Case Number: 3303903/2019
3313477/2019
3324255/2019
3326392/2019

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms E Curtis	**v**	**Quantum Care Limited**

Heard at: Watford by CVP video **On**: 7 September 2022
Before: Employment Judge R Lewis

Appearances
For the Claimant: In person, assisted by Mr Hoad
For the Respondent: Mr S McHugh, Counsel and Mr N Donaldson, Solicitor

JUDGMENT

The claim is struck out.

REASONS

Introduction

1. This judgment should be read in continuation with my case management order of 1 September 2022. The seven day hearing of this case was due to start that day, but was unable to proceed because the claimant reported having just tested positive for covid.

2. In addition to the trial bundle which I had on 1 September and the bundle of respondent's witness statements, I had at this hearing a further preliminary hearing bundle; a spreadsheet produced by the claimant with annotations on the trial bundle index; and a written submission from Mr McHugh. The claimant confirmed that she had all of these.

3. In these reasons I refer to numbers from the trial bundle with preface letter T; and from the bundle prepared for today with S.

4. I had had the opportunity to read before the start of the hearing. I explained that I would first invite Mr McHugh to make his oral submissions. He did so in about 50 minutes. I then asked the claimant if there were any points which she

asked to have clarified, and she did not. The hearing then adjourned for just under an hour to enable the claimant to prepare her reply. The claimant's reply lasted about one hour, until about 1.10pm. I then adjourned until 3.30pm, when I gave judgment. The claimant asked for written reasons.

The applicable rules

5. This was the respondent's application under Rule 37 of the Tribunal's Rules of Procedure which states as follows:-

> "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—
> …
> (b) that 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;
>
> (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)".

6. When considering an application for strike out, the tribunal must of course have regard to the overriding objective, and must seek to give effect to it. The overriding objective is set out at Rule 2 and includes in particular:-

> "(a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
>
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings…"

General approach

7. There are a number of matters of general approach to consider. I do not set them out necessarily in order of priority.

8. The purpose of the tribunal is to afford access to justice by giving parties the opportunity to have cases heard and resolved. It could be said that strike out is the most extreme power of the tribunal, because when that power is exercised, a party is as a result deprived of the opportunity of a hearing.

9. When considering the rules of procedure, the tribunal would do well to remember the old saying that the rules of procedure are the servant of justice,

not the master. Not every failure to comply fully with a rule of procedure will give rise to any sanction, let alone strike out.

10. When considering the first line of the overriding objective, namely the need to place parties on equal footing, there are many considerations. A claimant in person, as the claimant has been throughout, is engaging in what might be called a form of managed conflict. It is inherently a stressful experience. In this case the claimant referred to suffering from stress, and although she stated that she is on medication and improving, I had no material medical evidence.

11. A litigant in person who faces a professionally represented opponent is bound to feel that she is a participant in an unequal contest. The litigant in person is on unfamiliar territory, using unfamiliar language, to speak about concepts which she may not understand. A litigant in person may have access to advice which is not professionally qualified, or not even reliable or competent. Although the claimant in this case said nothing about legal advice, I was struck, on reading the bundle, by the contrast between documents written in her name which plainly had had no professional input (eg T125) and those which appeared to have some limited independent input (eg her resignation letter at T697). I am aware that the voluntary sector for legal advice is over-stretched, and that publicly funded legal aid is not, and never has been, available for representation in tribunals.

12. The tribunal must have regard to the problems which may arise from ignorance and inexperience of the law and procedure of the tribunal. Placing parties on an equal footing requires the tribunal to apply to the litigant in person a realistic standard of how to advance their cases. More bluntly, no litigant in person, or lay representative, is expected to work to the standard of a solicitor or barrister. On a near daily basis the tribunal encounters claimants in person who, like Ms Curtis, bring to their claims an unrealistic expectation of the life and work of a tribunal. The claimant's schedule of loss of June 2021 was a striking example.

13. A litigant in person is not expected to match the knowledge of law and procedure shown by a professional opponent. She is however expected to prepare, and where she encounters a point which is unfamiliar, she is expected to make some reasonable effort to understand it; or to seek advice; or to research online; or to ask the tribunal for assistance, and having received guidance from the tribunal, she may be expected to follow it. Where, as is often the case, a claimant is on unfamiliar territory, the reasonable expectation of the tribunal is that the claimant has insight into her unfamiliarity with the process, and the complications which it may cause.

