowing under section 103A.

47. Mr Maclean indicated he was confused about the claimant's position over incident 3 and 5. At some points he says it is important and then seems to be suggesting it is not. He touched on what he thought was "left'' following the June 2020 Judgment. In relation to any amendment the respondent's position was that any amendment came too late and had not been made. The primary position was that the Judgment in June 2020 precluded the claimant re-raising any of these issues.

48. Finally, the claimant argued that it had not been clear to him that the better and further particulars were taken as his full case. This ignored core

documents and such as the Agenda document that had been lodged referred to the earlier PH hearings. Reasonable adjustments arose and should proceed if necessary subject to a deposit order.

Amendment

49. There followed a discussion about amendment and the timing and extent of any amendment. The significant problems with the pleadings had not been cured Mr McLean submitted. I advised the claimant that it was not clear what any amendment was to be and in the absence of any separate amendment document or the highlighting of the proposed amendments I found the matter difficult to consider. Mr Dawson's position was that there was no amendment required as he was entitled to put these claims forward. He thought that the better and further particulars simply augmented his earlier position set out in the various ET1 documents and Agenda. There was a lot of background he said in the better and further particulars because he thought a new Judge was going to deal with the case. Mr Maclean intervened submitting that he thought it was unfair of the claimant to suggest some sort of subterfuge in his part in relation to the status of the better and further particulars as this had been clear from the exchange of e-mails that he had referred to.

Deposit orders

50. Mr Maclean then turned to the issue of deposit orders. He made reference to Rule 39(2) of Employment Tribunal rules and to a number of cases relating to whether the Tribunal should approach the matter meritorious claims should not be encouraged. The figure set should not go so far as to amount to a strike out. The Tribunal should look at each issue.

51. I explained to Mr Dawson that if he had been represented his representative would have been likely to lodge on his behalf documents vouching his income and general financial position. Mr Maclean had suggested that Mr Dawson should give evidence in relation to his financial position. Accordingly, it would be appropriate to ask him to take the oath or affirm. I explained what was involved in this and that taking the oath or affirmation meant that the evidence

was formal and if untrue there would be a potential penalty of perjury existed. I explained that it wasn't unusual for someone to be asked questions in this manner but I would ask questions about his financial position first but allow Mr Maclean an opportunity to cross-examine him. The claimant indicated that he wasn't prepared to take the oath or answer questions. He wanted to know the consequences of his actions. I explained to him to a certain extent he was leaving an "open goal". Mr Maclean's submission would no doubt be that failure to take the oath and explain his financial position showed a lack of candour on his part. He suggested that given that he had in passing observed yesterday that he wasn't working it might be to his advantage to participate in this process. I advised him however that if he wasn't prepared to answer questions or take the oath/affirmation then I couldn't force him to do so but the matter would be open to comment including at a later date any final Tribunal hearing. The claimant rather surprisingly advised me that he had been confused and didn't understand the position. I therefore went over once more explaining what the oath was in terms of the rule and what was proposed namely, I would ask him questions about his financial and Mr Maclean would have an opportunity of asking questions in cross-examination. The claimant once more indicated that he was not prepared to take the oath, affirmation or answer questions on his financial position.

52. In the light of this Mr Maclean's position was that I should issue deposit orders for £1,000 per issue. This was a sufficient deterrent to make the claimant think about unmeritorious claims but not to amount to a strike-out. Mr Maclean submitted that as Mr Dawson had given no evidence of his means I discharged my obligation under the rules I was entitled to make an order for the maximum sum of £1,000. Mr Dawson said that he had given evidence yesterday that he wasn't working. I advised him that if this was the case and he wasn't prepared to subject himself to further questioning Mr Maclean was entitled as he had to suggest that I should put no weight on this comment.

