EMPLOYMENT TRIBUNALS

CLAIMANT	**RESPONDENTS**
Mrs M Curle	**(1) Tudor Inns Ventures 1 Ltd** **(2) Tudor Inns Ventures 2 Ltd** **(3) Ms Maria Danalache** **(4) Mr Paul Withers-Green**

PRELIMINARY HEARING

HELD AT: **ASHFORD (In Person)** **ON:** **7 January 2022**

BEFORE: **Employment Judge Nash (sitting alone)**

Representation
For the Claimant: **In person**
For the Respondent: **Mr M Harris, Counsel**

JUDGMENT

The decision of the Employment Tribunal is as follows:-

1. The parties are granted permission to amend their claim and response pursuant to the order of Employment Judge Hildebrand.

2. The claimant did not fail to comply with the requirements of the ACAS Early Conciliation Procedure in respect of the claims against the third and fourth respondents. The claim against the 3rd and 4th respondents was validly accepted.

3. The Respondent's application for a strike out and a deposit order in respect of the unfair dismissal claim is refused.

4. The Respondents' application for a strike out of the race discrimination claim is refused, save in respect of the incident in October 2017.

5. The claimant's race discrimination claim in respect of the incident in October 2017 is struck out.

6. The Respondents' application for a deposit order in respect of the discrimination claim is refused.

7. The Respondents' application for a strike out of the section 13 Employment Rights Act unauthorised deduction from wages claim is granted, save for a deduction of 84p in June 2019.

8. The Respondents' application for a deposit order in respect of the 84p June 2019 deduction is refused.

REASONS

1. The effective date of termination was 14 June 2018. Following ACAS Early Conciliation against the first and second respondents, the Claimant presented her complaint against them to the Tribunal on 27 August 2019.

2. On 3 September the claimant brought Early Conciliation in respect of the third and fourth Respondents and the Tribunal accepted what was, in effect, an amendment to the claim to add them to the complaint.

3. There was a preliminary hearing before Employment Judge Hildebrand on 4.3.20 and a further preliminary hearing before EJ Mason on 28.3.20.

4. At this hearing the Tribunal heard no oral evidence, but it heard submissions from both parties and had sight of an agreed Tribunal bundle.

The Claims

5. With the parties, the Tribunal took some time in establishing what claims were pursued. It was agreed that the following claims were before the Tribunal:-

    a. For race discrimination under the Equality Act 2010;

    b. For constructive unfair dismissal under section 98 of the Employment Rights Act 1996;

    c. For unauthorised deduction from wages under section 13 of the Employment Rights Act 1996 in respect of both wages and holiday pay; and

    d. Under section 1 of the Employment Rights Act 1996 for a failure to provide a statement of written employment particulars.

6. The Tribunal discussed two other claims and it was established that these were not being pursued. The Claimant confirmed that she was not pursuing any claim under the Transfer of Undertakings Regulations including a failure to inform prior to the transfer. Further, the Claimant confirmed that she was not proceeding with a claim under the whistle blowing provisions (PIDA).

The Issues

7. It proved time consuming to establish the issues to be determined at this hearing. In summary, the original notice of hearing of 27 April 2021 listed a preliminary hearing to consider matters as set out in a tribunal letter of 23 September. There was no such letter and the tribunal interpreted this as reference to a tribunal letter of 24 September which referred back to the order at the preliminary hearing on 4 March 2020.

8. It was established that the following issues fell to be determined at this hearing: –

    a. Did the parties have leave to amend their pleadings pursuant to the order of Employment Judge Hildebrand? The tribunal granted leave by consent.

    b. Should there be a strike out of the claims against the third and fourth Respondents because of a failure to comply with the ACAS early conciliation procedure?

    c. Should there be a strike out of all claims (save section 1 Employment Rights Act) because there was no reasonable prospect of success, including on time grounds?

    d. Should a deposit order be made on all claims (save on section 1 Employment Rights Act) as there was little reasonable prospect of success, including on time grounds?

The hearing

9. The tribunal sought to establish whether the hearing had been listed to consider the time point as a substantive preliminary hearing on the time point or alternatively, as an application for a strike out / deposit on the prospects of success on the time point. The Respondent contended that this was a substantive hearing. The Tribunal stated that it must proceed on the basis of the hearing as listed to avoid putting any party at a disadvantage, especially as the claimant was not represented and, in line with the overriding objective, to ensure a fair hearing.

