EMPLOYMENT TRIBUNALS

Claimant: Miss M Strachan

Respondent: ISS UK Ltd

Heard at: Birmingham Employment Tribunal

On: 16-17 September 2020

Before: Employment Judge Mark Butler

Representation
Claimant: In person
Respondent: Mr Baker (Counsel)

JUDGMENT (AT PRELIMINARY HEARING)

The decision of the employment tribunal is as follows:

In relation to paragraphs 6.1 to 6.6 and paragraph 10 of EJ Harding's Record of Preliminary Hearing, there is no need for an application to amend. These are just further and better particulars.

In relation to paragraphs 6.7-6.9 of EJ Harding's Record of Preliminary Hearing, there is a need for an application to amend, and this application is granted

The claimant is found to have had a disability pursuant to section 6 of the Equality Act 2010 at the material times.

REASONS

Introduction

1. This case was initially before Employment Judge Harding for a Preliminary Hearing on 04 February 2020. At paragraphs 6-11 of the record of that hearing, EJ Harding recorded the claims that were proceeding for consideration.

2. At paragraph 12 of EJ Harding's record of preliminary hearing it is recorded that the respondent did not accept that the claimant satisfied the definition of disability as set out in the Equality Act. And further, at paragraph 13 it was recorded that the respondent was of the view that the particularisation of the claimant amounted to an application to amend.

3. Consequently, EJ Harding listed this matter for an Open Preliminary Hearing ('OPH'). The matters to be determined at this OPH were recorded at paragraph 14 of that record. Namely:

   14.1 Whether the claimant is making an application to amend, and if so whether that application should be permitted.

   14.2 Whether the claimant was a disabled person at the relevant time, as defined.

   14.3 Time limits may need to be considered as part and parcel of the amendment application, if one is being made. To the extent that there are any further points the respondent wishes to take about whether or not the acts set out above constitute a continuing discriminatory state of affairs, it will be within the discretion of the judge dealing with the preliminary hearing as to whether this can be dealt with at the preliminary hearing or is an issue to be held over to the full hearing.

4. In compliance with EJ Harding's direction at paragraph 16 of that record, the respondent emailed the tribunal (with the claimant cc'd into the email) on 14 April 2020 explaining on what basis it objected to the amendment application made by the claimant.

5. I also note that within the email of 14 April 2020, the respondent expresses that they would be seeking strike out of claims should the claimant's amendment be permitted, a matter that is further raised in the skeleton argument of Mr Baker.

6. Each of these matters will be addressed in turn in this judgment.

7. In assisting me in considering these matters before me I was provided with an agreed bundle of evidence, which included a witness impact statement prepared by the claimant. And I was assisted by the claimant giving oral evidence.

8. The claimant had raised a preliminary point in relation to documents which she says the respondent had not included in the bundle for this hearing. The claimant had brought a copy of those with her. Having considered these additional documents, I was satisfied that they did not include anything of

relevance to the preliminary points that I was being asked to determine. The documents contained evidence that may, however, be relevant, to the final hearing, where any live claims are being determined.

9. All of the evidence and submissions were heard on day 1 of the hearing, with day 2 used to deliberate, without a need for the parties to travel into the tribunal centre.

Amendment

10. In considering whether the particularisation of the claim at the Preliminary Hearing amounted to an application to amend the claimant gave oral evidence in chief. No written statement was produced for this purpose. And she was cross-examined.

11. I record relevant parts of the claimant's oral evidence here, as this is relevant to a case management decision that I make further on in this judgment. However, I am not committing the entirety of the claimant's evidence in this document. For the avoidance of any confusion, reference to paragraphs in the claim form below, are references to the paragraph numbers contained in the claim description which the claimant attached to her claim form. And reference to the record is reference to the record of the preliminary hearing.

Oral evidence given by the claimant

Evidence in chief

12. The claimant completed the claim form herself with the help of her sister, who had access to the internet. They liaised with ACAS on 21 June 2019, who explained to the claimant a list of different claims that she may be able to bring. They did not discuss disability discrimination. There was a discussion about time limits, and ACAS explained that all the claims that had been discussed would have to be brought within 3 months. The claimant did try to get legal advice through her house insurance. But to no avail. She says she tried a local law centre. But they were limiting cases they were taking on due to financial resources.