14. The tribunal seeks to avoid unnecessary formality. It should encourage informality of language and presentation, but informality must be balanced with respect for structure and discipline. It is a subtle balancing exercise, which many litigants find difficult to maintain.

15. All of these factors point to the tribunal making significant allowances in favour of a litigant in person. Those allowances are not unqualified. The tribunal's

expectation is that a litigant in person prepares fully and thoughtfully for her case, particularly in the present climate, where inordinate delay between case management and final hearings has become the norm.

16. Delay between case management and final hearing is the shameful reality of the tribunal's work. Nevertheless, it gives the claimant ample time and opportunity to prepare, including time and opportunity to seek help where needed. I also bear in mind the potential argument that where a case is postponed and relisted, that may give rise to another lengthy future delay, which in turn may allow a claimant the time and opportunity to repair errors and shortcomings. That is not a purely neutral matter, because in that period of future delay, further costs may well be incurred by respondents and further demands made on the resource of the tribunal. Those factors must be taken into account.

17. When looking into the future, the tribunal should have regard to the trite observation that past conduct is often a significant indication of future conduct. If the tribunal identifies shortcomings by a claimant, it must ask itself whether a period of delay is likely to produce a different outcome.

18. The tribunal can be flexible and balanced when it considers points of procedure, deadlines, or lay person's attempts to comply with what they understand to be the tribunal's requirements. The tribunal cannot be balanced in its application of the law: a claimant who advances points or arguments which are simply wrong in law has to be told that that is what she is doing.

History of the claim

19. A preliminary hearing took place on 11 February 2021 before Employment Judge Shastri-Hurst. Her lengthy and detailed reasons were sent to the parties on 22 March 2021 (T92-120).

20. At paragraphs 32 to 48 of her reasons, Judge Shastri-Hurst set out a summary of her findings on the claimant's employment and litigation history, which I respectfully adopt and repeat as follows:-

> "32. The Claimant began working for the Respondent on 12 August 2013 as a carer. Her Statement of Particulars is at p1517. Of those terms, the following are of potential relevance:
>
> > Clause 5: "Under your contract of employment, you may be required or permitted to work at or from any of Quantum Care's Homes. …"
> >
> > Clause 7: "… The Staff Handbook and all the sections of the HR Manual referred to in the Staff Handbook form part of your contract of employment."
> >
> > Clause 16: "… Your entitlement to sick pay is subject to compliance with Quantum Care's rules for reporting absence and for observing the other requirements of the Sick Pay Scheme as set out in the Staff Handbook and HR Manual."

> Clause 19: "… Quantum Care reserves the right to suspend you for no longer than reasonably necessary for the purposes of investigating any allegation of misconduct or neglect against you."

33. I have also had sight of parts of the HR Manual, including the sick pay policy, at p1604/1606, which provides as follows:

> Statutory Sick Pay (SSP)
>
> All employees have a right to SSP as long as they earn more than the lower earnings level (Payroll can confirm the current rate). SSP is not, however, payable for the first three qualifying days of absence. A qualifying day is a day on which you are normally expected to work under your contract of employment. …
>
> Occupational Sick Pay (OSP)
>
> OSP is sick pay over and above the statutory amount paid by Quantum Care. This is entirely at the discretion of management but will not be unreasonably withheld as long as you have conformed to the notification requirements and have produced any necessary medical certificates, including self- certificates. …
>
> …
>
> If you take sickness absence after a disciplinary investigation or formal disciplinary process involving you has been started by Quantum Care, then you will not usually receive any occupational sick pay. In exceptional circumstances, the Director of Human Resources and Training or the Director of Operations may at their discretion agree to pay occupational sick pay.

34. The last paragraph cited above (starting "If you take sickness absence") was confirmed on 16 January 2019 by Margaret Lillie, a Unison Convenor, to be a variation regarding company sick pay ("CSP") that was agreed as part of a consultation with the union in 2014 – p1562.

35. On 8 October 2013, the Claimant signed to show that she understood the terms and conditions of her employment, and that she had received a copy of the Staff Handbook – p1521. Her signature also appears on a document confirming receipt of the Staff Handbook on 14 September 2016 – p1522. The Claimant today told me that she did not sign this; she could not however explain how her signature appeared on the document. I note that the signature and handwriting on pp1521 and 1522 are extremely similar. I therefore find that the Claimant signed both these documents to confirm receipt of a Staff Handbook in both 2013 and 2016.