Expenses

53. We then turned to the issue of expenses. Mr Maclean referred to separate documents lodged in support of the application (RB p150-154). The cost of the litigation was now approaching £50,000 he said. They would restrict their claim to £20,000 being the sum that can be awarded without taxation. Mr Dawson had he said failed to answer questions about his financial position. It must therefore be assumed that has a healthy capital position. Mr Maclean then indicated that the case contained voluminous correspondence, numerous unsavoury allegations including the suggestion that the respondent's solicitors had acted in some Machiavellian way for example over tricking the claimant in some way over taking the better and further particulars as the sole measure of the claims.

54. More broadly he submitted that the majority of the claims had no reasonable prospect of success but had been insisted upon all this in his view redolent of unreasonable behaviour. The claimant should know better. He was given advice by the Tribunal on numerous occasions. He referred to the various Notes of case management discussions that had been lodged.

55. The claimant continued to look at matters on the basis of the impact on him rather than look at the employer's motivation when seeking to make claims. An insight into his mindset was that he had made a comment on the first day that he felt he had been bullied at work and that Employment Tribunal claims must arise from that. He had at an early stage made reference to the case of ***Bahl v The Law Society of England*** (which indicated that he must know that unreasonable behaviour does not give rise to any discrimination claims on it's own unless the employer is acting because of a protected characteristic).

56. The claimant argued that all the claims should proceed and that there was no basis to seek a deposit order. He had not made reference to PCP's or substantial disadvantage because the Preliminary Hearing order (RBp16) did not require him to do so.

57. He pointed out that as both parties had asked for reconsideration why should he then pay for it. He went through the various entries the respondent's lawyers had given of their expenses querying these. He had always tried to act responsibly and obey the Tribunal orders. He had never wilfully

contravened any order or knowingly acted unreasonably. The fifth claim had been withdrawn under an agreement that no expenses was sought. He once more returned to the better and further particulars that he had lodged in December/January. He had thought that these were in accordance with the June 2020 Judgment and he was entitled to recast his reasonable adjustments claim and it was unfair of Mr Maclean to refer to shifting sands or goalposts. It had not been clear to him what had been struck out. Both sides he submitted had indicated that there were problems with the June 2020 Judgment and he was entitled to recast his pleadings. In his view this is what he had done. He had not knowingly added any additional claims. These were all matters that had their genesis in earlier ET1s/Agenda documents or other documentation. He accepted that his pleadings had not been easy to follow in parts and apologised for that but he was a party litigant. He then took the Tribunal through the history of the case referring to the various ET1s and what had happened at various points in the development of the case.

58. In his written submissions the claimant submitted that he thought that it was unfair for the Judgment to deal with expenses as he thought it was only going to deal with Strike Out. He made various observations about the itemised expenses noting expenses were only claimed after June 2020. He queried if the expenses sought were properly claimed if his position was correct that his BFP were allowed by the Judgement. He suggested that he was not responsible for the Judge fixing CMD hearings which the respondents had to attend. Errors in the Judgements were not his doing.

Discussion and Decision

Reconsideration

59. The Tribunal has the power to reconsider Judgments. Rule 70 is in the following terms:

Principles

"***70.*** *A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.*"

60. This is a wide power that allows the Tribunal to reconsider the original Judgment and broadly put matters right that have gone awry in some way. As I have recorded there was common ground in relation to a number of a matters and accordingly the Judgment will be varied to reflect this.

Hearing 1 and 2 November

61. I narrated as best I can what transpired giving details of interactions and discussion where appropriate to ensure that the full background is given. The claimant was very anxious that all matters should be addressed. I have considered carefully the Notes that that he submitted and believe that the various issues raised are recorded above.

62. The first significant point he makes is that he did not understand that his BFP21 superceded earlier the ET1's he had lodged and what he described as core documents. It is true that at the first PH that took place on the 29 November advice was given as to what constituted pleadings (paragraph 9 onwards) and it was said that the BFP would augment the ET1. I think the claimant does not draw a distinction between documents for example grievances or grievance outcomes lodged with an ET1 (which was the situation with the first case 4110829/19 which will form evidence in a case rather than be an articulation of claims being made. The ET1 in that case contained upwards of 119 separate sheets of papers with text, narrative, photographs and copy documents).