13. The claimant says that matters recorded at 6.1, 6.2 and 6.3 of the record of the Preliminary Hearing are already covered by paragraph 7 of the claim form.

14. That there is an error in 6.4 of the record, in that it was not Sally Simpson that did not give her a copy of the contract. But that it was an Alex Amdes (if I have recorded that name incorrectly then the parties need to write into tribunal so that I can correct that name and have an accurate record), and he did not give the claimant anything. The says that this is covered in paragraph 9 of her claim form.

15. That the matter recorded at 6.5 is already in the claim form at paragraph 17.

16. That there is an error in the date at 6.6 of the record, as this should read the 29 July 2019 rather than 27 July 2019. The claimant says that 6.6 and 6.7 are contained in paragraph 18 of the claim form.

17. The claimant explained that that recorded at 6.8 of the record was not included in her claim form. This was an oversight on her behalf. And was due to her submitting her claim form on 12 August 2019. At which time she had not been notified of the appeal hearing. As she never got letters of 07 August 2019. She only found out about the appeal hearing after it had been held in her absence, and this was around 19 August 2019, which was after the claimant had presented her claim form.

18. In relation to the disability discrimination complaint at paragraph 11 of the record, the claimant says that this is already contained in her claim form at paragraphs 13 and 16.

Under cross examination

19. When cross examined on 6.1 of the record of PH, the claimant said that the reason sally Simpson shouted at her was because she wanted the claimant to accept the 28 days holiday. She shouted as she was annoyed due to the dispute over the contract.

20. When cross examined on 6.2 of the record of PH, the claimant says she did not know why Ms Ashman interrupted the phone call, but that she took over the conversation. The claimant did not know if Ms Ashman had liaised with Ms Simpson.

21. When cross-examined on 6.3 of the record of PH, the claimant explained that she was subjected to a hostile conversation by Ms Ashman, and the dispute was around the accuracy of the contract, with a dispute around whether the claimant had signed it. The claimant says that Ms Ashman was unpleasant because of the dispute as to the contract. The claimant further stated that both were unpleasant due to dispute over the contract.

22. When cross examined on 6.4 of the record of PH, the claimant indicated that it was Mr Amdes, and not Ms Simpson, and that he did not give her anything, before explaining the inaccuracies she identified to him in the contractual document.

23. When cross-examined on 6.5 of the record of PH, the claimant says she felt like the meeting was an ambush, that she did not want Ms Ashman to be in attendance as she had prior knowledge, and that Ms Green and Ms Ashman were both smirking and laughing, which was just too much.

24. When cross-examined on 6.6 of the record of PH, the claimant explained that she felt that Mr Clarke abandoned the appeal hearing as he was ill prepared. He had no knowledge of the letters that had been sent to him. I reached this conclusion having asked him about my letters.

25. In relation to 6.9, the claimant explained that Mr Hudson was aware on 19 August that she had had her first operation.

26. The claimant corrected paragraph 11 of the record of PH, explaining that referenced to meetings at Queen Elizabeth Hospital was incorrect, and that this should read Queen Mary's Hospital.

27. The claimant accepted that she knew that there was a need for facts to be included in the claim form. However, explained that she did not go into details on the claim form about adjustments and previous correspondence. However, that the matter is contained at paragraph 13 and 16 of her 'claim description' document.

Submissions

28. I had sight of a skeleton argument presented to me by both the claimant and by Mr Baker. I also heard closing submissions from both. I do not repeat these here, but these have been considered in reaching a decision in this case.

Is an application to amend needed?