Disciplinary process leading to sickness absence

36. On 3 August 2018, the Claimant sent a text message to Ms Karen Parker, the Regional Manager, complaining about Mrs Sharon Howe (Home Manager) and her treatment of some carp in a fish pond for which the

Respondent was responsible. On 4 August 2018, a disciplinary process was commenced against the Claimant due to the alleged inappropriate nature of that message.

37. Mrs Howe suspended the Claimant on 4 August 2018: this was confirmed by the Respondent in a letter dated 13 August 2018 – p 1636. The allegation was recorded as being that the Claimant had "allegedly [sent] an inappropriate message about your Home Manager, Sharon Howe to the Regional Manager, Karen Parker".

38. On 13 August 2018, the Claimant raised a grievance which is at p1637. On 8 November 2018, the Respondent sent the Claimant a letter informing her that, as of 12 November 2018, her suspension would be lifted and, although there was a disciplinary case to answer, any sanction would be short of dismissal (i.e. the conduct did not reach the level of gross misconduct) – p1643-1645.

39. That letter also provided that, as of 12 November 2018, the Claimant was required to return to work; however, she was required to work at another of the Respondent's care homes. The letter pointed out the mobility clause within the Claimant's contract of employment (cited above). On 12 November 2018, the Claimant sent the Respondent a fit note stating that she was unfit to work: the fit note is dated as being issued on 12 November 2018, but is backdated from 1 November to 30 December 2018 – email at C/1646, fit note at D/2218.

40. Due to the Claimant being suspended up to and including 11 November, and the Claimant only notifying the Respondent of her fit note on 12 November, I find that the Claimant was on sickness absence leave from 12 November 2018, not from 1 November 2018. The Claimant did not return to work but remained on sick leave.

41. Upon receipt of the Claimant's fit note, the Respondent replied by letter of 21 November 2018 – p1647. In that letter, the Respondent records some of the terms within the Staff Handbook regarding sick pay:

> If you take sickness absence after a disciplinary investigation or formal disciplinary process involving you has been started by Quantum Care, then you will not usually receive any occupational sick pay.

42. The Claimant submitted two claim forms, dated 16 February and 1 April 2019. Upon acceptance of the second claim form (3313477/2019), EJ McNeil QC directed that (A/47):

> Only the claims for disability discrimination and breach of contract are accepted.

43. On 25 April 2019, the first and second claims were consolidated – A/52.

44. On 17 July 2019, the Claimant resigned by letter at pp1851-1875, having not returned to work since being signed as unfit to work on 12 November 2018.

45. On 26 July 2019, EJ Lewis directed that the Claimant clarify if she has a disability and, if so, what it is – A/72. No answer was ever received to this request.

46. On 4 October 2019, the Claimant submitted her third ET1, followed on 25 November 2019 by her fourth ET1. It is noted that there is no ACAS Early Conciliation certificate for this fourth claim. It appears however that this fourth claim is a carbon copy of the third claim and so adds nothing further.

47. Throughout this chronology, the Respondent had submitted the requisite ET3 forms with Grounds of Resistance in time. The final Consolidated Grounds of Resistance, covering all claim forms was filed on 6 January 2020 – A/136- 154.

48. On 3 March 2020, Regional Employment Judge Foxwell ordered that all four of the Claimant's claims be consolidated under claim number 3303903/2019 – A/188."

After the hearing before Judge Shastri-Hurst

21. The outcome of the hearing on 11 February was that the great majority of the claimant's claims were struck out, and further claims were dismissed following the claimant's failure to comply with deposit orders directed by Judge Shastri-Hurst. (I was told at this hearing that the claimant has appealed against all or some of Judge Shastri-Hurst's Orders, but that as her appeal was presented late, it has been listed for a preliminary hearing on whether it may proceed out of time).

22. In light of Judge Shastri-Hurst's rulings, the only claims which proceeded were a claim for constructive unfair dismissal, and for notice pay. The respondent, which contended that the claimant's employment ended upon her voluntary resignation, conceded that if the claimant was found to have been dismissed, her claim for notice pay must succeed as a matter of logic. The notice pay claim therefore was entirely dependent on the claim for unfair dismissal.

23. Judge Shastri-Hurst directed a preliminary hearing to take place before herself on 9 June 2021 to continue with case management in light of the decisions given on and after 11 February. In light of comments made by the claimant in correspondence, she in the event recused herself from doing so, and the case management hearing took place before Employment Judge Alliott on 9 June 2021. His case management order was sent to the parties on 1 July (T170-176).