63. There is an element of disingenuousness to the assertion that by the time of the lodging of the second set of BFP in 2021 (now dealing with four conjoined claims) he was unaware that they were meant to be the distillation of all the claims being made. It is interesting to note that when the claimant lodged claim 4105478/19 (referred to as the fifth claim) he relied wholly on the last

BFP21 reasoning that if they were struck out in the conjoined claims he could rely on them in the fifth.

64. The claimant now complains that the strike out was dealt with in chambers. In an email dated 23 December from the Tribunal the claimant was reminded of his right to seek a public hearing when strike out was considered. It was also suggested that if the claimant was now solely relying on the claims articulated in the BFP21 then the fifth claim was a duplicate. The claimant was also told once more that he had the right to ask for a hearing by email dated 18 January sent by the Tribunal Clerk.

65. The claimant stressed that his Whistleblowing disclosure was his contact with Professor Boyne in November 2018 relating to the events of the student occupation. (In passing he did state in paragraph 16 of the BFP20 there was an earlier disclosure but that it did not trigger detriments). He is correct that the 7 November communication is noted in his first Agenda document as being the disclosure he was founding upon. That matter was considered in the June Judgment and only a claim for reasonable adjustments allowed to proceed. It may be in retrospect that the claimant's position that there was a claim for detriment though the employers deliberately not agreeing to reasonable adjustments together with separate claims for reasonable adjustments was not clear at the time as the Judgment tried to focus on adjustments and there was no explanation why the refusal of adjustments which were decisions made by the claimant's managers could be impacted by a Whistleblowing complaint made to the Principal.

66. The claimant rightly acknowledges that the matter boils down to what he was allowed to do by the first Judgment and I trust that matter is now answered.

67. I have tried to record the important interactions when discussion took place to highlight both that the claimant was given opportunities to explain his reasoning for the basis of some claims he had made. It was important to understand his position fully both in relation to the claimant's own request for reconsideration but also in relation to the respondent's application for

expenses and their expressed view that the claimant was intent on causing the respondent as much difficulty and expense as he could by pursuing multiple misconceived claims.

68. The claimant returned on a number of occasions to the original car parking incident that begins his history of incidents/interactions from which he draws claims suggesting that what he had done (highlighting by posting on the internet the misuse of the private University Disabled Bay by a Manager) was a protected act both in relation to his trade union activities and also in relation to the Equality Act. I asked him to take me through his reasoning on the matter expressing a little scepticism firstly whether the use of a University disabled space was a matter that somebody who was disabled could raise a claim about and secondly on what basis did he think that he could raise the issue. His position was that the owner of the vehicle Mrs Ingles, was visibly angered by him raising the matter. He did not engage in an argument. He said that the Manager, had the following day, insisted that he enter the occupied University administration building. This was he said putting him in a dangerous situation and was a detriment. It had also been sex discrimination. I asked him how these matters led to the claims he was making. His position was that being asked to enter the building prevented him being an active trade unionist in some way and that in any event he was made to cross a picket line. I observed that his approach appeared to be that if something happened that he was upset or concerned then that meant that claims must arise where he must start with why something happened in the first place and why that was a breach of some obligation.

69. Mr Maclean had intervened indicating that these matters had all been dismissed. This led to a discussion about the original July 2020 Judgment and the fact that it had not been successfully appealed. I indicated that even if I was sympathetic to the claimant's position I could do nothing about it now. The only point of agreement that arose was that it was agreed that it should be a reference to Mrs Dyker and not Mrs Ingles in the Judgment.

70. The claimant also kept returning to incidents 2 and 3. It was, he asserted, clear that the original Judgment was wrong and his claim had nothing to do with protected disclosures but protected acts. He criticised the suggestion that there was no linkage: the link was he asserted obvious. The respondent had been involved in "nefarious conduct".