10. The parties agreed that the Respondent first made its application in respect of the time point orally at the preliminary hearing on 4 March 2020. According to the order, it was said by the respondent that many of the matters relied upon were out of time and should be struck out.

11. The matter was revisited by Employment Judge Mason at a preliminary hearing on 28 March 2020 who listed the hearing to consider whether the claim should be struck out

on the basis that there was no reasonable prospect of success and in the alternative, whether the Tribunal should make a deposit order. Judge Mason made no express reference to whether the time point was to be considered substantively or on a reasonable prospect basis.

12. In the view of the Tribunal, the 4 March 2020 order, which in effect listed this hearing, could be interpreted in either way.

13. Matters were further complicated by the respondent's contention that the claimant did not have the necessary two years continuous employment in order to make a complaint of unfair dismissal under s98 Employment Rights Act. This, also, might be dealt with either as a substantive point or on a reasonable prospects basis. Further, the respondent contended that the race claim should be struck out or subjected to a deposit order on the grounds that it had no or little reasonable prospects of success on the merits.

14. The Tribunal was influenced by the reference to a strike out, rather than a jurisdictional issue. Further, Employment Judge Mason had not referred to a time limit as a preliminary substantive point. Had this hearing been listed to hear a substantive preliminary point on time and therefore likely requiring evidence, it was more likely than not that this would have been stated expressly and directions would have been given. There were no directions given at either hearing for witness evidence by way of statements. In any event the tribunal would have to consider a strikeout and deposit of the race claim on merits grounds.

15. In respect of prejudice, there would be prejudice to the Respondent in proceeding on a strike out basis, because the respondent would lose the chance to dispose finally of the time point. There would also be prejudice to the Claimant in proceeding on a strike out basis as the Respondent could then reopen the time point at the final merits hearing. Prejudice, in effect, went both ways.

16. Finally, the Tribunal bore in mind that substantive determination of a time point would likely require evidence, cross-examination on both sides and findings of fact. As such, definitive determinations may well be best left to the Final Hearing (see paras. 64-66 of *Caterham School Ltd v Rose* UKEAT/0149/19/RN, quoted in *E v X* UKEAT/0079/20/RN, para. 46).

17. However, the tribunal did not apply this reasoning to the respondent's case relating to the alleged failure to comply with the ACAS early conciliation procedure. The Tribunal could see no reason why this point could be dealt with on a reasonable prospects of success basis. It was necessary for the parties to know at this stage of proceedings if the claims were properly accepted by the tribunal.

18. The tribunal decided to consider the matter by way of a strike out applications and a deposit application. It did not determine the time point as a substantive point.

The Law

19. The tribunal's jurisdiction is found in the Rules of Procedure as follows

> **Striking out**
> **37.**—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
>
> (a)that it is scandalous or vexatious or has no reasonable prospect of success…

20. It is well established following the case of *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL* that Tribunals should be cautious in striking out a case if it is fact sensitive (for instance, most discrimination cases). Much case law relates to discrimination complaints but in the view of the Tribunal, this is relevant to constructive unfair dismissal claims if they are fact sensitive. According to the Employment Appeal Tribunal under its then President in *Abertawe Bro Morgannawg University Health Board v Ferguson UKEAT*/0044/13/LA (a whistle-blowing case)

> Applications for strike-out may in a proper case succeed. In a proper case they may save time, expense and anxiety. But in a case which is always likely to be heavily fact sensitive, such as one involving discrimination or the closely allied ground of public interest disclosure, the circumstances in which it will be possible to strike out a claim are likely to be rare. In general, it is better to proceed to determine a case on the evidence in light of all the facts. At the conclusion of the evidence gathering it is likely to be much clearer whether there is truly a point of law in issue or not.

21. The Court of Appeal in *A v B and anor 2011 ICR D9, CA*, determined that an Employment Tribunal was wrong to strike out a discrimination claim where there was a 'more than fanciful' prospect that the employer might not succeed in discharging the 'reverse' burden of proof. The questions the Tribunal must ask in a constructive dismissal are somewhat different, so the Tribunal considered whether the Claimant had a more than fanciful chance of proving what she needed to prove.

22. In respect of the respondent's application for a deposit order under Rule 39 (1) of the Rules, the tribunal's jurisdiction is found in the Rules of Procedure as follows

> **(**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.