Case management by Judge Alliott

24. Judge Alliott listed this case for seven days to start on 1 September 2022, an estimate which he said was based on the claimant's intention to give evidence and call 15 witnesses, and the intention of the respondent to call 5. He commented that that appeared an excessive allocation of time. He reminded the parties that the only remaining claims were constructive unfair dismissal and wrongful dismissal.

25. At paragraph 3 of his order he wrote:-

> "I explained to the claimant in some detail the nature of the claims that she has remaining. I explained to the claimant that the law will imply into her contract of employment a term of mutual trust and confidence. The claimant will have to establish that the respondent was in serious or fundamental breach of that term either by a single act or a series of connected acts. I explained that the claimant will have to establish that she resigned, at least in part, because of any breach established.
>
> I stressed to the claimant that any witnesses she intended to call and documents she intended to disclose should be limited to evidence relevant to the issues between the parties."

26. Judge Alliott directed that two documents provided by the claimant in response to Judge Shastri-Hurst's orders would count as the particulars of her constructive dismissal claim. They were in the bundle at T125 and T126, and separately or together were very close to incomprehensible. Broad brush, it is possible to understand that the claimant was aggrieved by the procedural conduct of grievance and disciplinary procedures. The following extract, which repeats the original verbatim, is set out to illustrate the point (T125):

> "No outcomes to 30th Nov 2015 and 5th July 2017 states (r) not complying with internal complaints or grievances processes as (KP) deleted all notes 18th July 2017 grievance meeting, it was evidence of the (c) suffering through (SH) unjust repeated behaviour the (c) had to think of her job security and safety as a riled (SH) was dangerous to the (c) after a RTA or in general as of unprovoked behaviour from (SH) then turned against the (c) through (SH) and (KP) failures the 3rd Aug 2018 text was about (SH) scapegoating her responsibilities as a (HM) of the cruelty to the Carp, dying inhumanely. (SH) (KP) use inept behaviour for their personal lives issues as an excuse for their failures. (c) Bundles provide this in evidence."

27. On 16 June 2021 the claimant provided a schedule of loss (T135). It was written in disregard of the judgment of Judge Shastri-Hurst and its consequences, and set out significant sums for claims which (a) had been struck out, and (b) which could never be before the tribunal as the tribunal does not have power to hear them (eg "breach of health and safety laws in the workplace" and "data protection breaches"). The total was £271,000. She had written on her ET1s that her normal net monthly pay was £996.

28. Correspondence in the 14 months between the hearing before Judge Alliott and the start of the hearing before me was extensive and disproportionate, and it

would not assist to attempt to summarise it here. The respondent made a helpful attempt to summarise it in pages S2 to S67. I note only the following:-

- On 17 August 2021 at Judge Alliott's direction, the tribunal reminded the parties of the need to adhere to the case management timetable (S3);

- On 11 November 2021 at Judge Alliott's direction, the tribunal extended time for exchange of witness statements to 31 January 2022 and wrote as follows (S10):

> "[The Judge] is concerned at the volume of documents that it appears the claimant is insisting go into the hearing bundle. Documents only relevant to her appeal to the Employment Appeal Tribunal and that concern the claims that have been struck out MUST NOT be in the bundle. If the claimant persists in asserting that all the documents are relevant then the respondent has permission to produce its own bundle of core, relevant documents for use at the Full Merit hearing. The larger bundle(s) can be available for relevance if required."

- On 5 January 2022 Mr Donaldson sent the claimant the index to the 956 page bundle, a link to the bundle, and the password to access it (T11);

- Correspondence in about February 2022 concerned the claimant's wish to test the evidence of about 20 former colleagues, either through the disclosure process or by oral evidence.

- On 8 March 2022 at Judge Alliott's direction, time for exchange of witness statements was extended to 31 March. In reply to a point raised by the claimant, the tribunal wrote (S24):

> "It is not possible to question witness' in advance of the hearing. Questioning of witnesses takes place at the final hearing.
>
> Once again Employment Judge Alliott remind the parties that only relevant evidence should be placed before the tribunal.
>
> The claimant should be aware that if she calls witness evidence or refers to documentation that the tribunal considers to be irrelevant then the tribunal may exclude and disregard it;"

- The care sector in which the respondent operates was subject to health related restrictions. The claimant also reported that a witness suffered from covid. The parties agreed to exchange witness statements on 3 June 2022, the agreement being recorded on 27 April (S28/29);

