EMPLOYMENT TRIBUNALS

Claimant: **Mr. M Ucar**

Respondents: **Central England Co-Operative Limited (R1)**
Encore Personnel Services Ltd (R2)

Heard at: **Nottingham (on the papers)**

On: **20th June 2020**

Before: **Employment Judge Heap (sitting alone)**

Representation
Claimant: **Written representations**
First Respondent: **Written representations**
Second Respondent: **Written representations**

JUDGMENT

1. There is no Order for wasted costs made in respect of the non-attendance by a representative on behalf of the Claimant at the last Preliminary hearing.

2. The Claimant's application for relief from sanction is granted and the claim will continue.

3. A further Preliminary hearing for the purposes of case management will be listed and Notice of hearing will follow.

4. By no later than **14 days** from the date on which this Judgment is sent to the parties the First and Second Respondents must confirm to the Tribunal and to the Claimant whether they contend that any part of the Claimant's list of allegations contained within the schedule sent to the Tribunal on 22nd March 2022 requires permission to amend the claim and, if so, what parts of the schedule that contention relates to.

REASONS

BACKGROUND & THE ISSUES

1. This hearing was listed to consider an application made on behalf of the Claimant for relief from sanction. That followed the Claimant's failure to comply with the terms of an Unless Order which I had made at an earlier Preliminary hearing and which saw the whole of the claim dismissed as a result. I come to the detail of that Unless Order below including the circumstances in which it came to be made and the events of the Preliminary hearing itself.

2. Alongside the application for relief from sanction, I had of my volition invited representations as whether there should be an Order for wasted costs arising from the failure of any representative on behalf of the Claimant to attend at that earlier Preliminary hearing for the purpose of case management. Again, I come to the detail of that later.

3. Shortly prior to this hearing, the Claimant sought clarification of whether the hearing was to be dealt with on the papers or by way of attendance and, if it was the former, that there be a postponement of the hearing to allow oral representations to be made. I refused that application on the basis that the Claimant's representative had previously written to the Tribunal specifically indicating his agreement for the hearing to be conducted on the papers. There did not appear to be any change in circumstances which warranted the need for an attended hearing and the costs which would result to the parties and to the Respondents specifically.

4. It is worth setting out the background of how this hearing came about. The Claim Form was presented to the Tribunal as long ago as 7th September 2021. It was prepared for the Claimant by Messrs Thompsons Solicitors and the Solicitor with conduct of the matter at all material times has been Mr. David Tyme.

5. Unfortunately, as I recorded in my note of the first Preliminary hearing in relation to this matter, the claim was entirely inadequately particularised. All that could largely be discerned was that the Claimant was complaining about discrimination relying on the protected characteristics of race and religion; that there was a complaint of harassment contrary to Section 26 Equality Act 2010 and of victimisation contrary to Section 27 of that Act.

6. I also noted that there might be a direct discrimination complaint but that was also unclear. The Claim Form contained less than half a page of text setting out what the claim was said to be about. Only two short paragraphs were devoted to setting out what the actual complaints in the proceedings were and even then those paragraphs addressed matters only in very generic terms. For example, there were complaints about harassment which did not set out exactly what it

was that the Respondents had said or done which was said to amount to harassment, when that took place or who did it. Whilst acts of harassment were said to be relating to race or perceived religion, no attempt had been made to engage with why those acts were said to relate to those particular protected characteristics.

7. There was a complaint included about the termination of the Claimant's assignment with the First Respondent which was said to be discrimination and which I presumed was direct discrimination on either the grounds of race or perceived religious belief but again there was no attempt to engage with why the termination was said to be because of either of those protected characteristics.

8. The complaint of victimisation which was presented on behalf of the Claimant did not engage with any of the protected acts that the Claimant relies upon nor how those would have been said to have materially influenced the decision of the First Respondent to terminate his assignment. The final paragraph of the Claim Form indicated that further particulars would be provided. As I noted at the Preliminary hearing, leaving aside the fact that an application would have needed to have been made to deal with that, it is notable that the further particulars in fact never materialised either by the date of the first Preliminary hearing or indeed at all.

