EMPLOYMENT TRIBUNALS

1. Claim Number: 3302095/2020
Claimant: Mr L Garcia (date of birth: 28 April 1964)

Respondents: Bigbux (1)
Frances D'Souza (2)

2. Claim Number: 3304580/2020
Claimant: Mr L Ramos (date of birth: 27 March 1974)

Respondent: Quint Solutions Ltd

3. Claim Number: 3304798/2020
Claimant: Mr L Ramos (date of birth: 27 March 1964)

Respondent: Tradeco Ltd (1)
Doulgas Wolfgang Doug (2)

4. Claim Number: 3201540/2020
Claimant: Mr L Ramos (date of birth: 28 April 1964)

Respondent: 900 Productions Ltd (1)
Sultan Mahmood Rashid (2)

5. Claim Number: 3219944/2020
Claimant: Mr L Ramos (date of birth: 28 April 1964)

Respondent: Samsky Travel Ltd (1)
Samson Eniolorunda ESEYIN (2)

6. Claim Number: 3220357/2020
Claimant: Mr L Garcia (date of birth: 28 April 1964)

Respondents: TiffinWalli CIC (1)
Manahara Rukmali Upton (2)
Sangeeta Sengupta (3)
Farida Kamal (4)

7. Claim Number: 3220506/2020
Claimant: Mr L Garcia (date of birth: 28 April 1964)

Respondents: Stonecrest Marble London Ltd (1)
Murat Yurtseven (2)

8. Claim Number: 3311648/2020
Claimant: Mr L Ramos (date of birth: 28 April 1964)

Respondent: Optim Contract Services Ltd (1)
David Clive Sambrook (2)

9. Claim Number: 3302359/2021
Claimant: Mr L Garcia (date of birth: 28 April 1964)

Respondents: Fresha Food Ltd (1)
Biyik Muhammed Osman (2)
Osman Topcu (3)
Sendur Idris (4)
Sahin Mutlu (5)

Heard at: Watford Employment Tribunal (in public; hybrid)

On: **30 March 2022**

Before: Employment Judge Quill (sitting alone)

Appearances
For the claimant: Mr Garcia (Litigant in Person in all of the above)

For the respondents:
Claim 1: No Appearance and No Representation
Claim 2: No Appearance and No Representation
Claim 3: Ms C Wright (employee of Tradeco) for both respondents (by video)
(Mr Doug also in attendance by video)
Claim 4: No Appearance and No Representation
Claim 5: No Appearance and No Representation
Claim 6: Mr Jones, solicitor (for all 4 respondents) (by video
(Ms Sengupta also in attendance by video)
Claim 7: Mr Bansall, solicitor for both respondents (in person)
Claim 8: Mr Charity, consultant for both respondents (by video)
Claim 9: Mr Belatri (employee of Fresha Foods) for all respondents (in person)
(Individual respondents also in attendance in person)

JUDGMENT

1. I do not recuse myself from this hearing of from making decisions about these claims.
2. I do not strike out any of the responses or make any deposit order against any respondent.
3. I do not reject any of the claims for failure to comply with the early conciliation requirements. To the extent that the Claimant has used a different variation of his name on an early conciliation certificate in comparison to a claim form, I consider that an error, and that it is not in the interests of justice to reject.
4. The claims stand dismissed under Rule 38(1), as a result of the Claimant's failure to comply with the Unless Order dated 17 August 2021, which required compliance by 10 September 2021.
5. The same human being has brought all of the above claims, albeit different names and different dates of birth were used on the claim forms.
6. If the claims were not dismissed under Rule 38(1), all of the claims are struck out because the Claimant has conducted the proceedings unreasonably.
7. I do not make any order for anonymity, or to restrict the information that the Claimant's first name is Lorenzo or that he uses each of Garcia and Ramos (separately and/or together) when making different tribunal claims.

REASONS

Recusal

1. In these 9 cases, there was an application by the claimant at the start of the hearing that I recuse myself. He also made a further application during the hearing.

2. I explained to the parties at the outset that the Claimant could make an application and, if successful, another judge would be found either to continue with the case the same day or (more likely) on another day. I also explained that, if unsuccessful, the application would continue before me today.

3. None of the respondents supported the application, and those that made any comments opposed it, including on the grounds of the risk of further delay.

4. The Claimant suggested that there is an appearance of bias and from me and that I have a conflict of interest. He pointed out (correctly) that I have made several case management orders in the past. He has also pointed out (correctly) that I have not granted certain applications which the claimant has made, whereas I have made some other case management orders despite his opposition to those particular orders. Amongst other things, he refers to is my case management decision to refuse to arrange for a panel of 3 to deal with this particular hearing and to the fact that I made some orders for further information which he does not think are appropriate in relation to his employment history.

5. He has also mentioned that he has made one or more complaints to the president of the employment tribunal and about me and about the orders I made for information about his past history to be disclosed. The claimant says that those orders have since been retracted. By implication, the suggestion appears to be that, because of his complaint, my orders were retracted, and that I might be biased because of that. However, it is not actually the case that those orders have been retracted, and one of the things to be considered during this hearing (regardless of whether it were before me or anyone else) is the extent to which the claimant has complied with, or is in breach of, those orders.

6. He also complains that I have made and orders both in these cases and other cases, requiring that he answer whether he is the same person as the individual of a similar name who, according to publicly available information, has a General Civil Restraint Order ("GCRO"). He says that it is wrong that I have stated in correspondence (because such correspondence is seen, of course, by the respondents) that there is somebody with a similar name to him who has a GCRO against them. He refused to answer my direct questions asking him to say whether or not he has such an order against him.

7. The claimant points out that even if – hypothetically – he is the person against whom there is a GCRO then that order would not prevent him bringing claims in the employment tribunal. In other words, he would not specifically be required to obtain any court's permission to bring such a claim.

8. I have had in mind and the guidance Jones v Das Neutral Citation Number: [2003] EWCA Civ 1071 in relation to apparent bias, as well as the guidance in Localbail v Bayfield Properties Ltd Neutral Citation Number: [1999] EWCA Civ 3004 (especially in paragraph 25). It is important that justice is done and that justice is seen to be done. If there is any real ground for doubting the lack of bias, then that the doubt should be resolved in favour of a recusal. That being said, as well as having an obligation to recuse myself in an appropriate case, I must note that it is important that judicial officers discharge their duty to sit on cases which are assigned to them, and that they must not accede too readily to suggestions of appearance of bias.

9. In this case, I do not think that there are any out proper grounds for me to recuse myself. I have made some previous orders in this case with a view to having this preliminary hearing take place to consider various matters as listed in those orders and notices of hearing. The purpose of today's hearing includes considering the evidence that is presented in relation to those various matters. The intention is to resolve some issues, such as identity of our the claimant, and whether or not the early conciliation rules have been complied with. There may be applications for strike out to be dealt with as well.

10. I am entirely satisfied that those factual issues, those legal decisions, and those applications can be decided fairly by me on the evidence and on the submissions that I hear. The fact that I have made some orders to list this hearing and some orders that the claimant does not agree with does not mean that I cannot hear the matter fairly and, in my judgment, does not give the appearance of bias.

11. Furthermore, while I acknowledge that the Claimant has told me about complaints which he has made, as described, the complaints are about the contents of the orders. I was aware, regardless of whether he complained to the president or not, that he disagreed with the orders. The mere fact alone that he has written to the president about the orders (as well as making his disagreement known by writing to the tribunal in the ordinary way) does not create an additional or separate danger of bias, and I do not think that a well-informed observer would think that it did.