- In response to further correspondence, at Judge Alliott's direction on 7 July, the tribunal extended time to exchange statements to 4pm on15 July. The letter wrote (bold and caps in original, S37):

> "**If a party fails to comply with this order an Employment Judge MAY WELL STRIKE OUT THE WHOLE CLAIM OR RESPONSE.**"

- The same letter reminded the claimant that it was her responsibility to call her witnesses and arrange their attendance. Judge Alliott repeated that the respondent was to send the claimant a copy of the bundle, commenting:

> "It is disproportionate for the respondent to provide a hard copy of all the documents relied on by the claimant as most appear to be irrelevant. It is for the claimant to bring 2 copies of any documents relied on not in the respondent's core bundle to the hearing."

- By email sent on 15 July at 4pm exactly (S40) the claimant sent the respondent a document headed "Witness Statement", to which I return in discussion below.

- At about the same time hard copies of the two ring binders which make up the bundle were sent to the claimant. The claimant has told me that the parcel contained one binder and not two, and was sent to the wrong address. Mr Donaldson said that he had made up the parcel himself and that it contained both binders. I can make no finding about the delivery. I note that the claimant had a soft copy of the bundle since 5 January 2022.

- Further correspondence of increasing acrimony ensued. The respondent did not regard the 15 July document as the claimant's witness statement. It thought therefore that it was under no obligation to serve its witness statements. While I agree with the first point, it would have been more in accordance with the overriding objective for the respondent to serve its witness statements unilaterally on or after 15 July, recognising the imbalance of knowledge and experience between the parties, and irrespective of the ill-will generated in the correspondence.

- On 10 August 2022 at Judge Alliott's direction, the tribunal directed immediate provision of the respondent's witness statements and stated (S59):

> "The claimant is warned that if she has not served a witness statement for herself and any of her witnesses an Employment Judge may well conclude that the case is not in a fit state to be tried and one option may be to strike out the Claimant's claim for failure to comply with Case management orders."

- On 23 August 2022 the tribunal wrote at the direction of Employment Judge Quill, refusing the claimant's application for a postponement (made on grounds of there being a pending appeal), advising the claimant of the procedure for applying for witness orders, and reminding the parties that Judge Alliott's directions of 10 August remain fully in force (S65).

- The claimant's reply (S65) sent at 23:46 on 24 August is referred to below as it was one part of the basis for a strike out application made by Mr McHugh.

- The matter came before me on 1 September when, as it happened, the claimant was unable to proceed due to a very recent positive covid test.

Submissions

29. Mr McHugh submitted that the tribunal should strike out the claim because the claimant had failed to comply with Orders of the tribunal, and had conducted the claim unreasonably. I deal with each aspect separately.

The witness statements

30. Judge Alliott's order of 9 June 2021 had written (T174, bold in original, underlining added):

> " The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **4pm, 20 October 2021**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant's witness statement must include a statement of the amount of compensation or damages she is claiming, together with an explanation of how it has been calculated."

31. The claimant's witness statement of 15 July was set out entirely in question and answer format. The first four lines read as follows:-

> "Is it true you worked for Quantum Care (QC)?
>
> Yes.
>
> How many years service did you provide?
>
> I started 12th August 2013 so that is just short of six years."

32. That is a distinctly odd format, unique in my professional experience, but nevertheless the basis of a workable document if there were no other problems.

33. No paragraphs were numbered, contrary to Judge Alliott's direction. The statement was prepared 54 weeks after Judge Alliott's order; tiresome though it would have been, it would have been the work of a few minutes for everyone at the start of a hearing to add numbering to the document before them.

34. I now turn to more serious shortcomings in the statement. The statement did not contain a single cross reference to the bundle. Given the time and energy generated by disputes about bundles, and given that the claimant had had access to the respondent's bundle since 5 January, that was a more difficult

and serious non-compliance. That was a serious non-compliance, but it was evidence of preparation without analysis or focus, and an indication that time would be wasted during the claimant's evidence.

35. Judge Alliott's order had referred to "full" statements, containing "all of the evidence" and had stated that there would be, "No additional evidence". The final three lines of the claimant's statement were as follows (S42):-

> "Is it true that a meeting took place… regarding an anonymous letter?
>
> Yes.
>
> More to be asked in the final hearing."