9. Given that there were clear deficiencies in the pleaded case, the matter came before Employment Judge Camp on 20th December 2021. He wrote to the parties setting out the further information that was required of the Claimant so as to properly understand what the claim was about. That was to be done before the first Preliminary hearing so that proper consideration to the issues could be had at that time. Employment Judge Camp also extended time for that Preliminary hearing from 90 minutes to 2 hours in order to deal with the question of whether any application to amend the claim might be necessary once the further information had been furnished. The Claimant was ordered to provide that information by no later than 17th January 2022 and for the Respondents to then reply by no later than 7th February 2022 to deal with the question of whether it was said that there needed to be any amendment application. Employment Judge Camp's Orders were sent to the Claimant's solicitors by email and there is no suggestion that they were not received. Thompsons did not comply with the Orders made by Employment Judge Camp and it was left to the Respondents to chase Mr. Tyme up about that. That was due in part to the fact that the Respondent also had to reply to the information that was supposed to have been provided and specifically to indicate whether or not any point was taken that amendment was required.

10. The Claimant's solicitors replied to email correspondence from the Respondents' representatives chasing up compliance with Employment Judge Camp's Orders indicating that the further information would be forthcoming by 4th February 2022. No application was made for an extension of time to the Tribunal.

11. In any event, that further information was still not forthcoming by that date and neither the Respondents nor the Tribunal received anything from the Claimant by the time that the matter came around for a first Preliminary hearing for case management on 11th February 2022.

12. To compound matters no one on behalf of the Claimant, other than the Claimant himself, then dialled into the Preliminary hearing itself. Representatives from both Respondents were present.

13. The Claimant informed me at that hearing that he had been told by his solicitor by email of 7th February 2022 that a barrister, Mr. Kennedy, had been instructed to represent him at the Preliminary hearing. However, neither Mr. Tyme nor Mr. Kennedy dialled into the hearing. A clerk of the Tribunal had telephoned Mr. Tyme's office to determine why no one had attended to represent the Claimant but she could not reach him and had to leave a voicemail with reception. He was also sent an email requiring him to dial in at 10:20 a.m. when I intended to reconvene having briefly adjourned the Preliminary hearing for enquiries to be made of Mr. Tyme. No one attended on the Claimant's behalf at that point and indeed that continued to be the case until 10:35 a.m. when the hearing concluded.

14. At that Preliminary hearing, I Ordered both Respondents to set out details of the costs that they had incurred on attending what was a completely abortive hearing given that it was not fair in my view to ask the Claimant to articulate his own case without the benefit of the legal representation he had clearly been expecting. I also invited representations from both Respondents and from the Claimant as to the reasons why an Order for wasted costs should or should not be made. The parties were invited to make representations as to whether a hearing should be held but, if none were forthcoming, then that would be a matter which would be dealt with in due course on the papers.

15. Whilst mindful of observations of the Employment Appeal Tribunal in relation to Unless Orders, particularly where that requires compliance with an earlier Order, in these circumstances I considered that making an Unless Order was both necessary and proportionate. That was because there had been a wholesale failure by the Claimant's solicitors to properly plead his case in the first place and, secondly, there had been a completely unexplained failure to comply with the Orders of Employment Judge Camp. That was then compounded by the failure to attend to represent the Claimant at the Preliminary hearing where some steps at least could have been taken to try to elicit the information that Employment Judge Camp had wanted to have to hand before that hearing itself. If some measure was not put in place to seek to compel compliance, I had no confidence that we would be in any better position at a later stage of the proceedings and that the Respondents would continue to be put to cost when in reality the matter was not being properly or actively pursued. The purpose of the Unless Order was to impress upon the Claimant's solicitors the need to comply fully and properly with the Order that Employment Judge Camp had made. I therefore made an Unless Order in the following terms:

*"**UNLESS** by no later than **18th February 2022** the Claimant complies with the Orders made by Employment Judge Camp and sent to the parties on 20th December 2021 in full and on time the entire claim will stand as struck out without the need for further Judgment or Order."*