12. Furthermore, in relation to the case management orders that were made, if the claimant wishes to argue that the orders for disclosure of his past employment history, for example, were orders that should not have been made (because they sought irrelevant information, or for any other reason), he can make those submissions as part of this hearing. The fact that I am the judge who made those orders does not mean that the Claimant does not have the opportunity to say that those orders had not been properly made.

13. So for those reasons, the recusal request was refused at the outset and I carried on dealing with the public preliminary hearing.

14. After the Claimant had given evidence, he made a further recusal application. To some extent, he repeated the points already made and I told him that there had been no change of circumstances since I already refused the application on those arguments earlier in the day. His new ground was that, during cross-examination, I had allowed questions to be put to him as to whether he was the Lorenzo Garcia who had a GCRO at Central London County Court. He said that I was hostile to him during his evidence. He refused to answer the question about the GCRO and the Claimant suggests that the fact that I would not rule the question as not relevant gives rise to an appearance of bias.

15. As I said, earlier in the hearing, and during the evidence, it may be necessary for me to decide whether the Claimant is that same Lorenzo Garcia who has that GCRO and, in any event, it will be necessary for me to consider the significance of his refusal to answer the question one way or the other. However, the fact that I consider this a potentially relevant matter, and that I do consider the questions legitimate, does not mean that there is an appearance of bias. I refused the second recusal application as well.

The hearing

16. By the time we had dealt with the (first) recusal application, it was about 10.45am. We then spent around 20 minutes going through all the documents which each of the parties had produced for this hearing (in particular, the Claimant's witness statements) and ensured that – for each case – both claimant and the respondents had everything that either side had produced and supplied to me.

17. Following a break, I heard evidence from the Claimant. He swore to the contents of his witness statements. There were 4: these were his "evidence in chief", and his additional evidence for Bigbux, his additional evidence for TradeCo, and his additional evidence for Qunit Solutions.

18. He confirmed his name as Lorenzo Garcia Ramos and confirmed his postal address. He confirmed that he was the same claimant in each of the cases, even though some of the claims and some of the witness statements used just "Ramos" or just "Garcia" as the case may be.

19. I asked some questions until 12.45pm, and then invited the Respondents to ask questions if they wished to do so. The Claimant asked if we could have a break first, and so we took a lunch break from 12.45pm to 1.30pm.

20. After lunch, the Claimant's oral evidence concluded, and I dealt with his second recusal application.

21. For the remainder of the day, I heard the parties' submissions. After I had heard from those respondents who were present, the Claimant made an application for postponement to a future date so that he could submit further evidence, including psychological evidence. I declined the application given the length of time that had elapsed since the hearing had been notified to the parties (and that this hearing date was the result of prior postponements). I heard the Claimant's further submissions until slightly after 4.30pm. I then reserved judgment.

22. I have not taken account of the correspondence sent after the hearing by the Claimant in which he makes further requests that I recuse myself. I have not taken account of that for recusal purposes, because I already dealt with 2 applications on the day. I have not, for the purposes of these decisions, taken account of the fact that the Claimant has obtained my judicial email address and been sending me correspondence directly. I therefore make no decision one way or the other about whether that amounts to unreasonable conduct of the proceedings; however, the fact that I am ignoring it for the purposes of these decisions should not be taken as a sign that I condone it, or that I have made a positive decision that it does not amount to unreasonable conduct.

Purpose of Hearing

23. By orders sent to the parties on 23 March 2021, this hearing was listed to consider the following:

> 4. At the hearing, there will first be a decision, in each case, about the correct name and date of birth of the claimant, and whether that claimant, as properly identified, complied with the early conciliation requirements and, if not, whether the claim should be rejected for failure to comply with the early conciliation requirements.
>
> 5. For those claims which are not rejected, the preliminary hearing will decide:
>
> 5.1. Whether any of the complaints are scandalous or vexatious and, if so, whether it is appropriate to strike out any such a complaint.
> 5.2. Whether the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious and, if so, whether it is appropriate to strike out those proceedings.
> 5.3. Whether any of the complaints have no reasonable prospects of success

and, if so, whether it is appropriate to strike out any such complaint.

6. In relation to those complaints which are not struck out, the preliminary hearing will consider, in accordance with Rule 39, whether any specific allegation or argument has little prospects of success and, if so, whether it is appropriate to order that the relevant claimant pay a deposit as a condition of continuing to advance that allegation or argument.

7. The preliminary hearing will make such other case management orders as are appropriate in relation to each of the cases (which might include ordering a further preliminary hearing). This might – if the judge thinks it appropriate – include making orders as to whether any of the claims should be heard together, or separately. However – if appropriate – the judge might decide to defer such decisions until a later date.

24. By orders sent to the parties on 10 May 2021, this hearing was also to consider the following:

4. In addition, decisions will be made as to:
4.1. whether the claimant (if it is one person) or any of the claimants (if they are more than one separate individual) is subject to any restrictions on commencing legal proceedings in England & Wales.
4.2. If so, what those restrictions are, and how such restrictions affect any of these claims (if at all). In particular, if the claimant (or any claimant) required permission from a court to commence any of these claims, the hearing will decide whether the Claimant did, in fact, have such permission.

25. Case management orders were also made in those documents. Some postponement requests were granted, leading eventually to the hearing taking place on 30 March 2022.

26. I made some Unless Orders which were sent on 17 August 2021 in relation to some of those original case management orders.

Facts

27. The Claimant received all of the case management orders for this hearing.

28. The Claimant admits that he did not comply with the order made in March 2021, at para 2.1.10. That order stated:

2. **Further information**
2.1 The following further information is ordered. By no later than 16 April 2021, each Claimant must supply the following information to the tribunal and to each respondent.
…
2.1.10 For the period from 1 January 2016 to present (in other words, slightly more than 5 years), what are the dates in which you were in paid employment, and for each such job:
2.1.10.1. what were the duties of the job
2.1.10.2. what were the hours of work each day, and each week
2.1.10.3. what method did you use to travel from home to work
2.1.10.4. what was the approximate journey time in each direction

29. Paragraph 5.2 was also significant, as it stated:

 5. **Witness statements**
 5.1 Each claimant shall prepare a full written statement containing all of the information they will give at the preliminary hearing.
 5.2 The statement must state that all of the further information supplied in accordance with paragraph 2 above is correct.

 5.6 The claimants must provide copies of their written statements to each other party by email on or before 4pm on 28 May 2021.

30. The Claimant applied for the 18 March orders to be varied. The 10 May orders confirmed that that was refused.

31. The Claimant also received the August 2021 orders which confirmed (at paragraph 2.6) that his further application for variation was refused.

32. The Claimant gave evidence that, in his opinion, if the instructions were not subsequently repeated in the Unless Orders that were issued then he believed that he did not need to comply. However, I am satisfied that the Claimant was aware that – whether he agreed with the orders or not – he had been ordered to supply the information in 2.1.10 (by 16 April 2021) and to confirm it in a witness statement (by 28 May 2021). He was aware that his request to vary those orders had been refused.