71. The claimant said in the course of the hearing that he was making a claim was because of the treatment of his deputy by the respondent (Paragraph 44. RBp34). This was a claim for reasonable adjustments. He indicated that his employers were bullies and had bullied him from his position in the University and forced his deputy to resign. They had been involved in white washing the situation and blaming others for their own actions. He had been set up. His health and safety had been put at risk. I queried what he meant by this latter comment. His view was that the leaking of the report on the student occupation in which he was mentioned by the then Principal was a sinister and dangerous assault on him. Words had been put in his mouth by Mrs Kinmond was as evident from the minutes.

72. This led to a discussion about Minutes that had been taken. I was interested in understanding the claimant's position (Incident 28/Paragraph 17 (RBp28)). The claimant believed they were inaccurate and words had been put in his mouth about him having trust issues with his managers. I explained that he would be able to put his own position about their accuracy when the unfair dismissal claim proceeded to a hearing. I ventured that he should consider that if Mrs Kinmond was correct and the minutes had been taken by a trainee listening in to the meeting there was perhaps a basis from which that trainee might have inferred there were trust issues, even if these exact words had not been used, if he had expressed the same sort of views at that meeting that he had expressed on numerous occasions before the Tribunal and in documentation. The claimant was adamantly of the view that the words had been placed in the Minutes deliberately specifically to assist the respondent dismissing him at a later date. (the Minutes were dated 6 December 2018 and the claimant was dismissed in June 2020).

73. I am afraid that the claimant seems to minimise just how forcefully he sometimes expresses himself about his managers and others. One example

is that he had written to the University on the 5 September 2019 (R 194-197) making very serious allegations about Mrs Kinmond that she had acted contrary to her professional obligations, misrepresenting matters when investigating his grievance/whistleblowing and been party to ‘‘cronyism’’. She had, he alleged, been involved in trivialising his whistleblowing complaint and exaggerating his grievance. A certain amount of hyperbole is understandable when someone feels aggrieved and it is not uncommon for parties to express strong or even intemperate views. The claimant has never been prevented from advocating his position.

Disposal

74. The first matter that needs to be stated is that it was not open to the claimant to re-open the earlier June PH Judgment. That Judgment was not successfully appealed nor was the refusal of the reconsideration. There are clearly some matters that are incorrect in the May PH and some that could have been better expressed and the respondent’s reconsideration shall be granted effectively in full and the claimant’s in relation to some minor matters of correction.

75. The claimant argued that he had not made reference to PCP’s or substantial disadvantage in his pleadings and it was unfair for them to be struck out for not containing these matters. The claimant was given guidance throughout the proceedings about the need to look at the statutory basis for each claim. At an early stage the difference between direct and indirect discrimination as discussed and the need for a PCP to be identified. These matters are also flagged up in the initial Agenda documents. The claimant is correct that the Preliminary Hearing order (RBp16) did not specify all the elements that had to be included but by that point he already had the June PH Judgment and should have been well aware of this requirement.

76. The claimant also said that he was confused at the terms of that Judgment and did not know that many of his claims had been struck out. He believed he was free to recast all his reasonable adjustments claims. That was clearly an error. I noted that he was given guidance at the PH that took place in November. It recorded (RBp16): *‘‘We then turned to the remaining conjoined actions. This led to a lengthy debate as to what the next steps should be. Mr*

Dawson expressed the view that he didn't really understand from the strike out Judgment what he had to do. Mr MacLean expressed the view that he should focus on the Judgment carefully and prepare Better and Further Particulars as envisaged for the remaining claims. To assist Mr Dawson given the complex procedural history that has now enfolded over the months since the issue of that Judgment ***I will give him 14 days from the date of issue of the Note to prepare Better and Further Particulars as envisaged in the Judgment…****"*

77. In making the order I was focussing on giving the claimant a fixed period to prepare BFP rather than specifying the elements that needed to be contained in them. This matter was also related to the question of whether a deposit order would be made. Before the hearing I had raised whether the claimant was seeking to amend his claim. Mr McLean had also specifically raised this in his correspondence. The claimant argued that no amendment was necessary as the matters were left 'live' by the first Judgment.