16. It is worth setting out what the Orders of Employment Judge Camp were and they said this:

> "3. *The Claimant must write to the Tribunal and the Respondent to provide the following information by **17 January 2022**, about everything that happened that he is making a Tribunal claim about:*
>
> *a. briefly - in one of two sentences - what happened (including which individuals were involved)?*
>
> *b. as precisely as possible, when did it happen?*
>
> *c. what type(s) of Tribunal claim is he making about this? For example direct race discrimination/racial harassment and/or direct religion or belief discrimination/religion or belief harassment and/or something else (in which case, what?).*
>
> *4. The information must be presented in date order (with the earliest date first), in a numbered list or table with four columns headed left to right, "No, of allegation" [i.e. the earliest dated allegation will be number "1", the next "2" and so on], "Date", "What happened", "Type(s) of claim"."*

17. By email timed at 19:18 on 16th February 2022, Mr. Tyme on behalf of the Claimant presented to the Tribunal a schedule in purported compliance with the Unless Order that I had made. That schedule was wholly inadequate for the purposes of compliance with the Unless Order. It provided extremely vague dates, ranging from 2017 at entirely specified times to 4th April 2021, which was four days before the termination of the Claimant's assignment with the First Respondent. The allegation mentioned no individuals by name and no attempt was made to pin down precisely what had happened over, in some cases, what appeared to be a four year period of time.

18. By way of an email timed at 18:18 on 17th February 2022, the solicitor for the First Respondent pointed out that the Claimant had not complied with the Unless Orders that I had made because the identity of the individuals involved had not been provided within the schedule. The First Respondent was of course quite right about that.

19. By way of an email received at 16:30 on 22nd February 2022, the Claimant's solicitor, having had his attention drawn direct to the fact that he had not complied with the Unless Order by the First Respondent, submitted a further schedule of allegations. By that time, however, the deadline for compliance

with the Unless Order had already passed and the Claimant's solicitor did not make any attempt to apply for an extension of time in respect of the date for compliance with that Order.

20. The matter came before me again on 1st March 2022 and by way of a letter dated 7th March 2022, I directed that the wasted costs application would be dealt with on the papers in due course and that there had been non-compliance by the Claimant with the Unless Order which I had made because there was no identification of the individuals concerned which had been specifically required by Employment Judge Camp's Orders. I set out that the effect of that non-compliance was that the claim stood as dismissed with effect from one minute past midnight on 19th February 2022 and I further directed that that letter be taken as notice of the dismissal of the claim pursuant to Rule 38(1) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The amended schedule of allegations sent in on 22nd February 2022 still did not comply with the Unless Order but even if, on a generous interpretation, it had done then by the time that it was received the date for compliance had already passed and no application for an extension of time had been made.

21. Confirmation was given that the claim therefore stood as dismissed unless and until the Claimant made a successful application for relief from sanction.

22. By way of an email on 9th March 2022, the Claimant made that application. It was brief in terms to say the least, extending to approximately half a page of A4 which said this:

> *"We write with reference to the order of the Tribunal dated 7th March 2022 dismissing the proceedings for non-compliance with the Order dated 20th December 2021 because the Schedule of Allegations provided did not identify all of the individuals concerned.*
>
> *The Claimant now seeks an order pursuant to R38(2) setting aside the Tribunal's decision on the basis that it is in the interest of justice to do so.*
>
> *In compliance with the Order dated 20th December 2021 the original version of the Schedule of Allegations was sent to the tribunal on 16th February 2022 and the amended Schedule of Allegations was sent to the tribunal on 22nd February 2022 at 4.30pm to provide further clarification of the allegations detailed in the original Schedule.*
>
> *The Claimant's failure to provide the names of all the individuals, instead of a generic reference to "colleagues" with whom he worked between from (sic) 2017 to 4 April 2021, evidently did not cause any prejudice to the Respondents and in any event did not prevent the Respondents from complying with paragraph 5 of the Order dated 20th December 2021. In this regard, the Respondents representatives has since confirmed that the allegations, as detailed in the Schedule of Allegations, does not provide for any additional claims that are not set out in the Claim Form.*

Furthermore, it is submitted that the Overriding Objective of dealing with cases fairly and justly can be achieved by allowing the Claimant to proceed with his claim which involves serious allegations of racial harassment, discrimination Race/Religion or belief (perceived) Discrimination and Harassment on the grounds of Race. To allow the order to stand would result in the Respondents being unjustly enriched by not having to respond to the allegations which is contrary to the spirit and intent of the Overriding Objective."

23. The First Respondent set out their objections to the Claimant's application on 10th March 2022. They set out the following points in support of those objections.