33. The Claimant's actual date of birth is 28 April 1964. On Claims 2 and 3, my finding is that he did not present the claims with the correct date of birth (and he wrote 27 March 1974 and 27 March 1964 respectively). In other words, I reject his suggestion that he submitted the correct information and that Ministry of Justice or HMCTS software made a mistake while processing his claim. Further, it is my finding that there are multiple differences in the keys that would be pressed to enter the correct date of birth and the dates that were actually entered. Thus, I am satisfied that the Claimant deliberately chose to enter dates of birth that were not correct on each of Claims 2 and 3.

34. The Claimant believes that he made job applications to Bigbux, Quint and Tradeco (Claims 1, 2 and 3 respectively). For Claims 4 to 9, he is not sure whether he applied or not.

35. Paragraph 3.2 of the March 2021 orders stated:

 3.2 On or before 30 April 2021, for each claim, the Claimant shall send to the relevant respondent(s) to that claim, the relevant job application (if any) made by the claimant to which the claim relates (or else an explanation as to why the document cannot be disclosed, or else does not exist).

36. The Claimant's evidence to me is that he not sure whether he complied with paragraphs 3.2 of the March 2021 orders for any of the claims. My finding is that he did not comply.

37. Paragraph 3.4 of the March 2021 orders stated:

> 3.4 On or before 30 April 2021, the Claimant shall send to each respondent, copies of any evidence that he intends to rely on at the preliminary hearing in relation to proving what assets and income he has, including property assets, savings, and income from any source, not just employment or benefits income.

38. The Claimant did not comply with this order. For Quint (Claim 2), he says his reason was that he was only seeking injury to feelings, and not financial loss, and therefore he did not think it was necessary. For the other claims, he says his reason was that he was thinking that he might write to the tribunal and the respondents to say that he was seeking injury to feelings (only) and not financial loss in those claims as well. He also said that he believed that the order was intrusive and he did not wish strangers to have this information.

39. The Claimant stated that his position was that if a judge ordered him to disclose documents or other information by a certain date, but his opinion was that it would be sufficient for the fair disposal of the case to comply with that order by a later date, then it was legitimate for him to choose to comply by the date which he thought was appropriate.

40. The Claimant did not send his witness statements to the Respondent by 28 May 2021. He sent the 4 statements relied on at this preliminary hearing to the respondents between 26 and 29 March 2022.

41. Each of the orders contained the following wording:

> Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.
>
> Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

42. The Claimant therefore submitted his witness statements approximately 10 months after the due date, and, in each case, gave the relevant respondent just a few days (or one day) to consider his statement prior to this hearing. He says that he did not have time to do his statements until March 2022 because he was too busy (a) sending correspondence to the tribunal and the president about these cases and (b) performing his work as a self-employed legal adviser and self-employed translator.

43. I do not accept that the Claimant was too busy for 10 months to produce the 20 page main statement, or the 3 shorter additional statements for this hearing. He has supplied no evidence of the number of days or hours that he has been working. I am also satisfied that he knew that the tribunal had not amended the date for him to supply his witness statements. Nowhere in the orders was the date for statements linked to hearing date.

44. The Claimant testified on oath that he had not put in any claims in the name "Leroux" and that he does not know anyone of that name, and that he has not made any claim against Hutchinsons Domestic Staff. I accept his testimony on these points.

45. The Claimant testified on oath that he had not put in any claims in the name Antonio Gonzalez or Antonia Gonzalez. I accept his testimony on these points. For the purposes of this preliminary hearing, I do not think it is necessary or appropriate for me to make any findings about what emails (if any) the Claimant might have sent from such an email account, or for what reason(s).

46. The Claimant testified on oath that he had not put in any claims to the tribunal other than: for first name, either "Lorenzo" or just initial "L"; for surname, just either "Garcia" only, or "Ramos" only, or "Garcia Ramos". I rely on his assurance for these points, and accept his testimony on oath to that effect.

47. I note that some early conciliation certificates use the name "Ramas". On the basis of the information available to me, my finding is that that was either (a) a key press error by the Claimant or by ACAS or (b) some other error by ACAS. In other words, this is not evidence of a deliberate attempt by the Claimant to mislead anybody.

48. The Claimant said that he believes that the only date of birth he has used on any claim forms to the tribunal is 28 April 1964. He thinks that the only two with any other date are Claim 2 and Claim 3 of these 9, for which he says he assumes that the tribunal service computers have made an error.

49. In the March orders, the further information required by paragraph 2 (and which was to be confirmed in the witness statement ordered by paragraph 5) included:

> 2.1.5 The exact names which you have used in any claim form which you have submitted to the employment tribunal (either in England & Wales or in Scotland) on or after 1 January 2019.
> 2.1.6 The exact names which they have used in any contact with ACAS to commence early conciliation for any matter on or after 1 January 2019.
> 2.1.7 The date of birth which you have stated in any claim form which you have submitted to the employment tribunal (either in England & Wales or in Scotland) on or after 1 January 2019, and, if there are any differences to your actual date of birth, a full explanation of the reasons.
> 2.1.8 The total number of claims which they have submitted to the employment tribunal (either in England & Wales or in Scotland) between 1 January 2019 and 18 March 2021.
> 2.1.9 The total number of occasions on which they have contacted ACAS to commence early conciliation for any matter between 1 January 2019 and 18 March 2021.

50. The Claimant's testimony was that in order to comply with paragraph 2.1.7, the Claimant did look back through the claims he has submitted to the tribunal in England & Wales and in Scotland, and it was based on that examination of the claims that he is able to state on oath that the only two claims with an incorrect

date of birth is Claims 2 and 3 of these 9.

51. The Claimant did not comply with paragraph 2.1.8. I asked him to supply that answer during his oral evidence and he told me that he refused to answer as he considered it victimisation. He also said that he could only be cross-examined about things which he put voluntarily in his witness statement. After he refused the first time, I gave him a second opportunity, reminding him that he had been ordered to supply this information by a written tribunal order, and that a judge was now asking him orally to supply it. He refused a second time.

52. The Claimant did not comply with paragraph 2.1.9. He said that he relied on the same arguments for refusing to supply this information as for 2.1.8 but, in addition, that he also asserted that it was without prejudice. I said that it was my view that simple start dates for early conciliation was not covered by the without prejudice rule, and information that early conciliation had, or had not, commenced was always potentially admissible evidence in tribunal hearings. He maintained his position that he would not answer this question.

53. I asked the Claimant to supply the information required by paragraph 2.10. Initially, he would not answer and said that this had not been part of the Unless Orders made in August 2021. I told him that I regarded it as potentially relevant information to his claims, because he was claiming discrimination in relation to job adverts (with his claim being that in some cases he applied for the job, and in other cases, he did not apply because he was put off by the fact that the wording of the advert implied that the application would be unlawfully refused) as one issue which could potentially arise was whether he was genuinely interested in the job.

54. He then told me that he had been an employee. He was a legal secretary. He worked about 37 hours per week. He had one employer. It started before 2016 and, he believes, it also ended before 2016.

55. After January 2016, he believes that he was an employee as a market researcher and was also an employee as a translator. He maybe had 6 or 7 assignments per year. He worked for £9 or £10 per hour. He travelled in excess of an hour for some of the assignments, eg from London to Guildford. He was vague on the details. I accept that it might have been difficult to recall the full details while at the witness table. However, I do not accept that he would have been unable to obtain accurate information about this work had he complied with paragraph 2.1.10 of the orders to supply this information in writing to the respondents and the Tribunal, and to confirm its accuracy in a written statement.