23. This is an expressly lower threshold than "no reasonable prospects of success". There is a distinction between the criterion for making a deposit order and that for striking out a case. Nevertheless, according to the Employment Appeal Tribunal in *Jansen Van Rensburg v Royal Borough of Kingston-upon-Thames and ors EAT 0096/07,* in order to make a deposit order a tribunal must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response.

Background

24. This case is in part a family dispute. The Claimant is the sister of the third respondent and the sister-in-law of the fourth Respondent. The first and second Respondents appear to be companies with very close connections to the third and fourth Respondents. This be why this matter is complex and why the parties feel so strongly. However, this has not helped with case management and has added to the complexity and difficulties of the case.

The Claim Against the Third and Fourth Respondents

25. The respondents submitted that the tribunal should not consider the claims against the third and fourth respondents on the basis that the claimant had failed to comply with the requirements relating to ACAS Early Conciliation.

26. Following early conciliation, the claimant presented the original ET1 against the first two respondents on 27 August 2019. On 3 September 2019 the claimant applied to the tribunal to add the third and fourth respondents to the claim. The tribunal had sight of ACAS early conciliation certificates (126 and 127) stating that early conciliation lasted a single day, 3 September 2019, the same day as the claimant wrote to the tribunal.

27. The Respondents agreed that the tribunal had accepted the claims against the third and fourth respondents but submitted that this acceptance was contrary to the Rules.

28. The tribunal rejected the respondents' application for the following reasons. The tribunal directed itself in line with *Drake International Systems Ltd and Others v Blue Arrow Ltd* UKEAT/0282/15/DM. In *Drake*, the tribunal allowed the Claimant (a transferee seeking to claim against a transferor) to amend the claim to add four subsidiary companies as Respondents, although no early conciliation certificate had been obtained against these four respondents. The EAT under its then President held that the claim against the further respondents had been made in accordance with the Rules. The tribunal's decision to permit the respondents to be added to the claim was a tribunal case management decision, to be exercised in line with the over-riding objective, in accordance with the longstanding principles set out in *Selkent Bus Co v Moore* [1996] ICR 836.

29. In Langstaff P's view, the aim of the EC procedure — namely, to allow the parties the opportunity to conciliate in respect of what is broadly termed a 'matter' — had been

fulfilled in respect of the 'matter'. He concluded that a 'happy consequence' was the avoidance of stultifying satellite litigation in respect of the EC procedure.

30. In *Mist v Derby Community Health Services NHS Trust 2016 ICR 543*, EAT, HHJ Eady followed her earlier decision in *Science Warehouse Ltd v Mills [2016] I.C.R. 252, [2015] 10 WLUK 251* to hold that a claimant who sought to add an additional respondent to an existing claim did not have to go through the ACAS procedure again. This was consistent with rule 34, 'which specifically addresses the addition or substitution of parties in ET proceedings without reference to any further EC requirements'.

31. From the tribunal file, there was no indication that the tribunal had addressed its mind to how it should exercise its discretion according to the principles laid down in *Selkent* and the over-riding objective *(Drake* para 25) when accepting the claim against the third and fourth respondents. This tribunal accordingly carried out this analysis.

32. The tribunal noted Langstaff P's guidance in *Drake* that it might well be envisaged that an employment judge might decline permission if the proposed substituted Respondent were completely independent of the existing Respondent, and there was little if any connection on the facts between them. This was far from the case here. The third and fourth respondents were intimately involved in the management and day to day running of the corporate respondents.

33. The Tribunal noted Langstaff's reference in paragraph 25 of *Drake* to "Fairness and justice which the overriding objective seeks to promote include (Rule 2(c)) avoiding unnecessary formality and seeking flexibility in the proceedings, and (d) avoiding delay so far as compatible with proper consideration of the issues; and (e) saving expense." Langstaff deprecated the delay and expense caused by a further reference to ACAS.

34. The tribunal thus determined that the denial of any determination of the merits of the claimant's claims against the personal respondents outweighed any other *Selkent* factors.

35. The tribunal found that the claim was correctly accepted.

Section 13 – Wages Claim

36. Tribunal firstly considered wages. The respondents' case was that there was little or no reasonable prospect of the tribunal accepting jurisdiction because the claims were made out of time.