29. Having considered all of the evidence before me and having considered the wording of the claim form carefully, I am satisfied that the matters recorded at paragraphs 6.1 to 6.6 of EJ Harding's record of PH are already included in the claim form, and these are no more than further particulars of the claim and therefore do not require any application to amend. I reached this conclusion having considered the claim form as a whole and, in particular, based on the following:

    a. The claimant ticked the boxes at 8.1 of the claim form to indicate that she was bringing complaints of race discrimination and sex discrimination. She further indicated in the box where text could be added that she was bringing complaints of 'Breach of the Equality Act' and victimisation. In box 9.2 of the claim form the claimant refers to having been treated in an 'intimidating, hostile, harassing, stressful and dismissive manner by management'. The respondent was aware from this that the facts presented may form part of a claim for any one of these matters.
    b. The factual pleadings in 6.1, 6.2 and 6.3 is particularisation of matters already contained in paragraph 7 of the claimant's 'Claim Description'
    c. The factual pleadings in 6.4 is particularisation of matters that the claimant is alluding to at the first, second and third point in box 9.2 of the claim form, and in paragraphs 10 and 11 (which followed the 13 May 2019 grievance hearing and implies that no contract had been given since the claimant was still requesting one) of the claimant's Claim Description.
    d. The factual pleadings in 6.5 is particularisation of matters raised at

paragraph 17 of the claimant's Claim Description

e. The factual pleadings in 6.6 is particularisation of matters raised at paragraph 18 of the claimant's Claim Description.
f. Although I do accept that the claimant has done little to explain the causal link between the factual pleadings complained of and the protected characteristic and/or act in question, I consider to require an application to amend on that basis alone would be approaching this matter in too formalistic a manner. Especially given that the claimant's case is that she was subjected to these treatments and they were acts of race discrimination, or in the alternative race discrimination, or in the alternative (at least so far as 6.4-6.9 are concerned) are acts of victimisation.

30. Paragraphs 6.7. 6.8 and 6.9 of EJ Harding's record of PH are factual pleadings not already contained in the claimant's claim form and therefore will need to be considered as an application to amend.

31. Turning to the disability discrimination complaint at paragraph 10 of EJ Harding's Record of PH. I further find that this is simply further particulars of a disability discrimination complaint contained in the claim form, due to the following:

    a. In box 9.2 of the claim form, at paragraph 8, the claimant wrote that "Even though management were aware of my medical condition they made no reasonable adjustments"
    b. The claimant ticked box 12.1, and explained in the accompanying box: "Disabled transportation and raised seating (hip operation pending)"
    c. In paragraph 13 of the claimant's Claim Description, the claimant wrote:

       13. On 21.5.19 I reported absent from work after struggling with my mobility for several weeks. I reported certificated sick with sciatica causing spasms in my both legs and having to take prescribed numerous controlled drugs. I have been advised by medical professionals not to drive due to my medical condition to date. Also, I'm unable to attend voluntary work of 10 years working with dementia patients.

    d. And in paragraph 16 of that same document, wrote "No reasonable adjustments were made, even though outlined in previous correspondence.

32. From this it is my decision that the respondent should have been aware, despite the box not being ticked at box 8.1, that the claimant was bringing a complaint for disability discrimination, in particular for a failure to make reasonable adjustments, and that this concerned an difficulty in travel and or her mobility. The matters at paragraph 10 of EJ Harding's Record of PH is merely giving the full particulars of that complaint. No application to amend is therefore needed in respect of this part of the claim.

33. Therefore, there is a need to consider whether to allow the claim form to be amended to include the matters contained at 6.7, 6.8 and 6.9 of EJ Harding's Record of PH, however not in relation to the other matters that the respondent had submitted were in need of an application to amend.

Legal Discussion

34. Where a claimant seeks to amend their claim form (ET1) the tribunal has a discretion whether to allow or refuse the amendment.

35. Under its general powers to regulate its own proceedings and specific case management powers the tribunal can consider an application to amend a claim at any stage of the proceedings (Presidential Guidance March 2014).

36. Mr Baker did hand me a copy of **Selkent Bus Company Ltd v Moore [1996] ICR 836**, and made submissions on this. I was also myself mindful of the direction provided by the case of **Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650**, as well as the sections of the Presidential Guidance on Case Management dealing with applications to amend.

37. The guidance provided by **Selkent**, in particular, was that the key principle when considering the exercise of the discretion to allow an amendment is to have regard to all the circumstances, and in particular any injustice or hardship which would result from the amendment or refusal to amend.