56. Page 73 of the hearing bundle prepared by Stonecrest showed a "Lorenzo Garcia" had a GCRO due to expire 21 November 2022. The Claimant refused to say whether that was him or not. He refused to say one way or the other whether he had received any notification from the court stating that a GCRO was being considered and/or had been made. My finding is that the Claimant does know, one way or the other, whether he has received any such correspondence. My finding is that he was deliberately refusing to answer the question.

57. In cross-examination by Stonecrest's representative, he was asked whether he had issued proceedings in Central London County Court. The Claimant objected to the question as it was about something not in his witness statement. I said that I considered the question potentially relevant, and the Claimant stated that he refused to answer.

58. In August 2021, Unless Orders were issued which stated:

    On the Tribunal's own initiative, Employment Judge **QUILL** ORDERS that-

    Unless by **4pm on Friday 10 September 2021,**

    the claimant complies with paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.7 and 3.1 of the case management orders sent to the parties on 23 March 2021

    <u>the claim will stand dismissed without further order</u>.

59. On 10 September 2021, the Claimant had sent some emails to the tribunal with the following times of receipt, the contents of which answered questions 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5. These were for:

    Claim 1: none on file (See 15:54 email mentioned below on another point).
    Claim 2: 16:01
    Claim 3: 16:03
    Claim 4: none on file
    Claim 5: 16:03
    Claim 6: 16:05
    Claim 7: 16:06
    Claim 8: 16:15
    Claim 9: 16:07

60. Those emails partially answered 2.1.7. As described above, the Claimant suggested that every claim he has submitted used the date of birth 28 April 1964 other than Claims 2 and 3. I am satisfied that, while not a literal answer to the question, it is sufficient.

61. The Claimant also sent an email to the tribunal (with the Bigbux Claim 1 case number), which was received at around 15:54 on 10 September 2021 which complied with the requirements of paragraph 3.1 of the orders. I am satisfied that, since he was only ordered to send it to the tribunal, and not the parties, I should treat that email as sufficiently compliant for each of the 9 claims.

62. In terms of the lateness of those emails which were received after 4pm, the Claimant said that he did not know if he had had an internet/wifi outage, but he might have had. He did not know if there were other obstacles, but there might have been. He said that, due to the passage of time, he could not remember. He also said that because he had to send separate emails for different claims that meant that caused a delay to the final few emails.

63. The Claimant's recollection is that in total he has applied for around 5 jobs as a cleaner. He believes that at least one of his applications was for a cleaning job

which did not specify that the employer was seeking a female. He has not applied for any cashier job which did not specify that the employer was seeking a female.

64. The Claimant had brought claims prior to 1 January 2019 using the name of Garcia. According to what he told me, the first time he brought a claim using the name Ramos was after March 2020. He did not want people to know that the person bringing the claim under the name "Ramos" was the same person who had previously brought claims as "Garcia". He says this was because he was concerned that he might be victimised when making claims under the name Garcia.

The Law

65. The tribunal rules include the following:

37.— Striking out
(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;
(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
(c) for non-compliance with any of these Rules or with an order of the Tribunal;
(d) that it has not been actively pursued;
(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

38.— Unless orders
(1) An order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred.
(2) 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.
(3) Where a response is dismissed under this rule, the effect shall be as if no response had been presented, as set out in rule 21.

50.— Privacy and restrictions on disclosure
(1) A Tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings so far as it considers necessary in the interests of justice or in order to protect the Convention rights of any person or in the circumstances identified in section 10A of the Employment Tribunals Act.
(2) In considering whether to make an order under this rule, the Tribunal shall give full

weight to the principle of open justice and to the Convention right to freedom of expression.

(3) Such orders may include—

(a) an order that a hearing that would otherwise be in public be conducted, in whole or in part, in private;

(b) an order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public, by the use of anonymisation or otherwise, whether in the course of any hearing or in its listing or in any documents entered on the Register or otherwise forming part of the public record;

(c) an order for measures preventing witnesses at a public hearing being identifiable by members of the public;

(d) a restricted reporting order within the terms of section 11 or 12 of the Employment Tribunals Act.

…

(6) "Convention rights" has the meaning given to it in section 1 of the Human Rights Act 1998.

66. Where a claim has not previously been referred to a judge for a decision under Rule 12 (potential rejection for substantive defects), a decision can be made on whether to reject the claim, even if the tribunal service has already sent the claim to the respondent in accordance with Rule 15 and even if a response has already been entered in accordance with Rule 16. However, a discrepancy in a name between the early conciliation form and the claim form does not automatically lead to rejection, and the judge should not reject the claim if satisfied that the claimant made an error, and that it is not in the interests of justice to reject. (Prior to 8 October 2020, the requirement was also for the error to be "minor").

67. Where there is non-compliance with an unless order in any material respect, a tribunal has no discretion as to whether the claim should be dismissed. The claim (or the relevant part of it) is automatically dismissed as at the date of non-compliance. See Scottish Ambulance Service v Laing EATS 0038/12, for example. Where there might be a dispute about whether there was actually non-compliance in any material respect, a tribunal should have regard to the over-riding objective when considering whether to invite submissions and as to what the format of those submissions (including as to whether to hold a hearing) should take.

68. After dismissal for non-compliance has taken effect, the claimant has the right to apply to the tribunal in writing - within 14 days of the date that notice of the dismissal has been sent to the parties - to have the order set aside on the basis that it is in the interests of justice to do so.

69. In Cox v Adecco [2021] UKEAT 0339_19_0904, the EAT made the following points about strike out. The comments were most specifically directed to strike out under Rule 37(1)(a), but the points about the importance of clarifying the case, and making suitable allowances for litigants in person (and being consistent with the principles of the Equal Treatment Bench Book) are of general significance.

21. The President of the EAT, Choudhury J, helpfully summarised the current, and well-settled, state of the law on strike out in **Malik v Birmingham City Council** UKEAT/0027/19:

> **"29. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides:**
>
> **"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..."**
>
> **30. It is well-established that striking out a claim of discrimination is considered to be a Draconian step which is only to be taken in the clearest of cases: see Anyanwu & Another v South Bank University and South Bank Student Union** [2001] ICR 391**. The applicable principles were summarised more recently by the Court of Appeal in the case of Mechkarov v Citibank N.A** [2016] ICR 1121**, which is referred to in one of the cases before me, HMRC v Mabaso UKEAT/0143/17.**
>
> **31. In Mechkarov, it was said that the proper approach to be taken in a strike out application in a discrimination case is that:**
>
> **(1) only in the clearest case should a discrimination claim be struck out;**
>
> **(2) where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence;**
>
> **(3) the Claimant's case must ordinarily be taken at its highest;**
>
> **(4) if the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and**
>
> **(5) a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts."**
>
> **32. Of course, that is not to say that these cases mean that there is an absolute bar on the striking out of such claims. In Community Law Clinics Solicitors Ltd & Ors v Methuen UKEAT/0024/11, it was stated that in appropriate cases, claims should be struck out and that "the time and resources of the ET's ought not be taken up by having to hear evidence in cases that are bound to fail."**
>
> **33. A similar point was made in the case of *ABN Amro Management Services Ltd & Anor v Hogben* UKEAT/0266/09, where it was stated that, "*If a case has indeed no reasonable prospect of success, it ought to be struck out*." It should not be necessary to add that any decision to strike out needs to be compliant with the principles in *Meek v City of Birmingham District Council* [1987] IRLR 250 CA and should adequately explain to the affected party why their claims were or were not struck out."**

22. A similar approach to that taken to strike out in discrimination claims is taken in protected disclosure claims: Ezsias v North Glamorgan NHS Trust [2007] ICR 1126.