78. The starting point is the June Judgment. Paragraphs 58,59,60 and 61 of the BFP20 were allowed to be recast but only in so far as the circumstances narrated could give rise to claims for reasonable adjustments. The underlying complaint was a delay in dealing with grievances and possible changes to the working environment. It's helpful to set these out. Paragraph 58 related to an interaction with the claimant's line manager on 4 October 2019 about Occupational Health recommendations. Paragraph 59 related to the 4 November and the issue of adjustments such as having a different line manager. Paragraph 60 related to the grievance not being heard in good time and whether there was a possible adjustment by the University of expediting such processes. Finally, 61 relates to delay in actioning a grievance and whether a similar reasonable adjustment arises.

79. We must then look to see what the claimant did with these in his BFP21 (RBp30 onwards) and how they were dealt with in the Judgment under review. The first point is that the claimant seems to have ignored the 'Incident's referred to in his first BFP and started a consideration of reasonable adjustments at a much earlier point namely in February 2019. I have some sympathy with that as he was founding on an Occupational Health

report of the 21 February but the headings make clear that he is seeking to add various reasonable adjustment claim starting from that date. I did not accept the explanation that this was simply background. For example, in paragraph 36 he poses the question what reasonable adjustments should have been carried out and answers it thus: *''The Respondent should have obtained my consent and agreement for the February 2019 referral to Occupational Health. The Respondent should not have threatened me to be in breach of contract if I did not attend. The Respondent should have rearranged the appointment….*''

80. Even if these pleadings had been able to have been allowed standing the terms of the June Judgment it would require an amendment and the pleadings themselves contain many adjustments that are not on the face of them likely to be held to be reasonable adjustments in themselves. In the course of the hearing I tried to explain to the claimant that the issues raised by him in relation to being referred or not referred or allowing self- referral to Occupational Health did not amount to reasonable adjustments in themselves. Referral was a means to an end that end being the identification of reasonable adjustments. To make a claim for a reasonable adjustment in these circumstances means that a claimant has to set down what they think the outcome of the Occupational Health referral would have been for example suggesting a cut in hours/workload or whatever. In the various paragraphs of his pleadings under consideration in the May Judgment, he disagreed with the stress risk assessment actually used by the line manager (Paragraph 39 of the Submissions/BFP21) and thought that a different more detailed one should have been used. I suggested that this seems to raise the same issue as before namely an assessment was a means to and end not an end in itself.

81. It was very difficult to wade through the long narratives and distil some adjustment from the text as much of it consisted of the claimant believing that reasonable adjustments were essentially the employer's managers doing what he suggested or doing things differently from the way they did. The pleadings are complex and prolix and if these were meant to introduce new claims by amendment then that is refused. In the May Judgment my view was

that the only clearly stateable adjustment related to the delays in dealing with his grievance and to change his line manager. That remains my view.

82. The Judgment was perhaps not as clear as it could have been in relation to Paragraph 62 of the claimant's BFP21. That paragraph does appear to be a summary of the preceding claims and not an iteration of claims itself. For the avoidance of doubt I will alter the Judgment to make this apparent by adding specific reference to this paragraph. The claimant's reconsideration is not well founded for the reasons I have discussed and other than some minor alterations in the May Judgment proposed by him his reconsideration is refused. The respondent in their application have carefully analysed the pleadings and have made suggested alterations which are in accordance with the reasoning set out there and being well founded is granted. In order ensure that changes to the Judgment are clear to parties following the reconsiderations I will revoke the Judgment and repromulgate it with the changes discussed here. I understand that an appeal has been marked and this will hopefully allow parties to work from a 'clean' version of the Judgment.

83. The issue of Mr Lynch still being a party to proceedings was raised but we did not have time to explore the issue in any detail. I am not sure why the claimant disagrees that he should no longer be a party. If the respondent has given an assurance that they will not use the statutory defence then I struggle to see grounds for him to remain as a party. I will deal with this matter separately as a case management matter.