38. In **Selkent**, the Employment Appeal tribunal set out a non-exhaustive list of relevant factors which are to be taken into account in considering the balancing exercise of all the relevant factors, having regard to the interests of justice and the relative hardship that would be caused to the parties by the granting or refusing of the amendment. These were; the nature of the amendment, the applicability of time limits, and the timing and manner of the application:

> *"(4) Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account <u>all</u> the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.*
> *(5) What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:*
>
> *<u>The nature of the amendment</u>*
>
> *Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal have to decide whether the amendment sought is one of the minor matters or is a substantial*

alteration pleading a new cause of action.

The applicability of time limits

If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions eg, in the case of unfair dismissal, S.67 of the 1978 Act.

The timing and manner of the application

An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time - before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision."

39. The Presidential Guidance reaffirms the **Cocking** and **Selkent** guidance, noting that relevant factors include the three matters outlined in **Selkent**, and also noting that tribunals draw a distinction between amendments which seek to add or substitute a new claim arising out of the same facts as the original claim, and those which add a new claim entirely unconnected with the original claim.

40. With regard to time limits, the Presidential Guidance notes that the fact that the relevant time limit for presenting the new claim has expired will not exclude the discretion to allow the amendment, and also that it will not always be just to allow an amendment even where no new facts are pleaded. In particular, the Guidance notes that where there is no link between the facts described in the claim form and the proposed amendment, the tribunal must consider whether the new claim is in time and will take into account the tests for extending time limits. In this case, those were; the just and equitable formula in relation to additional discrimination complaints.

41. I was also taken to the following cases:

    a. **Chandhok and Chandhok v Tirkey [2014] UKEAT/0190/14**. Mr Baker explained the importance of the claim form and court documents, relying on this authority.
    b. **Galilee v Commissioner of Police of the Metropolis [2018**] ICR

634, in relation to the relevant date for considering an amendment application.

Discussion and Conclusions

42. The relevant date to take account of for the amendment application is the date on which the Preliminary Hearing took place, that being 04 February 2020. Considering this, the earliest date an act contained in the amendment application could have been in time is 05 October 2019.

43. In relation to that contained at 6.9 of EJ Harding's Record of PH, this relates to facts that are dated 05 November 2019, and therefore was still in time at the date of the amendment application. Although not determinative, it would take something considerable and exceptional to refuse this amendment, given that the claimant could simply have presented a second claim form. There are no such circumstances, and therefore this amendment is granted.

44. Turning to that contained at 6.7 and 6.8 of EJ Harding's Record of PH first. These concern matters on 29 July 2019 and 07 August 2019 respectively. I am allowing these amendments for the following reason:

    a. Although new factual circumstances, this is not a wholly new cause of action. It is merely an extension of a claim that has already been presented, namely that referred to at para 6.6 of EJ Harding's Record of PH.
    b. There is a close connection between these two matters and the claim originally pleaded.
    c. The prejudice to the respondent is minimal, in that they are already required to make enquiries in to the appeal hearing, and in particular the role that Mr Clarke played in that hearing. The costs incurred will not be increased as a result of allowing this amendment.
    d. Although both out of time, I am satisfied that the claimant, not having legal representation, not understanding tribunal process, raised this matter at the earliest time that she thought she could, that being the Preliminary Hearing on 04 February 2020. And this was in circumstances where the claimant, whose evidence I accept, was not in receipt of this information at the time of presenting her claim form.
    e. Including these matters will have no bearing on the time estimate in this case.

45. In these circumstances, applying the balance of injustice and hardship test, these amendments are granted.

46. As I have accepted that the claim contains one for disability discrimination, this decision now turns to the matter of disability.