23. In addition to the summary of the current state of the law on strike out, I consider that Malik is important because of the consideration the President gave to dealing with strike out of claims made by litigants in person.

24. Guidance for considering claims brought by litigants in person is given in the Equal Treatment Bench Book ("ETBB"). In the introduction to Chapter 1 it is noted, in a very well-known passage:

> **"Litigants in person may be stressed and worried: they are operating in an alien environment in what is for them effectively a foreign language. They are trying to grasp concepts of law and procedure, about which they may have no knowledge. They may be experiencing feelings of fear, ignorance, frustration, anger, bewilderment and disadvantage, especially if appearing against a represented party.**
>
> **The outcome of the case may have a profound effect and long-term consequences upon their life. They may have agonised over whether the case was worth the risk to their health and finances, and therefore feel passionately about their situation.**
>
> **Subject to the law relating to vexatious litigants, everybody of full age and capacity is entitled to be heard in person by any court or tribunal.**
>
> **All too often, litigants in person are regarded as the problem. On the contrary, they are not in themselves 'a problem'; the problem lies with a system which has not developed with a focus on unrepresented litigants."**

25. At para. 26 of Chapter 1 ETBB, consideration is given to the difficulties that litigants in person may face in pleading their cases:

> **"Litigants in person may make basic errors in the preparation of civil cases in courts or tribunals by:**
>
> - **Failing to choose the best cause of action or defence.**
> - **Failing to put the salient points into their statement of case.**
> - **Describing their case clearly in non-legal terms, but failing to apply the correct legal label or any legal label at all. <u>Sometimes they gain more assistance and leeway from a court in identifying the correct legal label when they have not applied any legal label, than when they have made a wrong guess.</u>" [<u>emphasis added</u>]**

26. I consider that the ETBB provides context to the statement by the President of the EAT in Malik about the importance of not expecting a litigant in person to explain their case and take the employment judge to any relevant materials; but for the judge also to consider the pleadings and any other core documents that explain the case the litigant in person wishes to advance:

> **"50. The claimant was not professionally represented. He had, however, produced a detailed witness statement which, as I set out above, contained some material which might support an allegation of race discrimination. He also placed before the Tribunal other documents in which he attempted to set out his case. These included documents entitled "Additional information", which are appended to the claim form and which contained some of the matters referred to in his witness statement.**

> **51. In my judgment, the obligation to take the Claimant's case at its highest for the purposes of the strike-out application, particularly where a litigant in person is involved, requires the Tribunal to do more than simply ask the claimant to be taken to the relevant material. The Tribunal should carefully consider the claim as pleaded and as set out in relevant supporting documentation before concluding that there is nothing of substance behind it. Insofar as it concludes that there is nothing of substance behind it, it should, in accordance with the obligation to adequately explain its reasoning, set out why it concludes that there is nothing in the claim."**

27. Because the material that explains the case may be in documents other than the claim form, whereas the employment tribunal is limited to determining the claims in the claim form (Chapman v Simon [1994] IRLR 124), consideration may need to be given to whether an amendment should be permitted, especially if this would result in the correct legal labels being applied to facts that have been pleaded, or are apparent from other documents in which the claimant seeks to explain the claim. The fact that a claim as pleaded has no reasonable prospect of success gives an employment judge a discretion to exercise as to whether the claim should be struck out: HM Prison Service v Dolby [2003] IRLR 694; Hasan v Tesco Stores Ltd UKEAT/0098/16. Part of the exercise of that discretion may involve consideration of whether an amendment should be permitted should the balance of justice in allowing or refusing the amendment permit if it would result in there being an arguable claim that the claimant should be permitted to advance. In Mbuisa v Cygnet Healthcare Ltd UKEAT/0119/18, HHJ Eady QC held at para. 21:

> **"Particular caution should be exercised if a case is badly pleaded, for example, by a litigant in person, especially in the case of a complainant whose first language is not English: taking the case at its highest, the ET may still ignore the possibility that it could have a reasonable prospect of success if properly pleaded, see Hassan v Tesco Stores Ltd UKEAT/0098/16 at para 15. An ET should not, of course, be deterred from striking out a claim where it is appropriate to do so but real caution should always be exercised, in particular where there is some confusion as to how a case is being put by a litigant in person; all the more so where - as Langstaff J observed in Hassan - the litigant's first language is not English or, I would suggest, where the litigant does not come from a background such that they would be familiar with having to articulate complex arguments in written form."**

28. From these cases a number of general propositions emerge, some generally well-understood, some not so much:

(1) No-one gains by truly hopeless cases being pursued to a hearing;

(2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;

(3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;

(4) The Claimant's case must ordinarily be taken at its highest;

(5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;

(6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;

(7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;

(8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;

(9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

29. If a litigant in person has pleaded a case poorly, strike out may seem like a short cut to deal with a case that would otherwise require a great deal of case management. A common scenario is that at a preliminary hearing for case management it proves difficult to identify the claims and issues within the relatively limited time available; the claimant is ordered to provide additional information and a preliminary hearing is fixed at which another employment judge will, amongst other things, have to consider whether to strike out the claim, or make a deposit order. The litigant in person, who struggled to plead the claim initially, unsurprisingly, struggles to provide the additional information and, in trying to produce what has been requested, under increasing pressure, produces a document that makes up for in quantity what it lacks in clarity. The employment judge at the preliminary hearing is now faced with determining strike out in a claim that is even less clear than it was before. This is a real problem. How can the judge assess whether the claim has no, or little, reasonable prospects of success if she/he does not really understand it?

30. There has to be a reasonable attempt at identifying the claims and the issues before considering strike out or making a deposit order. In some cases, a proper analysis of the pleadings, and any core documents in which the claimant seeks to identify the claims, may show that there really is no claim, and there are no issues to be identified; but more often there will be a claim if one reads the documents carefully, even if it might require an amendment. Strike out is not a way of avoiding rolling up one's sleeves and identifying, in reasonable detail, the claims and issues; doing so is a prerequisite of

considering whether the claim has reasonable prospects of success. Often it is argued that a claim is bound to fail because there is one issue that is hopeless. For example, in the protected disclosure context, it might be argued that the claimant will not be able to establish a reasonable belief in wrongdoing; however, it is generally not possible to analyse the issue of wrongdoing without considering what information the claimant contends has been disclosed and what type of wrongdoing the claimant contends the information tended to show.

70. Rule 37(1)(b) provides that a claim or response (or part) may be struck out if 'the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent… has been scandalous, unreasonable or vexatious'. "Scandalous" and "vexatious" are to be interpreted consistently with their usage in rule 37(1)(a). Rule 37(1)(b) also covers scenarios where a party has conducted the case in an "unreasonable" manner. For a tribunal to strike out for unreasonable conduct, it must be satisfied either that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; and in either case, the striking out must be a proportionate response. See Blockbuster Entertainment Ltd v James 2006 Neutral Citation Number: [2006] EWCA Civ 684.