37. The last deduction relied upon took place in what the parties referred to as week 11. This was agreed to be in time. This was for 84p. Although the Respondents correctly pointed out that this was a very minor matter, they accepted that this was a valid claim over which the tribunal had jurisdiction.

38. The normal time limit for a section 13 ERA claim is three months beginning with the date of the alleged deduction was made — S.23(2) ERA – as adjusted by the ACAS early conciliation period. However, a claimant may bring a S.13 claim for a 'series of deductions', if the claim is presented within three months of the last deduction in the series — S.23(3) ERA.

39. It was agreed that the other alleged deductions were out of time unless they formed part of a series of deductions with the 84p deduction. It was also agreed that there was a three-month gap between the earlier alleged deductions from wages and the in time deduction of 84p.

40. According to the EAT under its then President in *Bear Scotland Ltd v Fulton and anor; Hertel (UK) Ltd and anor v Woods and ors (Secretary of State for Business, Innovation and Skills intervening) 2015 ICR 221, EAT*, if there is a gap of more than three months between deductions, this cannot form part of a series. That is to say, a gap of more than three months between non-payments or under payments of wages breaks any series of deductions for the purposes of bringing an unlawful deduction of wages claim. The EAT under its President in *Smith v Pimlico Plumbers Ltd*: UKEAT/0211/19/DA *2022* stated obiter that it would not be right to depart from this approach.

41. Further and in the alternative, some of the deductions were made more than two years (plus ACAS early conciliation period) before the claimant presented her claim. Accordingly, the Tribunal would not have jurisdiction over these deductions pursuant to the Limitation Regulations 2014.

42. The Tribunal determined that the claimant had no or little reasonable prospects of success in establishing that it was not reasonably practicable to bring the section 13 claims in time for the following reasons. The Claimant said that she did not, in effect, realise that there had been underpayments until there was a dispute at the end of the employment. There was no suggestion that she was ill or otherwise unable to bring a claim. There was no suggestion that she was ignorant of the existence of the employment tribunal or its time limits. There was no suggestion that she was unaware of the facts underlying the claim; she had simply not realised the legal consequences.

43. Case law tells us that the meaning of reasonable practicability is not reasonableness and nor is it whether it was physically possible; the question for the tribunal would be whether presenting the claim in time was reasonably feasible. According to the Employment Appeal Tribunal in *Asda Stores Ltd v Kauser EAT 0165/07* : 'the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done'.

44. In the view of the Tribunal, there was no reasonable prospect of the Tribunal finding that it was not reasonably practicable for the claimant to have presented the claim within time.

45. Accordingly, there was no reasonable prospect that the tribunal would find that the claim was in time and the respondent's application for a strike out was granted.

Section 13 ERA - Holiday Pay

46. Following discussion between the parties and the tribunal, the Claimant confirmed that there was no claim for any deduction in respect of holiday pay relating to 2019. The only claims dated from 2018 and before. The Tribunal applied the same reasoning to holiday pay as it had to the other unauthorised deduction from wages claim, save that there was no deduction in time which might form part of the series with the earlier deductions. Accordingly, there was no reasonable prospect of success for the claimant in the holiday pay claim and the respondent's application for a strikeout was granted.

Unfair Dismissal

47. The only ground on which a strike out or deposit order was sought was that the Claimant did not have the necessary two years continuous employment (under section 108 Employment Rights Act) to bring a claim of unfair dismissal under Section 98 Employment Rights Act. The issue was whether the claimant had little or no reasonable prospects of success of establishing that she had the necessary two years continuous employment at the effective date of termination.

48. The Claimant started work on 4 June 2017 for the second Respondent and it was not disputed before the Tribunal that when she ceased to be employed by that Respondent in September 2018, she was forthwith re-employed by the first Respondent. The Respondent, in its original ET3, stated that employment between the first and second Respondent was treated as continuous. The effective date of termination was 14.6.19.

49. There was some discussion before the Tribunal about the Transfer of Undertakings Regulations and other routes by which it might be possible for the Claimant to demonstrate two years employment. Nevertheless, because the Respondent had accepted in its ET3 that employment with the first and second Respondent would be treated as continuous, and the period of the claimant's employment with the first and second respondents amounted to over two years, it could not be said that the Claimant had no or little reasonable prospect of establishing the necessary continuous service to bring an unfair dismissal claim.