36. Judge Alliott, had at least three times in a single sentence, directed that the totality of the evidence was to be in the witness statement. His directions were not a mere formality: they were a clear indication of an essential element in trial preparation, namely that each side places its cards fully on the table well in advance, and that as result each party knows in advance the full case which it will have to answer.

37. The substance of the statement appeared to be grievance and complaint about management practice. It referred to anecdote without any form of detail, reference, or particularisation. It made general allegations (eg respectively "A resident swung her stick at me" and "I was monitored excessively and blamed for any concerns." These allegations were too vague, and too imprecise, to be capable of fair trial without a great deal more information.

38. Despite the lapse of some 15 months since Judge Shastri-Hurst's order, the statement referred to matters which had been struck out ("I was victimised for whistleblowing"). This was a serious indication of either poor preparation, or poor self discipline on the part of the claimant.

39. Nevertheless, even taken cumulatively, the above were not the most serious problems with the claimant's statement. I now turn to the major significant, substantial difficulties with the statement. It was wholly silent on the great majority of the elements of a claim of constructive dismissal which are for the claimant to prove.

40. The statement did not identify any "series of fundamental breaches" as Judge Alliott had advised. It did not state how or when or why the claimant reached the decision to "resign" her employment. It did not explain the issue of delay, ie the passage of time between the claimant's last attendance in the workplace (about 4 August 2018) and the date of her resignation on 17 July 2019. To the extent that the respondent was to say that all management actions were for good and proper cause, the claimant did not address those points. Despite the excessive schedule of loss, the claimant gave no evidence on remedy, and was silent on when and whether she next applied for employment, and/or her benefits history after resignation.

41. Taking all the above point togethers, I find that the claimant's email of 4pm on 15 July was not a witness statement provided in compliance with the tribunal's case management orders, and was not capable of being the basis of a fair trial.

Other statement

42. I add for sake of completeness that the witness statement bundle contained a document which the claimant had provided to the respondent, which was said to be a witness statement by Mr Harknett. In it Mr Harknett reported what he claimed he had been told by a relative employed by the respondent about the management of the covid pandemic. As the claimant's employment ended several months before the first diagnosis of covid in the United Kingdom, it is impossible to see how this could have assisted the tribunal.

43. On 1 September 2022 the claimant told me that she had had difficulty contacting former colleagues as potential witnesses, and I told her what the standard procedure was: to write to the former colleagues care of the respondent's solicitor, with a short explanation of why she wanted to contact them, and asking them to contact her, giving contact details. It would then be a matter for the former colleagues, each acting entirely voluntarily, as to how they responded. I did not know, when I said that, that Judge Alliott had advised the same procedure when the claimant brought up the same question on 9 June 2021. Although it is not mentioned in Judge Alliott's order, I accept the observations of Mr Donaldson and Mr McHugh that that was done, and I accept that the claimant at no point followed that procedure.

Bundle of documents

44. Preparation of the bundle had, as appears from the above, generated much more heat than light. I accept that in general litigants in person struggle with the concept of relevant disclosure, working from a professionally prepared bundle (especially through distrust of the opposing representative), and the burdens created by the indiscriminate approach of subject access requests. In this case a professionally prepared bundle was available eight months before the start of trial. Judge Alliott's proposal, which was that any additional documents should be brought to the tribunal in two sets by the claimant was pragmatic, and not unusual. That approach very often leads to the litigant in person preparing a modest bundle of additional documents and handing them up to the tribunal. My personal approach, when that happens, is usually to explain that the tribunal will work from the professionally prepared bundle, and will refer to the claimant's separate bundle as and when necessary: in other words, cross the bridge of the claimant's documents when come to. For that to happen, identical sets of the litigant's additional documents, bundled and numbered, must be available to both sides, the tribunal, and, ideally, for the witness table. (I assume that Judge Alliott had in mind the latter two when he gave his direction).

45. It was common ground in this case that the claimant had not provided a set of her additional documents to the respondent before 1 September, ie the first

listed day. She was then unable to attend that day due to covid. When I asked her how many sets of the documents she had she was uncertain whether she had one set or two; but of course if the respondent had not been provided in advance with the documents she would have needed at least four sets: for herself, the respondent, potentially the witness table, and for the judge.

46. When I asked the claimant how many pages her additional documents might be, she answered that there were about 2,000 pages. I did not at that point go on to enquire whether they had been indexed or paginated.

47. I find that the claimant has failed to comply with orders of the tribunal about disclosure and provision of documents; and that the documents available to the claimant on 1 September 2022 were not capable of forming the basis of a fair trial.