Deposit Orders

84. Rule is in the following terms:

Deposit orders

"***39.***—*(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—

(a)the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and

(b)the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order."

Expenses

85. The Rule governing such applications is Rule 76:-

"*When a costs order or a preparation time order may or shall be made*

76(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that -

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or(b)any claim or response had no reasonable prospect of success."

86. Although there have been changes to what could be described as the expenses regime over the years an award is still the exception rather than the rule. There are good policy grounds for this around ensuring that litigants

are not deterred from making claims by the fear of incurring expenses if they lose.

87. The terms of Rule 14(1) of the earlier 2001 Rules used the same formulation as later versions of the rules namely that the trigger test was acting '*vexatiously, abusively, disruptively or otherwise unreasonably, or the bringing or conducting of the proceedings by a party has been misconceived*'.

88. In most cases the unsuccessful party will not be ordered to pay the successful party's costs; see ***McPherson v BNP Paribas (London Branch) [2004] IRLR 558*** per LJ Mummery at paragraphs 2 and 25:-

> "*Although Employment Tribunals are under a duty to consider making an order for costs in the circumstances specified in Rule 14(1), in practice they do not normally make orders for costs against unsuccessful applicants. Their power to make costs orders is more restricted than the power of the ordinary courts under the Civil Procedure Rules; it has also for long been generally accepted that the costs regime in ordinary litigation does not fit the particular function and special procedures of Employment Tribunals. It is, therefore, not surprising that the Employment Tribunal Rules of Procedure do not replicate the general rule laid down in CPR Part 38.6(1) that a claimant who discontinues proceedings is liable for the costs which a defendant has incurred before notice of discontinuance was served on him. By discontinuing the claimant is treated by the CPR as conceding defeat or likely defeat. The Tribunal rules of procedure make provision for withdrawal of claims in Rule 15(2)(a), but the costs consequences are governed by the general power in Rule 14*."

89. The then President of the EAT, Mr Justice Burton in ***Salinas v Bear Sterns International Holdings Inc UK/EAT/0596/04DM*** noted at paragraph 22.3 that "*something special or exceptional is required*" before a costs order would be made and, even if the necessary requirements of Rule 14 are established, there would still remain a discretion of the Tribunal to decide whether to award costs. The matter is one for the Tribunal's discretion. In ***Benyon & Others v Scadden [1999] IRLR 700*** it was made clear that the discretion given to Tribunals and courts is not to be fettered.

90. It should also be borne in mind that a litigant in person has to be judged less harshly than a professionally represented litigant. (See ***AQ Ltd v Holden [2012] IRLR 648***).

91. The present case is in my judgment a case that falls into the category of being exceptional for a number of reasons. The claimant lodged five ET1 applications (four of which are conjoined in the current proceedings). That is unusual but not exceptional in itself but what is the whole circumstances here. Firstly, there is the plethora of claims that were originally made and which were contained in the claimant's BFP (RBp394-436) containing some 65 paragraphs over 42 pages detailing incidents or circumstances from which multiple claims were said to arise. These various incidents were addressed in the June 2020 strike out and the vast majority held to have no reasonable prospects of success.

92. Following that hearing the claimant recast his pleadings to make numerous claims for reasonable adjustments including claims arising from matters dealt with at the first strike out. He did not ultimately ask to amend but rather argued that the first Judgment allowed him to pursue these claims. Throughout these proceedings the claimant has persevered with claims that he must reasonably know he cannot rationally justify and are baseless. When asked to explain how such claims could arise he refused or was unable to explain his thinking. This all occurred when the claimant must have known perfectly well that most of his claims could never amount to valid legal claims. In his overall conduct of the case while I accept that he has obeyed case management instructions the overarching approach has been to pursue meritless claims.