50. Accordingly, the tribunal refused the respondent's application for a strikeout and/or deposit order

Race Discrimination – Time Points

51. The Tribunal considered if there was no or little reasonable prospect that the race discrimination claim (or any part of it) was presented out of time and if so if there was no or little reasonable prospect that the tribunal would exercise its discretion under s123 Equality Act 2010 to extend time.

52. The first task was to consider the reasonable prospects of the tribunal determining that any act relied upon by the claimant was in time. Taking into account the date of presentation of the claims against the 1st and 2nd respondents and then against the 3rd and 4th respondents and taking into account the effects of ACAS early conciliation, the Respondents accepted that acts in the statement of claim at paragraphs 8.9 to 8.19 (with perhaps one or two exceptions) were in time. The Respondents' case was that the actions which occurred before late May (for the 1st and 2nd respondents) or early June 2019 (for the 3rd and 4th respondents) were out of time.

53. As a number of acts relied upon by the claimant were agreed to be in time, the question was whether there was no or little reasonable prospect that the earlier acts which were potentially out of time formed part of a continuing act with the acts which were in time

54. The Tribunal applied the guidance of the Employment Appeal Tribunal in *E v X* UKEAT/0079/20/RN that in an appropriate case, no evidence may be needed and the issue can be "approached, assuming, for that purpose, the facts to be as pleaded by the claimant" (para. 50(8)); even though the claimant's case on the alleged continuing act will be taken "at its highest", the tribunal can consider whether any part of that argument is "implausible" (para. 47).

55. The Tribunal considered the earlier acts which were potentially out of time. The acts relied on by the Claimant were:-

    i. In October 2017 - the fourth Respondent said that 'delayed gratification were big words for a Romanian';

    ii. In June 2018 - the third Respondent complained about the fourth Respondent;

    iii. In June and July 2018 - all the Respondents refused to allow the Claimant to take steps over a dishonest English employee who was bullying her Romanian son;

    iv. In July 2018 - the Claimant was told that an English employee would stay whilst the Claimant's son who was Romanian would go;

    v. In July 2018 - the third Respondent told the Claimant to watch the cameras.

    vi. Undated –the fourth Respondent told the Claimant off in public about a Respondent employee;

    vii. In July 2018 – Customers harassed the Claimant and the third Respondent. The fourth Respondent failed to protect her, and the third Respondent said that the customers could, in fact, harm the Claimant;

viii. In August 2018 – Other Romanians were removed;

ix. There was an allegation about her pension which the Claimant confirmed to the Tribunal was that the fourth Respondent had been purporting to deduct money from her wages in respect of pension but had not, in fact, paid the money over to the proper authorities;

x. There was an allegation about delays in providing payslips that the claimant contended was on-going during the employment;

xi. In April 2018 – there had been mocking of a French person although this was nothing to do with the Claimant;

xii. Another undated allegation was that the fourth Respondent had put the Claimant down in public;

xiii. 14 May – the fourth Respondent had criticised the Claimant's work;

xiv. In May 2019 – the Claimant's son raised a complaint of racism against staff members which the third Respondent confirmed;

xv. On 3 June 2019 – the third Respondent again admitted that staff were racist.

56. The Tribunal found that there was no reasonable prospect that the allegation in October 2017 formed part of a continuing act with the later acts because this related to a different employment.

57. As to the rest of the potentially out of time acts, in the view of the Tribunal, it could not be said that the claimant's contention that the acts formed part of a continuing act had little reasonable prospect of success. Most of the acts were said to be carried out by the same person or people, mainly the fourth Respondent and sometimes the third Respondent. Some acts such as pension and payslips were ongoing.

58. Essentially in the view of the Tribunal, there was not little reasonable prospect of a Tribunal finding that most of the acts formed part of an over-arching complaint of harassment or failure to protect the Claimant and other foreigners from racial discrimination at the hands of customers or colleagues, mainly attributable to the fourth Respondent.

59. The Tribunal accordingly found that there was not little reasonable prospect of success of the Tribunal finding that the acts amounted to a continuing act (save for the October 2017 act).