(a) That the Claimant knew of the terms of the Orders made by Employment Judge Camp but did not comply with them and had made no attempt to explain that non-compliance;

(b) There had been non-compliance with the Unless Order because it did not identify of the individuals involved in the alleged discrimination in sufficient detail to enable the First Respondent to know the case it had to meet;

(c) That there had been no explanation as to why the detail in the amended schedule of allegations could not have been provided in compliance with the Unless Order;

(d) The First Respondent was prejudiced on the basis it had been assumed that the Claimant was no longer pursuing the claim and had abandoned it given non-compliance with the Order of Employment Judge Camp and the failure to provide the further particulars which were referenced in the Claim Form itself;

(e) That allowing the application was not in accordance with the overriding objective given delay and additional expense had been caused in consequence of rescheduling and postponing the Preliminary hearing because of the Claimant's solicitor's continued non-compliance; and

(f) That those repeated failures did not give rise to it being in the interests of justice to allow the claim to proceed and that the Claimant himself had not set out any basis for asserting that it was in the interests of justice to grant the application.

24. The Second Respondent objected in similar terms to the Claimant's application.

25. On 22nd March 2022, there was then a further submission from the Claimant. That was from a Mr. Lenihan of Thompsons solicitors who made the following representations:

"We acknowledge that there was insufficient information provided in the schedule of allegations we sent to the Tribunal on 16th February in order to comply with the Order. There is no good reason for that. We accept that and apologise to the Tribunal and the Respondents.

We only repeat that this is not a case of a complete failure to comply but rather the provision of inadequate information to comply with the Order.

We do however submit that the reason for the default is not the only issue. There is severe prejudice to the Claimant if he cannot pursue his claims involving allegations of race and religious discrimination, harassment and victimisation. The failure to comply with the Unless Order was not the fault of the Claimant. It would be unjust if through no fault of his own he were not allowed to proceed. The errors were entirely the fault of his solicitor. By contrast there is limited prejudice to the Respondents except delay as they will now be able to understand the claims and a fair trial remains possible. Any prejudice in delay or additional correspondence can be reflected in a reasonable and proportionate costs order rather than not allowing the Claimant to proceed with his claims. We do not consider for these reasons that not allowing the Claimant to proceed would be consistent with the overriding objective."

26. Both Respondents objected to those additional representations given that they were outside the timescale provided for by the Tribunal's earlier directions.

27. It should be noted that attached to those submissions was a further updated schedule of allegations which contained much more detail than either of those earlier two incarnations of the schedule had and which did comply, albeit belatedly, with the terms Unless Order. I have presumed that that is because by that time Mr. Lenihan had become involved and provided an acknowledgment as to the unfortunate state of affairs that had occurred thus far and realised that again even the second schedule was insufficient so as to comply with the terms of the Unless Order.

28. As I have already observed, shortly before this hearing Mr. Tyme sought a postponement so that he would have the opportunity to make oral submissions. That was refused for the reasons that I have previously given. I did, however, permit the parties additional time to make any supplemental written representations that they may wish to make, either in relation to the application for relief from sanction or the issue of wasted costs, provided that those were received by no later than 9.00 a.m. on the day of the hearing.

29. The Claimant, via Mr. Tyme, took the opportunity to do that. I have read those representations in detail and so I do not set them out here in full but in short the additional submissions made the following points:

- That is had been accepted that there was no good reason for the default but that that was the result of the actions (or perhaps more accurately inactions) of the Claimant's solicitor and not the Claimant himself. Moreover, that default was not deliberate;
- That there had been partial compliance with the terms of the Unless Order and therefore it was less serious than wholesale non-

compliance.

- That the prejudice to the Respondents was limited and could be negated further by there being an appropriate Order for costs;
- That a fair trial remained possible and that the Claimant had acted promptly in making his application for relief from sanction; and
- That the default was not of the Claimant's making and that it would not be in accordance with the overriding objective to not allow him to ventilate what were serious allegations of discrimination.

30. The submissions also addressed the matter of wasted costs. As to that position it was said on behalf of the Claimant that there had been a change in the original time listed for the Preliminary hearing to take place. That had been changed on 20th December 2021 to 10.00 a.m. from the original time set out in the Notice hearing of 11.00 a.m. It was said that Counsel and his clerk saw the Notice of hearing and understood that the hearing would commence at 11.00 a.m. and that this was simply a human error which was easy to make.