Disability Issue

Findings of fact

47. I make the following findings of fact based on the balance of probability based on all of the evidence I have read, seen and heard:

    a. The claimant has been impacted upon by a physical impairment since March 2019 (see paragraph 9 of the witness impact statement).
    b. This impairment, from this time, caused the claimant difficulties in getting in and out of bed and in and out of the car (see paragraph 13 of the witness impact statement).
    c. The pain the claimant was suffering got worse in April 2019. This impacted upon the claimant's sleep (paragraph 14 of the Witness Impact Statement).
    d. On 21 May 2019, the claimant was signed off sick. This is recorded as being for back pain (p.85 of bundle)
    e. On 07 June 2019, 21 June 2019, 04 July 2019, 23 July 2019 and 01 August 2019 the claimant was signed off sick, for sciatica.
    f. The claimant had an X-ray on 01 August 2019, where she was diagnosed as having no cartilage or bones in her hips. On this I accept the claimant's evidence, although I note that there is a lack of medical evidence on this, which would have been helpful.
    g. The complaints of back pain, sciatica and hip issues are part of a single physical impairment which has been impacting upon the claimant. They are connected.
    h. The claimant was under the care of a Consultant Orthopaedic Surgeon from 02 September 2019, who commented that the claimant 'presented with extremely severe arthritis affecting both hips. I was quite surprised that she had coped so long with such bad hips…'
    i. A letter from Dr Cotter dated 04 March 2020 described the claimant as having had severe osteoarthritis of both hips.

Legal position

48. The definition of disability has several different elements for a Tribunal to consider when arriving at its decision on whether a person has a disability.

49. The starting point is Section 6 of the Equality Act 2010. To have a disability as defined under the Equality Act, a person must establish the following:

    a. they have a physical or mental impairment,
    b. the impairment has a substantial and long-term adverse effect on ability to carry out normal day-to-day activities.

50. There is a general interpretation section in the Equality Act and at section 212(1) it says that 'substantial' means 'more than minor or trivial'. This is a relatively low threshold that is confirmed in **Leonard –v-the South Derbyshire Chamber of Commerce** (2001) IRLR 19.
51. Long-term impairment also has a particular meaning. A long-term impairment is one that has lasted 12 months or is likely to last 12 months or is likely to recur. Whether an impairment is long-term must be considered as at the date of the alleged discrimination. (Long-term impairment is not to

be considered as at the date of the Tribunal hearing (**McDougall v Richmond Adult Community College** [2008] ICR 431 CA).

52. Guidance has been issued by the government under section 6(5) of the Equality Act concerning the definition of disability in the Act. Any tribunal which is determining for any purpose of the Equality Act whether a person is a disabled person has to take into account any aspect of this Guidance which appears to it to be relevant.

The meaning of substantial adverse effect

53. In deciding whether a claimant is disabled within the meaning of the Act, it is necessary to consider what 'substantial adverse effect' means.

54. This is considered in Part B of the Guidance. Paragraph B2 says that the time taken by a person with an impairment to carry out normal day-to-day activity should be considered when assessing whether the effect of the impairment is substantial, it should be compared with the time it might take a person who did not have the impairment to complete the activity.

55. Paragraph B3 states that another factor to be considered when assessing whether the fact of an impairment is substantial is the way in which the person with that impairment carries out normal day-to-day activities.

56. Paragraph B4 gives guidance that an impairment might not have a substantial adverse effect on a person's ability to undertake a particular day-to-day activity in isolation. However, it is important to consider whether its effects on more than one activity, when taken together, could result in an overall substantial adverse effect.

57. Paragraph B6 says that a person may have more than one impairment, any one of which alone would not have a substantial effect. In such a case, account should be taken of whether the impairments taken together have a substantial effect overall on the person's ability to carry out normal day-to-day activities. The cumulative effect of more than one impairment should also be taken into account when determining whether the effect is long-term. This is further emphasises in **Ginn –v-Tesco Stores Ltd** UKEAT/0197/05, where the EAT held that the question for the Employment Tribunal to determine is whether the combined effect of the impairments is to have a substantial adverse effect on the employees ability to carry out normal day-to-day activities. The Employment Tribunal is to be concerned with the impairment itself not the cause of the impairment (**College of Ripon and York St John V Hobbs** (2002) IRLR 185)

58. Paragraph B7 says that account should be taken of how far a person can reasonably be expected to modify his behaviour, for example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities.