71. In Bolch v Chipman EAT/1149/02 & EAT/1150/02, the earlier authorities (including De Keyser Ltd v Wilson EAT/1438/00) were reviewed and, at paragraph 55, the EAT noted:

> 55. However, quite apart from procedural matters, we turn to the questions that would require, as a matter of law as it appears to us, to be decided by a Tribunal, once faced properly with a question under Rule 15(2)(d).
>
> (1) There must be a conclusion by the Tribunal not simply that a party has behaved unreasonably but that the proceedings have been conducted by or on his behalf unreasonably.
>
> … We are by no means saying that there can be no finding that proceedings have been conducted in the relevantly objectionable ways, simply because the conduct that occurred is proven to have taken place outside the curtilage of the Tribunal. It is not necessary that such objectionable conduct should either amount to the sending of legal documents, or the receipt of legal documents, or their non-receipt, or behaviour in the waiting room, or behaviour in the court room.
>
> There can no doubt be a finding in relation to conduct outside the court room and outside the ambit of legal correspondence which could be found to be a method of conducting the proceedings. For example, it may well be, on appropriate facts, that a Tribunal might find that if there were a threat that unless proceedings were withdrawn some course or other could be taken, that that would amount to a scandalous method of conducting those proceedings. But as we have indicated, there was no such finding here.
>
> … If there is such to be a finding in respect of Rule 15 (2) (d), in this or any case, there must be a finding with appropriate reasons, that the conduct in question was conduct of the proceedings and, in the circumstances and context, amounted to scandalous, unreasonable or vexatious such conduct.
>
> This proposition is supported by the recent decision of the Court of Appeal, to which our attention has been drawn by Miss Genn, in Bennett v Southwark London Borough Council [2002] ICR 881 , where the conclusion was that conduct in the Tribunal by an advocate, by way of aberrant and offensive behaviour, was not, in those

circumstances, relevant conduct within Order 15 (2) (d).

(2) Assuming there be a finding that the proceedings have been conducted scandalously, unreasonably or vexatiously, that is not the final question so far as leading on to an order that the Notice of Appearance must be struck out.

The helpful and influential decision of the Employment Appeal Tribunal, per Lindsay P, in De Keyser Ltd v Wilson [2001] IRLR 324 is directly in point. De Keyser makes it plain that there can be circumstances in which a finding can lead straight to a debarring order. Such an example, and we note paragraph 25 of Lindsay P's judgment, is "wilful, deliberate or contumelious disobedience" of the Order of a court.

But in ordinary circumstances it is plain from Lindsay P's judgment that what is required before there can be a strike out of a Notice of Appearance or indeed an Originating Application is a conclusion as to whether a fair trial is or is not still possible.

That decision is not only a decision binding on Employment Tribunals and persuasive before this Tribunal, but it follows well-established authority — in the High Court in the persuasive decision of Logicrose Ltd v Southend United Football Club Ltd by Millett J (as he then was), reported in The Times 5 March 1998 , and in the Court of Appeal in Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167 ; both of which authorities were recited by Lindsay P in the course of his judgment in De Keyser.

An enquiry must be held by the tribunal, having made its finding as to the conduct in question, absent the exceptional case as to whether a fair trial is still possible. In Logicrose it was held that such a fair trial was still possible. In Arrow Nominees it was held that it was not.

The reason for the need for that question to be asked, save in the exceptional circumstance to which we and Lindsay P have referred, is that a striking out order is not (or at any rate not simply) regarded as a punishment. We quote from Millett J's judgment as reported in The Times:

> *"The deliberate and successful suppression of a material document was a serious abuse of the process of the court and might well merit the exclusion of the offender from all further participation in the trial. The reason was that it made the fair trial of the action impossible to achieve and judgment in favour of the offender unsafe.*
>
> *But if the threat of such exclusion produced the missing document then the object of Order 24, rule 16 was achieved. In his Lordship's judgment an action ought to be dismissed or the defence struck out only in the most exceptional circumstances once the missing document had been produced and then only, if, despite its production, there remained a real risk that justice could not be done.*
>
> *That might be the case if it was no longer possible to remedy the consequences of the document's suppression despite its production. It would not be right to drive a litigant from the judgment seat, without a determination of the issues, as a punishment for his conduct, however deplorable, unless there was a real risk that the conduct would render further proceedings unsatisfactory."*
>
> …

Employment tribunals must have the power to manage cases, and to make orders that unless their orders be complied with applications will be debarred or dismissed, and if there are breaches of those orders then of course, pursuant to what Lindsay P himself made clear in De Keyser, there will have been, absent a proper excuse, wilful disobedience of a court order, which can lead to a strike out.

There will plainly be circumstances, perhaps such as we indicated earlier by way of illustration, in which conduct of proceedings, for example by way of a threat, even if it results in some kind of promise of good behaviour, or something of that kind, by a respondent, can still have such lingering effect that the Tribunal is of the view that there can no longer be a fair trial. That can certainly be the case in the example given

by Millett J where documents have been fabricated, if, for example, no tribunal hearing the case can be satisfied that there are no further documents to be produced or that the present documents may not also have been fabricated, because confidence has been entirely lost in the good faith and honesty of one party or the other. But there must be, and certainly should have been in this case, in our judgment, a conclusion as to whether or not a fair trial can and could be held.

(3) Once there has been a conclusion, if there has been, that the proceedings have been conducted in breach of Rule 15(2)(d), and that a fair trial is not possible, there still remains the question as to what remedy the tribunal considers appropriate, which is proportionate to its conclusion. It is also possible, of course, that there can be a remedy, even in the absence of a conclusion that a fair trial is no longer possible, which amounts to some kind of punishment, but which, if it does not drive the defendant from the judgment seat (in the words of Millett J) may still be an appropriate penalty to impose, provided that it does not lead to a debarring from the case in its entirety, but some lesser penalty.

(4) But even if the question of a fair trial is found against such a party, the question still arises as to consequence. That is clear because the remedy, under Rule 15 (2) (d), is or can be the striking out of the Notice of Appearance. The effect of a Notice of Appearance being struck out is of course that there is no Notice of Appearance served. The consequence of there being no Notice of Appearance by a Respondent is set out in Rule 3 (3), and it reads as follows:

…

72. The fact that a party might be to some extent uncooperative or difficult would not be likely to meet the threshold (assuming a fair trial was still possible). However, “wilful, deliberate or contumelious disobedience" of an order might be.

73. In deciding whether to strike out a party’s case for non-compliance with an order under rule 37(1)(c), a tribunal must regard to the overriding objective set out in rule 2. This requires a tribunal to consider all relevant factors, including:
    - 73.1 the magnitude of the non-compliance
    - 73.2 whether the default was the responsibility of the party or his or her representative
    - 73.3 what disruption, unfairness or prejudice has been caused
    - 73.4 whether a fair hearing would still be possible, and
    - 73.5 whether striking out or some lesser remedy would be an appropriate response to the disobedience

    See Weir Valves and Controls (UK) Ltd v Armitage EAT/0296/03.

74. As all the cases on strike out make clear (under any of the sub-paragraphs of Rule 37(1) and its predecessors), strike out is a draconian option of last resort, which is only to be used sparingly and only when it is proportionate to do so. Even if there has been some wrongdoing by a party, then actions to address that wrongdoing which are short of strike out should be considered.

75. Furthermore, society’s interests in having alleged breaches of the Equality Act tried on their merits, rather than disposed of on procedural grounds, is an important and relevant factor.