THE LAW

Wasted costs

31. Rules 80 to 82 of the Regulations deal with wasted costs. Rules 80 and 81 provide as follows:

"When a wasted costs order may be made

80.*—(1) A Tribunal may make a wasted costs order against a representative in favour of any party ("the receiving party") where that party has incurred costs—*

(a)as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or

(b)which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.

Costs so incurred are described as "wasted costs".

(2) "Representative" means a party's legal or other representative or any employee of such representative, but it does not include a representative who is not acting in pursuit of profit with regard to the proceedings. A person acting on a contingency or conditional fee arrangement is considered to be acting in pursuit of profit.

(3) A wasted costs order may be made in favour of a party whether or not that party is legally represented and may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where

that representative is representing a party in his or her capacity as an employee of that party.

Effect of a wasted costs order

81. *A wasted costs order may order the representative to pay the whole or part of any wasted costs of the receiving party, or disallow any wasted costs otherwise payable to the representative, including an order that the representative repay to its client any costs which have already been paid. The amount to be paid, disallowed or repaid must in each case be specified in the order".*

32. The decision in **Ridehalgh v Horsefield 1994 Ch 205** endorses the adoption of a three-stage test when a wasted costs application is made: (i) Has the legal representative of whom complaint is made acted improperly, unreasonably or negligently? (ii) If so, did such conduct cause the applicant to incur unnecessary costs? (iii) If so, is it in all the circumstances of the case just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?

33. The Court of Appeal in **Ridehalgh** (as subsequently approved by the House of Lords in **Medcalf v Mardell & Ors 2002 All ER 721, HL**) examined the meaning of 'improper', 'unreasonable' and 'negligent' as follows:

"'improper' covers, but is not confined to, conduct that would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty;

'unreasonable' describes conduct that is vexatious, designed to harass the other side rather than advance the resolution of the case; and

'negligent' should be understood in a non-technical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession".

Relief from sanction

34. Where there has been non-compliance with an Unless Order the party in default may apply for relief from sanction. Rule 38(2) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 deals with such applications and provides as follows:

"A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations".

35. Whilst it is important for Tribunals to enforce compliance with Unless Orders and should not set them aside too readily so as to undermine their importance, in certain circumstances the interests of justice and the overriding objective will best be served by granting relief to the party in default. Factors to be considered will generally include, but may not be limited to, the reason for the default, and in particular whether it was deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible. No single factor is necessarily determinative, and each case will depend on its facts (see **Thind v Salvesen Logistics Ltd EAT 0487/09**).

CONCLUSIONS

36. I begin with my conclusions in relation to the matter of wasted costs. I do consider that there is a reasonable explanation now for what happened at the Preliminary Hearing with regard to non-attendance of Counsel who had been instructed to represent the Claimant. I do not consider in view of that explanation that the conduct of Thompsons has been improper, unreasonable or negligent within the description of those meanings as examined in **Ridehalgh**.

37. Having checked the Tribunal file there was a change in the hearing time which altered it from 11.00 a.m. to 10.00 a.m. Whilst it could perhaps have been expected that the correct time of the hearing should have been made plain on the instructions sent to Counsel, I accept the submissions made that what had happened amounts to no more than human error. It is regrettable that Mr. Tyme was not contactable by telephone and did not see the email sent from the clerk prior to the hearing ending but those are not things which make his conduct, or that of Thompsons, improper, unreasonable or negligent. I am therefore satisfied that having now received a proper explanation for non-attendance at the Preliminary hearing there should not be any Order for wasted costs.

38. I turn then to the application for relief from sanction. I have considered the guidance provided in **Thind** and the factors to be considered which will generally include, but may not necessarily be limited to, the reason for the default, and in particular whether it was deliberate; the seriousness of the default; the prejudice to the other party; and whether a fair trial remains possible.

39. By the very narrowest of margins, I have decided that it is in the interests of justice to grant the Claimant relief from sanction. I should observe that had I been considering this matter based solely on the first set of representations by Mr. Tyme and his schedules before the involvement of Mr. Lenihan, I would most certainly not have granted that application. As to those additional representations which the Respondents urge me not to consider I have extended time retrospectively under Rule 5 of the Regulations for Mr. Lenihan's representations to be considered on behalf of the Claimant as I am satisfied that it is in the interests of justice to do so.