59. The Tribunal must consider the question of impairment as if the person is

not taking medication or in the absence of measures controlling it.

The meaning of normal day-to-day activities

60. Paragraph D2 reminds us that the Equality Act does not define what is to be regarded as 'normal day-to-day activity'. Paragraph D3 says that in general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities.

61. Normal day-to-day activities can include general work-related activities, and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or shift pattern.

Discussion and conclusions

62. I am satisfied that on the balance of probabilities the claimant satisfies the definition of disability as defined at section 6 of the Equality Act 2010 at the material times, that being between the 13 May and 29 July 2019. Although I do have to say that this is by the narrowest of margins.

63. The claimant was suffering from a physical impairment, that being osteoarthritis of both hips. This, on occasion presented itself as back pain. I have no reason to doubt that that is the case. And even if I am wrong on that, I can consider the back pain/sciatica and the osteoarthritis of both hips in the cumulative.

64. This had been having a substantial adverse impact upon the claimant's day to day activities, and in particular her ability to get in and out of the car and to get in and out of bed. And presumably, in other ways where mobility in the hip was required. Although I am conscious that I have no evidence in relation to other normal day to day activities that were affected. A further impact is that the claimant was no longer deemed fit to attend work, and this was from 21 May 2019, as evidenced in the sick notes that have been disclosed.

65. Important in reaching my decision is the comments of the Consultant Orthopaedic Surgeon in his letter of 02 March 2020. Although not specifically giving a date range, it is implicit that the claimant must have been suffering from a significant physical impairment for some time, that then required hip surgery.

66. I am satisfied that given her arthritis has been described as severe and that the Consultant Orthopaedic Surgeon was 'surprised that she had coped so long with such bad hips', alongside my other findings above, that on

balance, the claimant was more likely than not to be suffering from a physical impairment that had a substantial adverse effect on her normal day to day activities at the material time, and that that effect was likely to last more than 12 months at that point.

67. This is a very narrow decision, primarily due to the limited evidence that the claimant has presented on the disability point at the relevant time.

Strike Out

68. Mr Baker raised a question as to whether the claims could be struck out on the grounds that there were no reasonable prospects of success.

69. However, consideration as to striking out the claims is not something for which the claimant has been given the requisite notice as required by rule 54 of the ET Rules of Procedure.

70. Mr Baker made submissions that I ought to consider using Rule 5 to reduce the notice required to enable me to consider that application today, given that he says that some of the claims are bound to fail given the claimant's evidence that she gave today. Although I have some sympathy for the respondent, I do not think that this would be appropriate. The claimant is unrepresented. And whether the claims have reasonable prospects or not will depend on the content of the grievance that the claimant raised. To properly consider an application to strike out, I would need to have sight of evidence in relation to that grievance and matters concerning the disputed contract. As there may be something in there which relates to complaints of discrimination. To allow an application to strike out to proceed would mean important evidence may not be before the tribunal. As such, I will not be considering whether to strike out the claimant's claims today.

71. However, I am going to list this for a further Open Preliminary Hearing to consider whether the claims or part of the claims should be struck out under Rule 37 of the ET Procedural Rules, and/or whether deposit orders should be made in relation to any of the remaining claims. Separate directions to this extent will accompany this decision.

Next Steps

72. My initial view was that there would be a need for further Open Preliminary Hearing to consider striking out the claimant's claim or parts of it, and/or whether to apply a deposit order. This will following some of the evidence (noted above) that the claimant gave when she was cross-examined on matters relating to the amendment application and on the disability issue. However, I have reviewed this view, and at present do not consider a further Open Preliminary Hearing would be appropriate. As this would require the hearing of evidence to determine whether there was discriminatory intent or motive behind the contractual dispute. And those matters are best left to the final hearing. It is a matter for the respondent as to whether they seek to

refresh their application for strike out.

Transfer Out of Region

73. Both parties are London based. The parties may wish to consider an application to transfer this case to a region that is more suited to their location. However, this is a matter for the parties.

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Employment Judge **Mark Butler**

Date_28 September 2020____

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.