93. I will briefly refer to the first and penultimate paragraphs of the first BFP (RBp394and p435) as they are illustrative of the approach taken by the claimant both at that stage. The first incident relates to a conversation the claimant had with one of the respondent's managers. He asserts that five claims arise but no proper basis is set out. In Paragraph 64 an email postponing an internal grievance hearing is said to give rise to ten claims ranging from discrimination on the grounds of his philosophical beliefs to detriment as a whistleblower. Looking at the various incidents it was difficult to decern what the viable claims were leading to a considerable amount of

time and effort being expended by the Tribunal and the respondent's solicitors in trying to understand the matters pled.

94. However, it is noteworthy that the these BFP are not narratives of events as sometimes occurs they are structured by the claimant giving the date of the Incident, those involved, the claims that arise, the facts relied upon and whether there is a comparator. In passing the claimant suggested that it was unfair to criticise his later BFP because no comparator's were mentioned yet he was aware that this was needed when preparing his earlier BFP. It was in any event a matter canvassed at the case management hearing that took place in November 2019 and reflected in the orders promulgated that gave rise to the first BFP. In paragraph 12 it recorded: ''I indicated that I would make Orders that the claimant address first of all his specific statutory basis for his claims. The facts underpinning them and the detriments or less favorable treatment he believes resulted''. I specifically raised the need for the claimant to address the motivation of the employer. The Note is worth quoting:

> *''9. We then spent some time discussing the ET1 and the further information the claimant had included in the Agenda document. I pointed out that what is in the Agenda document is not strictly speaking pleadings. In order to become pleadings the claimant would have to prepare document headed Better and Further Particulars to augment what is in his ET1.*
>
> *10. I observed that I struggled a little to see the basis of the claims made by the claimant and the nexus or connection between the facts that he sets out in some detail and any possible breach of the Equality Act or other statute. I took some time to explain what I meant by this. I noted that the respondent's Agenda document raised a number of preliminary issues.*
>
> *11. The claimant advised me that the matter had started with a parking issue and then he became involved events surrounding a student occupation. It affected him badly. He believes that he has some form of PTSD and was then off ill. He was upset that he was not interviewed as a witness as part of the investigation that took place and feels that this for example was disability discrimination. We explored this. I suggested that a failure to interview the claimant whilst unwell might have an innocent explanation but even if it didn't the fact that the employer had acted in some way unreasonably did not answer the question of why there was a particular*

form of discrimination at work or some detriment arising out of whistleblowing, trade union activities or whatever."

95. The claimant was also given advice about identifying the issues and keeping them separate from background information. It was clear that he had put all the Incidents on which he relied in one documents namely the BFP. Following the strike out hearing In June 2020 at which numerous claims were struck out the claimant was also warned about amending in new claims as he might be accused of manufacturing such claims. The need to set out PCP's was also raised at the Preliminary Hearing that took place in October 2020 (Rbp5). The respondent made reference to the PH Note that was issued following the case management hearing in November 2020 (RB3-19) that also provided the claimant with guidance about following the requirements of the section of the statue he was making a claim under. He was advised again that unreasonable behavior was not in itself proof of discrimination. At paragraph 15 it said:

"He should look at what is required by the statutory section he is invoking and make sure the facts he sets out are sufficient to found such a claim. In section 13 of the Equality Act to amount to direct discrimination a claimant must show they were treated less favourably that others would have been treated and the difference is ***because*** *of a protected characteristic. He should bear in mind what has been said on previous occasions namely that an employer's unreasonable actions does not mean (on its own) that there has been discrimination of any particular sort."*

96. The claimant took exception to the observations recorded in the July 2021 Judgment which bear repeating here:

"*88. I do not minimise the difficulties that party litigants face when drafting pleadings especially in discrimination cases. The claimant also has mental health issues which are referred to in the report he has lodged. He has not suggested how this impact on his actions. He is clearly an able person and has demonstrated this in a number of ways such as the detailed research he has carried out on issues and the lengthy and complex nature of his pleadings. He was also a Trade Union representative at the University. He is not the average party litigant and*

has skills and experience (including the ability to research matters on the Internet) which he can deploy."