Other points

48. Mr McHugh submitted that the claimant's unreasonable conduct of the proceedings manifested in other respects. I will deal with these relatively briefly.

49. One was that the claimant had failed to return the pre-hearing checklist. The claimant did not challenge this. I agree that a failure to complete and return the checklist is capable of constituting unreasonable conduct of proceedings. However, to deprive a party of the right of hearing on that ground would be to take procedure as the master of justice. I declined to do so.

50. Secondly, I had on 1 September directed the claimant to submit evidence of positive covid testing on her behalf and that of Mr Hoad. She had provided a blurred photograph (not a screen shot) of a positive rapid flow test. It was not dated, and there was no evidence that it belonged to the claimant. As it was a photograph, its meta data could not be checked. There was no evidence to support Mr McHugh's submission that that was done as a deliberate ploy to mislead the tribunal. It did not seem to me that the claimant has been proved to have conducted the case unreasonably in this respect, and given the ambiguities of test flow information, it would not have been at all right to strike out the claim for failure to do so.

51. Thirdly, Mr McHugh submitted that the claimant's language about Judge Shastri-Hurst and Mr Donaldson was abusive and outrageous. He referred to the claimant's written submissions about Judge Shastri-Hurst's judgment, and in particular to the claimant's email of 24 August, which (S65) started as follows, underlining added:

> "Watford tribunal only display hostility towards the claimant thats noted now a another Judge from Watford that is governed by HCC is permitted so ET Judge Quill is to place his qualifications and who he or she is to be fair to a LIP. It seems that Mr Donaldson has secured a sure deal by a new Judge thats why he has gone quiet (bank

> details need to be checked) as of the biast treatment to the claimant and a strict compliance and the fact Quill knows about something he knows nothing about…."

52. I agree with Mr McHugh that the underlined words imply that Mr Donaldson bribed, at least tried to bribe, Judge Quill. At this hearing I asked the claimant if she wished to take the opportunity to say anything about that email. Although I did not say so in terms, I am confident that she understood that I was offering her the opportunity to withdraw and apologise for it. She said that she had been stressed, but that was all that she had to say.

53. I agree that the claimant has expressed herself rudely about Judges Shastri-Hurst and Quill and Mr Donaldson. Accepting that the email of 24 August alleges that Mr Donaldson paid a bribe to Judge Quill, the allegation is absurd, not least because it is unsupported by evidence, and that position is, at least, one which the claimant has no capacity to change. I agree that the use of personalised abusive language towards an opponent or a judge constitutes unreasonable conduct of proceedings.

54. I declined to strike out on this ground first because the work of a judge, and of a solicitor, requires both broad shoulders and a thick skin; and secondly because work on this case indicates that the claimant has a significant difficulty in expressing herself properly in writing. If the matter had proceeded, I would have made very clear to her that the slightest recurrence of this degree of personalised rudeness could lead to a strike out.

The claimant's replies

55. The claimant's submissions in reply were troubling. She said almost nothing about the grounds of application until, after about 50 minutes of submissions, I asked her to. She instead reiterated a number of her workplace grievances, and her complaints about how she had been managed. Some of these issues went back many years; many of them pre-dated her resignation by a matter of years; and many appeared to depend on an interpretation of an event or a document which I could not decide at this hearing, but which could give rise, if relevant, to a fierce evidential battle at the full hearing.

56. She raised and had raised points to indicate how difficult she had found case preparation, and disadvantaged in comparison with the respondent's representatives. I accept that factually that was the case. I do not accept that she has shown evidence of impropriety on the part of Mr Donaldson, such as to be a material consideration in the exercise of my discretion.

57. I accept that the claimant had full access to the respondent's bundle by 5 January 2022. I can make no finding on what happened to a hard copy bundle which allegedly went missing in transit. I accept that at the June 2021 hearing Judge Alliott told the claimant (but did not record in his order) about the conventional procedure for accessing former colleagues who might be potential witnesses. I accept the respondent's submission that the claimant never used

that procedure. I repeat that even if the claimant had used it, there is no telling now what responses she might have received.

58. Finally, the claimant referred to errors as she identified them in the index to the 956 page bundle. I have dealt with this on 1 September but I repeat the point. The claimant was asked to identify pure factual or typing mistakes in the index. She identified about half a dozen mistaken numbers or mistaken descriptions. These were routine slips, presumably in Mr Donaldson's office, and nothing turns on any of them.