Analysis and conclusions

76. The Claimant made clear that he still was dissatisfied with the fact that these cases had been listed to be heard together, and that some of them had been transferred from other regions. However, a case management order had already been made, and there was no relevant change of circumstances. The Claimant provided no fresh information to me to cause me to reverse the earlier decision. The Claimant's comments about what REJ Foxwell knew about the Claimant's previous complaint(s), including as a result of the president's letter of 18 August 2020, is not new information. Furthermore, and in any event, the Claimant's challenge to the Employment Appeal Tribunal had been unsuccessful. I declined to await the outcome of the Court of Appeal proceedings which the Claimant told me had been commenced.

77. The Claimant drew my attention to the decision in case number 3318988/2019. He referred in particular to paragraph 21, especially 21.5. In that case, the three person panel had decided that he had given "untrue evidence" about not being the claimant in certain other employment tribunal cases. To the extent that the Claimant suggests that REJ Foxwell knew about that decision prior to making his orders, that is not relevant, for the reasons mentioned in the previous paragraph. To the extent that the Claimant disagrees with the decision in that case, that is not a relevant matter for me, and he would have to follow the processes for appealing and/or seeking reconsideration, subject to the time limits for doing so (which are likely to have long since expired, but that is not a matter for me to decide). The Claimant also relies on the finding in paragraph 21.5 of that case as part of his justification for refusing to answer my questions about other cases. He points out (which I accept is logically accurate) that if he had refused to answer questions in that case about other claims, then the panel would not have been able to conclude that he had (a) denied being the claimant in other cases and (b) that that denial was untruthful. However, while it is logically true that a refusal to answer a question is not the same as an untruthful answer, that does not imply that a refusal to answer is necessarily an acceptable alternative to giving a truthful answer. Furthermore, a witness's or party's concern that an answer might be disbelieved is not, in itself, a valid reason to refuse to provide the answer which they believe to be truthful.

78. The Claimant also referred to the fact that in some of the cases, the respondents have not presented responses. This again is not a new argument and is dealt with, for example, in my orders of 10 May 2021, as well as other previous orders. Judgment against those respondents is not appropriate in the circumstances.

79. In this case, where some variation of Ramos, Ramas or Garcia has been used on the early conciliation certificate, and a different variation on the claim form, I am satisfied that that was an error. It was the Claimant's intention to try to only use Ramos throughout on some claims and only use Garcia throughout on others, and so it is only by mistake that he has used both names in some cases. He has not intentionally used "Ramas" in these cases, and that is also a mistake. Now that it has been clarified that the person using the names "L Garcia" and "L Ramos" is the same person, it is not in the interests of justice to reject any of these 9 claims as a result of the mistakes in the names. (For the avoidance of

doubt, an incorrect date of birth on the claim form is not a ground for rejection under either rule 10 or rule 12).

80. The Claimant has not provided any satisfactory basis on which I could order that his name be completely anonymised (his first preference) or else only disclosed to a limited extent, being “L Garcia” and “L Ramos” respectively, with there being a ban on identifying the two names as belonging to the same person (his request in the event that I rejected his first preference). The principles of open justice require that the identities of parties to proceedings be public information unless the requirements of Rule 50 are satisfied and there is a good enough reason to outweigh the very important open justice requirements. To the extent that the Claimant suggests that he might be victimised by judges (including regional employment judges) in the absence of anonymity, firstly, I do not accept that he would be victimised by judges and secondly, the granting of an anonymity order would not mean that the Claimant was entitled to conceal relevant information about past cases in any future legal proceedings.

81. It is, in fact, the Claimant’s position that no information about past claims would be relevant to future claims, but I do not agree. Firstly, where the Claimant brings a claim for financial losses (or loss of chance) relating to the income that he might have received from a particular job but for the (allegedly) discriminatory practices or advert, then the compensation that he might have received for the same period already in another case (or settlement) is potentially relevant information for the tribunal to have when assessing compensation. Secondly, if a person has a significant number of concurrent claims, then the issue of whether they have, or have not, given the same information in each case about their circumstances is potentially relevant to credibility. Thirdly, relevant issues for the tribunal to determine might relate to whether or not the claimant had a genuine interest in the job. See, for example, Keane v Investigo and ors EAT 0389/09, and Berry v Recruitment Revolution and ors EAT 0190/10. Information about other jobs which the Claimant might have applied for, or been offered, or been doing, at relevant times might be relevant to that issue, and information about what other claims the claimant has brought is likely to be relevant. Fourthly, one of the respondents in this case intends to argue that it contacted the claimant after he had issued the claim, told him that – regardless of any admitted or alleged indication to the contrary in the advert – he was eligible for consideration and the job was still available, and invited him to apply, and yet he did not apply. If an argument similar to that can be proved (and I have seen no evidence to support it, and I do not express any views on its likelihood of success) then – potentially at least – that could be relevant in other cases, when assessing the Claimant’s credibility, and/or the whether his interest in the job was relevant, and/or assessing the loss of chance.

82. The Claimant suggests that information about other claims, and/or other job applications, could not become relevant until, at the earliest, he has had a liability judgment in his favour and compensation falls to be assessed. I do not agree, for the reasons mentioned in the previous paragraph. That is, while the information might be relevant to remedy, it is not relevant only to remedy. (Aside: When I asked the Claimant to confirm that he had in fact disclosed the information at the remedy stage of those claims in which he had been successful, his answer

was evasive. However, the issue of what the Claimant did or did not disclose in cases which have already been decided is not something that I am going to take into account when reaching my decision on these 9 cases.)

83. The Claimant suggests that information about other claims, and/or other job applications, is not relevant at all, provided he confines his claims to injury to feelings awards only. I do not agree. In addition to the reasons stated in the previous two paragraphs, I think it is potentially relevant to the size of an injury to feelings award for the tribunal to have information about how frequently the claimant had seen an allegedly discriminatory advert and brought a claim about it. Whether a high frequency leads to an increase or decrease in the injury to feelings award is, of course, a matter for individual argument and decision on the facts of any given case; however, I am satisfied that it is a potentially relevant issue about which there should be disclosure and (potentially) evidence.

84. Therefore, anonymisation, or other measures to conceal the Claimant's identity from the general public, or from other employment tribunals, are inappropriate.

85. During this hearing, the Claimant expressly refused to answer questions from me, and questions from the other parties about whether he is subject of a GCRO. The Claimant seems to clearly understand what a GCRO is and, in fact, I agree with him that the existence of such an order would not have operated to prevent him bringing any of these 9 claims, or any other employment tribunal claims. I am invited by (some of) the Respondents to infer from (a) the fact that the name is not especially common and (b) the fact that the Claimant is knowledgeable about GCROs and (c) the fact that the Claimant refused to deny being the person to whom the GCRO applied (in the context of refusing to answer at all), that the Claimant is, on the balance of probabilities, the individual against whom there is a GCRO.

86. As I said during the hearing, I do not think I should give too much weight to the fact that the Claimant is knowledgeable about GCROs. He did not offer any specific reasons for being familiar with them, but it is a fact that the tribunal orders sent to him about this issue were sent many months before the hearing, and he has had time to research GCROs if he wanted to. He also spoke about having been a legal adviser several years ago. In any event, I do not think it is suspicious if someone has knowledge about GCROs; publicly available information about them is not intended to be secretive or confusing.

87. I also do not think I can take judicial notice of how rare or common is the name Lorenzo Garcia. If there were as few as 3 in London, then – on one view at least – I could not be satisfied that the inherent probability that the person with the GCRO was the Claimant was higher than around 34%. I therefore decline to speculate as to whether the Claimant's name is so uncommon that I should infer, on the balance of probabilities, that he is the person with the GCRO.