97. Another noteworthy feature of his case is that the claimant is not an average party litigant who commonly would have little knowledge of the law or Tribunal processes. Although I invited him to say which of these observations he disagreed with he would not do so and simply said that there was not such a thing as an average party litigant. The matter can be put in another way. The claimant has demonstrated considerable aptitude in getting to grips with the relevant law and the Tribunal Rules and procedures. He has the ability to research and understand legal matters. I would give one example namely he wrote to the Tribunal in March 2020 prior to the first strike out application quoting, summarising and applying upward of twenty relevant case authorities. He has shown he is able to demonstrate similar abilities throughout the conduct of the case including being able to understand and comply with Orders.

98. The claimant denies that he is manufacturing spurious claims and says that the June Judgment left the way open for his to set out what reasonable adjustments he should have had. He did not seem to appreciate that the June Judgment was not successfully appealed and rightly or wrongly he must live with that. The Judgment stated that all claims were dismissed other than those specifically reserved as arising from named incidents. That cannot be seen as a green light to start again.

99. For completeness, the claimant mentioned that he had put more background into BFP21 because another Judge was likely to deal with the second strike out and that it was in some way unfair both that I dealt with that matter and there was no hearing. It is true that in December I had hoped that another Judge could deal with the second strike out. This was intimated in an email dated 21 December to parties. The respondent's position was that I should deal with the second strike out application given my knowledge of the case. The claimant did not comment. I will not quote all the correspondence but the claimant emailed on the 12 January confirming he was content that the strike out should be dealt with by me on the basis of written submissions. In the

email dated 18 January the Tribunal set out it's understanding thus: *''the Judge notes that there appears to be agreement as to the future course that should be followed. He therefore agrees that the five claims are conjoined and the claimant's BFP are accepted as the narration of the claims''*

100. The respondent's in their submissions took issue with the claimant's approach characterising it as unreasonable and one where ''old''' claims had been re-labelled. They referred to the case of ***Keskar v Governors of All Saints Church of England School*** (UKEAT/0007/18) where it was said that the Tribunal should consider whether the claimant ought to have known the claims have no prospects of success. I regret to say that this is the conclusion I have drawn. Not only from the claimant's willingness to use quite intemperate language but more crucially from his reluctance to be prepared to discuss the rational basis for some claims, to acknowledge the difficulties such as lack of direct evidence, in the face of and despite the case management advice, his own resources and knowledge and the previous lengthy strike out process and Judgment that examined his many claims in some detail leads me to conclude that he did and does know better. I conclude that the Rule is engaged and that his conduct in leveling so many claims against the respondent is unreasonable behavior and designed to cause the utmost expense and inconvenience.

101. The claimant refused to assist the Tribunal consider his financial position in relation to Deposit Orders and it was explained that any such information would be part of the overall picture the Tribunal would consider when looking at expenses. The claimant did observe in passing at one point on the first day that he was unemployed. Mr McLean asked me to discount this as the statement was not given under oath. I do not, however, believe the claimant would seek to mislead the Tribunal on this matter and am prepared to weigh it in the balance. I also weigh in the balance the fact if we are just looking at the expenses incurred following the June Judgment some of those expenses might probably not have been avoided for example the respondent would no doubt have sought reconsideration anyway. I accept that the likely cost to the respondent in legal fees probably approaches or exceeds £50,000. I also note that they considerably restrict what they are claiming.

102. The claimant's actions have markedly increased the cost and complexity of the case through his clear intent to maximise the number of claims he can lay at the respondent's door irrespective of whether he considers that there is a logical basis for doing so. He is an able and intelligent man who is well able to research the law and this leads me to conclude that he knows full well what he is doing irrespective of any psychological motivation or drive he has to act in this way. Nevertheless, I am not prepared to award the sum sought bearing in mind that this is a substantial sum for a private individual to raise and the respondents have ''broad shoulders''. In all the circumstances I conclude that it would be appropriate to award the sum of £7000 in expenses as being an appropriate award to reflect part of the cost the respondent has been put to through his actions.

Employment Judge **J Hendry**
Date of Judgement **26 November 2021**
Date sent to parties **26 November 2021**