59. I had not asked the claimant at that stage to say what she challenged in the contents of any document, although that was part of her reply and I disregarded it. If the claimant wished to demonstrate that the bundle was in some way created so as to mislead or deceive or disadvantage the claimant or the tribunal, I reject that submission. I also add that the care with which the claimant, or perhaps a supporter or friend, had gone through the bundle and index, seemed to me a powerful indication that the claimant, or a person on her behalf, had taken some considerable time with a form of preparation for this case, and was capable of doing so in other respects.

Discussion

60. As I have said above, the task of the tribunal in this instance, as in many, is a balancing exercise. The tribunal prides itself on affording access to workplace justice without need of lawyers. It must balance that open door approach with the right of respondents to be protected from claims which are either unmeritorious or unreasonably conducted, and it must have regard to its own finite resources. Judicial resource devoted to this case is not available to members of the public who may have prepared their cases immaculately, in strict compliance with all orders and directions.

61. I have found that this case could not have started its trial on 1 September 2022. I have found that the claimant's witness statement of 15 July 2022 could not be the basis of fair trial, and was not served in compliance with repeated orders and directions of the tribunal. I have found that the claimant's reliance on 2,000 pages of undisclosed documents, which would not have been available to the respondent and the tribunal as required, was unreasonable. If the claimant had attended with the documents on 1 September 2022, the case would not have been on that date capable of fair trial. I must therefore go on to my conclusions.

62. I have considered whether the better course would be to adjourn and relist, (possibly in a year's time, given the level of delay at Watford) and to make a range of stringent case management orders with rigid time limits. I have decided against this because the correspondence from the tribunal, through Judge Alliott, shows that time and again the claimant has been told what is required of her, and warned of the consequences of non-compliance. I have declined to adjourn on that basis because I have no confidence, having heard from the claimant on 1 and 7 September, and read much of what she has

written, that she would conduct her case any differently in future from how she has done in the past. I was strengthened in that view by a striking feature of her remarks on both dates, namely the absence of any expression of regret or apology, or acceptance that she had failed to prepare her case as directed.

63. Is it proportionate to deprive the claimant of the opportunity to be heard? That seems the single most difficult question which I have to decide. In approaching it, I pay no regard whatsoever to any view which I may have formed of the merits. I say so because an impressionistic view of the merits, drawn from the claimant's poor advocacy and poor writing skills, is not a proper consideration at the present stage, and could well mislead any tribunal faced with a dispute between a represented and an unrepresented party. In all of the circumstances of this case, the sanction of strike out appears to me appropriate and proportionate.

Outcome

64. Although the claimant participated volubly in this hearing, I am left unsure how much of it she really took in. For that reason, and for the sake of clarity, I follow Judge Shastri-Hurst's thoughtful example by setting out the outcome of this hearing in a format which I hope the claimant will find helpful. In relation to each point raised by Mr McHugh, I ask and answer four questions separately. My decision to strike out the claim is however based on the cumulative replies, when read together. The questions are:

    Q1: What do I find as fact has happened?

    Q2: On that finding, do I find that the claimant has complied or not complied with an Order of the tribunal?

    Q3: On that finding, do I find that the claimant has conducted the case unreasonably?

    Q4: On those findings alone, do I find that it is in the interests of justice to strike out the claim?

65. On the claimant's witness statement, my answers are:

    Q1: I find that the document of 15 July 2022 was not a witness statement as directed by the tribunal.

    Q2: The claimant has not complied.

    Q3: Yes.

    Q4: Yes.

66. On the claimant's documents, my answers are:

Q1: I find that the claimant has failed to give disclosure and prepare documents as directed by the tribunal.

Q2: The claimant has not complied.

Q3: Yes.

Q4: Yes.

67. On the claimant's failure to complete and return the pre hearing checklist:

Q1: I find that the claimant failed to complete and return the checklist.

Q2: The claimant has not complied.

Q3: Yes.

Q4: No.

68. On the claimant's evidence of covid testing:

Q1: I find that the claimant submitted a photograph.

Q2: The claimant has not complied.

Q3: No.

Q4: No.

69. On the claimant's use of language:

Q1: I find that the claimant has expressed herself rudely about Judge Shastri-Hurst, Judge Quill, and Mr Donaldson.

Q2: Not applicable.

Q3: Yes.

Q4: No.

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Employment Judge R Lewis

Date: 26/9/2022

Sent to the parties on: 29/9/2022

N Gotecha - For the Tribunal Office