Race discrimination-merits

60. The Tribunal understood the Respondents' case to be that it was not possible to elucidate the claim because the claimant had failed to provide particulars permitting them to respond to the allegations; further, the claimant had failed to state what section number she relied on – s13 or s18 or s26 Equality Act etc – in respect of each allegation. Accordingly, there was no or little reasonable prospect of the claimant succeeding in these claims. When

61. The respondents pointed out that the Claimant had been told by Employment Judge Hildebrand to set out what in her claim form was alleged to be direct or indirect discrimination. (There was no reference to either harassment or victimisation in the order although the Claimant purported to bring claims of harassment and victimisation.) The claimant had provided further information but had not complied with the order of EJ Hildebrand and had used this as an opportunity to introduce new allegations. The Claimant had not complied with the case management orders in particularising, for instance, which section number was relied upon in respect of each allegation in the ET1.

62. The Tribunal considered *Cox v Adecco* UKEAT/0039/19/AT (a whistleblowing case), in which the Employment Appeal Tribunal reviewed the authorities relating to applications to strike out claims on the ground of no reasonable prospect of success in cases involving an unrepresented claimant:-

> *"*Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is*" (para. 28(5))*

63. In the view of the tribunal, this was the crucial difficulty with the respondent's application.

64. The tribunal accepted that the claimant had failed to explain, contrary to the tribunal orders, which act she relied upon under each section number, that is she failed to identify what type of discrimination it was. Nevertheless, the tribunal did not accept that this would lead to a finding that the claimant had little or no reasonable prospect of success.

65. The tribunal did not accept that the claimant's failure to explain, up to this point, whether she relied on a particular act as direct discrimination or harassment was an unmanageable difficulty. The difference between these two causes of action is somewhat technical not always appreciated by lay people. It is common that the same act is argued both under s26 and s13. There is a specific provision in the Equality Act at s212(1) preventing double recovery in this situation. The Tribunal did not find that a failure to distinguish whether a particular act was argued under s13 or s 26 or both led to a finding that there was little or no reasonable prospect of success. This could be resolved by simple case management.

66. In any event, should the Claimant seek to rely on the same act as either harassment or direct discrimination, it is unlikely to add anything material to the hearing, save perhaps some submissions, and would cause the Respondents little prejudice. The respondents would have to deal with the substantive allegation in any event whatever statutory label was applied.

67. The tribunal accepted victimisation under Section 27 Equality Act 2010 is a more distinct claim. However, again, the Tribunal was of the view that if the claimant sought to bring a victimisation claim, the identification of a protected act and any detriment were essentially case management issues.

68. From discussions with the claimant the tribunal was not satisfied that she intended to bring an indirect discrimination complaint. The claimant's case seemed to be that she and other foreigners had been mistreated, not that a neutral criterion or practice existed which had a disparate adverse impact upon Romanians or foreigners.

69. The claimant's failure thus far to particularise her case in such a way as to permit the respondent to respond could be resolved by robust case management. If the Claimant is seeking to add new material in the particulars of claim that did not exist in the original claim, then this again is a matter that can be dealt with by robust case management. If the claimant failed to take the opportunity to particularise her case or if her case, once particularised appeared to have little or no reasonable prospect of success, the respondent could apply again.

70. Accordingly, the tribunal did not grant the respondent's application for a strike out or deposit order in respect of the race discrimination complaint (with one exception set out below) because it could not be said that there was either no or little reasonable prospect of success.

Giving the Claimant a Further Opportunity to Particularise Her Claim

71. The Tribunal reminded the claimant that, once the claim was properly particularised and the tribunal could work out what the claim was, it would be open to the respondent to renew its applications. Further, if the claimant failed to comply with the order made at this hearing to particularise her claim, then it would be open to the respondent to apply to strike out her claim on this basis.

72. The tribunal has borne in mind that the claimant is not represented. It might be said that the tribunal is giving the claimant a second chance to put her claim in order following the earlier order of Employment Judge Hildebrand. If she fails to take advantage of this second chance, this is something the respondent may seek to rely on in a second strike out application. The Tribunal again emphasised to the claimant that this is an opportunity to put her claim in proper order, rather than an opportunity to add new matters that were not mentioned in the original claim form.

73. In addition to race discrimination and unfair dismissal, the only remaining money claim is the wages claim for 84p. The Tribunal reminded the parties of the overriding objective which requires the tribunal to deal with cases in ways which are

proportionate to the complexity and importance of the issues. The Tribunal was of the view that it was difficult to see how it would be a proportionate use of the tribunal's resources or the parties time to litigate this matter further. This is a matter which the tribunal would expect to be resolved by settlement.

Employment Judge Nash
Date: 11 March 2022