88. In terms of his refusal to answer the questions about it, it would not necessarily be unfair or unreasonable for me to treat that as sufficient evidence that this claimant is the same Lorenzo Garcia who is the subject of a GCRO. However, in my view, the fact that I could – hypothetically – make such a finding of fact

(and/or the fact that any tribunal panel dealing with any of the cases could – hypothetically – make such a finding of fact) misses the point that when a party is asked a direct question, both by way of case management orders and on oath while giving evidence, they are required to answer it. The question and potential follow up questions are potentially relevant to the issue of whether the Claimant was – for each claim – genuinely seeking employment, or whether there is some other explanation for why he brought employment tribunal proceedings. It is in the interests of justice that respondents can potentially explore with him whether he has a past history (in other jurisdictions) of bringing claims in circumstances which led to a GCRO.

89. I am not, of course, saying that if the Claimant has a GCRO then he could not succeed in one, some or all of the 9 claims. Nor am I saying that if the Claimant has a GCRO then it automatically follows that he would be found to have brought any employment tribunal proceedings vexatiously or without having had a genuine desire for the job in question. However, it remains the case, that there is EAT (in Berry) authority to the effect that:

> … the purpose of the [legislation] is not to provide a source of income for persons who complain of arguably discriminatory advertisements for job vacancies which they have in fact no wish or intention to fill, and that those who try to exploit the Regulations for financial gain in such circumstances are liable, as happened to the claimant in the **Investigo** case, to find themselves facing a liability for costs.

90. My decision was that the Respondent was entitled to the information. The Claimant was entitled to hold the opinion that my decision was wrong. However, by refusing to answer the questions despite their having put to him, my decision is that he has acted unreasonably. Furthermore, he has done so wilfully, deliberately and contumeliously. His view is that if he does not think a question is relevant, then he is entitled to simply refuse to answer it even when the judge tells him that he is obliged to answer.

91. Because I have found that this unreasonable conduct of the proceedings was wilful, deliberate or contumelious, then I can potentially move to considering sanction and proportionality. However, I will, for completeness, also comment on why I think this action does prevent a fair trial. If the matter proceeded to a final hearing, then the hypothetical options would be: (a) that I decide that the Claimant **is** the same person who has the GCRO and that is binding on the final hearing; (b) that I decide that the Claimant is **not** the same person who has the GCRO and that is binding on the final hearing; (c) I decline to make a finding and decide to leave it to final panel, which then decides that the Claimant **is** the same person who has the GCRO; (d) I decline to make a finding and decide to leave it to final panel which then decides that the Claimant is **not** the same person who has the GCRO.

92. The combination of a decision that the Claimant had no GCRO and the actual reality being that he had no GCRO does not create unfairness to either side. Any other combination, potentially is problematic.
    92.1 A decision that the Claimant **did** have a GCRO when he actually did not is potentially unfair to the Claimant. It might be argued that he had brought it on himself, but there is also the possibility for appeal, and for the Claimant

to challenge the judicial reasoning which had led to (on this hypothesis) and incorrect finding of fact.

92.2 A decision that the Claimant did **not** have a GCRO when he actually did is potentially unfair to the Respondent.

92.3 A decision that the Claimant **did** have a GCRO when he actually **did** is potentially unfair to the Respondent. His refusal to answer questions about it would deny the respondent the opportunity to pursue lines of enquiry (or, at the very least, put the Respondent to considerable expense in seeking to uncover information which the other party already possesses and is refusing to disclose).

93. In relation to employment history (paragraph 2.1.10) the situation is similar but slightly different. The Claimant refused to supply that information in advance of the hearing and did not put it in his written statement either. However, he did answer some questions about it during his evidence. I regard him as being in fairly serious breach of the tribunal orders. However, I do not conclude, on balance, that it was necessarily wilful, deliberate or contumelious. I am satisfied that it was clear to the Claimant that, just because these particular orders had not been converted to Unless Orders, that did not mean that he was no longer obliged to supply the information. I am slightly concerned that when the Claimant was seeking to justify the extreme lateness of his witness statements, he said that time spent working was one of the causes of delay, whereas when being asked questions about whether he was genuinely interested in jobs as a cleaner or cashier, he said that he could not estimate accurately how often he worked as a translator or market researcher, and thought it might be around 6 or 7 assignments per year. However, I take into account that the Claimant is a litigant in person and that he had not been told clearly and unequivocally that his claims would be struck out for failure to supply this information. I also do not think that his delay (and he has still not complied) prevents a fair trial. For example, if this was the only issue, then an alternative to striking out the claim might be to award costs to the Respondent or to take no action at all other than, perhaps, to make an Unless Order. Thus, taking account of how draconian it is to strike out a claim, then I would have taken action short of strike out for this failure alone.

94. One thing to mention is that before relenting, and supplying some (limited) information about his employment history, the Claimant had expressed the view that even if he was ordered to supply this information by a certain date, he did not have to comply with that order if he was still trying to make up his mind as to whether to claim financial loss/loss of chance or whether to limit to injury to feelings only. Further, he expressed the view that that even if he was ordered to supply this information by a certain date, he did not have to comply with that order if, in his opinion, there was no need to supply it until after liability had been decided and remedy was about to be considered.

95. Similarly to the GCRO issue, the Claimant refused to engage with the orders (2.1.8 and 2.1.9) requiring him to supply information about other claims that he had brought and other early conciliations which he had commenced. This information was potentially relevant for reasons similar to those mentioned when discussing his refusal to answer about the GCRO. It was possible, in my opinion, for the Claimant to disclose the information and to then argue his point about why

the existence of other claims should not be a point in a respondent's favour in these 9 cases. However, he refused to supply it, stating that part of his reason was that an employment tribunal decision had said that he had been untruthful when he had answered questions about other claims that he had brought, and he therefore considered it more appropriate to refuse to answer.

96. My decision was that the Respondent was entitled to the information. The Claimant was entitled to hold the opinion that my decision was wrong. However, by refusing to answer the questions despite their having put to him, my decision is that he has acted unreasonably. Furthermore, he has done so wilfully, deliberately and contumeliously. His view is that if he does not think a question is appropriate, then he is entitled to simply refuse to answer it even when the judge tells him that he is obliged to answer.

97. I do not think that a fair trial without the answer to these questions is possible. The Claimant has refused to supply the information and I do not think that giving him a further opportunity to do so is a reasonable alternative to striking out for his deliberate refusal to deal with the matter in response to earlier written orders and the questions put to him in the hearing.

98. My conclusion is that, even apart from the failure to comply with the orders for disclosure of employment history, the Claimant has conducted this litigation unreasonably in 2 respects: refusing to answer about the GCRO and refusing to answer about the number of other claims/conciliations. In giving his reasons for his stance about these issues (echoed in part about his reasons for not supplying the employment history in advance of answering some oral questions about it), the Claimant has made clear that he believes that he only has to comply with orders if he agrees with those orders.

99. The Claimant does not fail to understand that litigation imposes obligations on the parties. He has, for example, applied for strike out of responses, or else Rule 21 judgments, when he thinks that he can persuade a judge that a respondent should face the consequences of some (alleged) failure to comply with obligations.

100. It is proportionate to strike out these claims because the Claimant has already had sufficient opportunity to demonstrate a willingness to comply with the orders and, has made expressly clear that he is not willing to comply.

Employment Judge Quill

Date: 25 July 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

24 August 2022

FOR EMPLOYMENT TRIBUNALS