40. I have considered, particularly in granting the application and determining it is in the interests of justice to grant relief from sanction, that the default was not of the Claimant's own making. There is no suggestion that he has not been giving prompt instructions and it is accepted by Thompsons that the failure lay squarely at the door of his solicitor. I have also taken into account that this is not a situation where there was a wholesale and deliberate failure to comply and that when deficiencies have been pointed out, attempts have been made, most notably by Mr. Lenihan, to seek to rectify that. The third incarnation of the schedule which was produced by Mr. Lenihan was compliant, albeit belatedly, with the terms of the Unless Order that I had made. That again lessens the seriousness of the default. The default was not therefore the fault of the Claimant, it was not wholesale or deliberate and it has now been rectified by the production of the third schedule. All of that favours the granting of relief from sanction.

41. However, that is not the end of the matter and I have had to balance that against the fact that the very reason I made the Unless Order was because there had been non-compliance with the Orders of Employment Judge Camp and non-attendance at the Preliminary hearing. The Claimant was therefore on notice of the seriousness of the situation when making sure that the Unless Orders were complied with. Indeed, I had explained to the Claimant himself at the Preliminary hearing the importance of getting in touch with Mr. Tyme promptly to make sure that he did comply in full with what the Unless Orders required.

42. There is of course a public policy interest in not undermining the effectiveness of Unless Orders by setting them aside too readily. Balancing that and the fact that the Unless Order was necessary in view of previous non-compliance on the one hand and the matters set out in paragraph 40 above the scales are in my view tipped in favour of granting relief from sanction and it is in the interests of justice to do so.

43. I have also considered when reaching my decision in respect of the application the fact that whilst there is prejudice to the Respondents in terms of the cost, delay and finality of the litigation, that can be negated to a significant degree by an Order for costs being made. Should there be application of that nature made then I would observe that the Claimant may find rather difficult to resist given that the submissions of both Mr. Lenihan and Mr. Tyme make reference to such an Order being a possibility. I am not making any Orders of that nature today because the parties will need to have a reasonable opportunity to make submissions about such matters. If either or both Respondents do wish to make an application, then of course they are free to do so but any such application must be accompanied by a clear schedule of the costs which they contend flowed from the failure of the Claimant's Solicitor to comply with the terms of the Unless Order.

44. The Claimant's solicitors should not, however, take my granting of their application for relief from sanction as any suggestion that I view this as a case which has been appropriately managed. It was initially woefully unparticularised. There has been no reasonable explanation as to why

Employment Judge Camp's Order was not complied with and similarly there have had to be a number of iterations of the schedule before it amounted to anything approaching a satisfactory explanation of what the claim was about.

45. Equally, it was only when the First Respondent pointed out that there had been non-compliance with the Unless Order that schedule number two came into existence with an attempt to rectify the defects with the first and even then that was still deficient until Mr. Lenihan became involved.

46. This is therefore very much last chance saloon as far as this claim is concerned and there should not be any further instances of non-compliance with Orders at all during the remainder of the lifecycle of this claim. If there is, then there will undoubtedly become a time when consideration is given to striking the claim out.

47. In terms of the next steps involved in dealing with this matter, it will need to be relisted for a further Preliminary hearing to be conducted by telephone. Notice of hearing will follow.

48. As I have already observed, it was not until the third iteration of the schedule of allegations that the claim was properly set out. That shall be the schedule to be used at the next Preliminary hearing. However, it does appear to include a further allegation which was not set out in the earlier two documents. In view of that, the Respondents may (and I put it no higher than that) take a different view to that which they previously took in relation to whether the Claimant requires permission to amend his claim to include any additional allegation within that schedule. The Orders set out above therefore require confirmation on that position from the Respondents and, as I have already observed, another Preliminary hearing will now be listed at which, if any point on amendment is taken, that matter will be determined.

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Employment Judge Heap

Date: 12th July 2022

JUDGMENT SENT TO THE PARTIES ON

16 July 2022

FOR THE TRIBUNAL OFFICE

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