EMPLOYMENT TRIBUNALS

Claimant:	**Ms D North**
Respondent:	**Countryside Properties PLC**
Heard at:	Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE By video link
On:	23 November 2022
Before:	Employment Judge Adkinson sitting alone
Appearances	
For the claimant:	In person
For the respondent:	Mr P Wilson, Counsel

JUDGMENT

UPON hearing the claimant in person and Counsel for the respondent,

AND UPON considering the evidence and Tribunal's file

IT IS ORDERED THAT

1. The claimant's application for reconsideration of Employment Judge Adkinson's judgment dated 24 June 2022, which struck out the claim because the claimant had not actively pursued it, is dismissed.
2. That judgment therefore is confirmed.

REASONS

Introduction

3. The claimant (Dr North) seeks reconsideration of my judgment dated 24 June 2022 (the index judgment) and which was sent to the parties by email on 19 July 2022. I had struck out Dr North's case on the grounds that she was not actively pursuing it. The respondent resists the application.

Hearing

4. This hearing took place by way of video link. There were no technical problems worth noting. I heard oral evidence from Dr North. I had an agreed bundle of documents of 90 pages. Each party presented their arguments

about why I should decide the application in their favour. I also had the Tribunal's file. In reaching my decision I have taken all of that into account.

5. I did not consider the matter straight forward. Therefore I reserved my decision. This is that decision.

Background

6. I first consider Dr North's evidence. I am satisfied she was doing her best to tell me the truth. She accepted that she could not be sure about many things and was having to speculate about many matters. It is to her credit that she conceded this and that she was reluctant to speculate.

7. On balance though, I did not find her evidence satisfactory in relation to the application before me. I found her evidence instead to be vague and, regrettably therefore, unhelpful. She was unable to confirm whether she received the notice confirming that her case had been accepted, that set out the dates of the final hearing, that provided some default directions, and which provided details of a case management conference by telephone. She could not recollect at first, but then appeared to accept she knew of the final hearing, which implies she had received it. She said it looked familiar. She also alluded to problems with her email but could not say with certainty that emails had gone missing (she told me that others had mentioned to her that they could not contact her, but she conceded that she could not fairly attribute their complaints to problems with email). She also speculated, understandably, that there were problems with filters imposed by the email service and, possibly, problems caused by internet protocol addresses. However she accepted in answer to questions about me that, while she checked her email daily, she only ever checked her spam folder if someone contacted her and asked her to (e.g. because she had not replied to a message), and that it automatically and irretrievably deleted emails after a short time. She did not suggest her email was not filtered to remove spam.

8. With that in mind I turn to the facts necessary for me to resolve this case.

9. The respondent employed the claimant from 6 April 2021 to 24 April 2021. The details of her employment do not matter for today's purposes.

10. Between 25 October 2021 and 5 December 2021, Dr North engaged in early conciliation through Acas.

11. She presented her claim on 23 December 2021 online through the gov.uk website. This is separate from the Acas website. The details of the claim do not matter except to observe:

    11.1. The allegations are serious, but lack detail to enable the respondent to understand the case against it and the Tribunal to understand the issues,

    11.2. The serious is reflected in the fact that she claims at least £153,000 in compensation,

    11.3. She has intimated claims of: Automatic unfair dismissal for making a protected disclosure , detriment from making a protected disclosure, age discrimination, disability discrimination, maternity discrimination, sex discrimination, race

discrimination, discrimination on the grounds of religion or belief and discrimination because of sexual orientation and notice pay and "other payments".

12. In the claim form, Dr North provided a postal address (Dr North's postal address) and an email address at which she could be contacted (which I refer to as either Dr North's email address, her email address or the claimant's email address, as may be). It is from a large, well-known provider of internet email services owned by a well-known, international, large software and cloud services provider. I have referred to it in these cryptic terms in order to preserve privacy. She indicated she would prefer to be contacted by email.

13. On 17 January 2022 the Tribunal sent to both parties a document (the notice of a claim) that required the respondent to complete its response (the ET3), set down the final hearing and set down standard directions to prepare for the final hearing.

14. One of those directions was that the claimant had to send to the respondent a schedule of loss by no later than 28 February 2022. The claimant did not comply with that direction.

15. The notice of a claim was accompanied by a notice of a telephone case management discussion on 6 June 2022 at 4pm.

16. The Tribunal's file discloses that these documents were sent by post to both parties. This is in accordance with the standard procedure in the Employment Tribunals for handling these documents. While Dr North is not clear about if and when she received these, she had some recognition of them, there is no suggestion she had trouble with the post and they were posted to Dr North's postal address. She was also aware of the final hearing. The only document mentioning that is these letters. This leads me to conclude they were properly delivered to her and she received them. I am also satisfied that she had a reasonable opportunity to read and consider them since the timescale suggests she did, and there is no evidence to suggest to the contrary.

17. In addition Dr North was sent a letter on the same date to her address that read:

"Your claim has been accepted. It has been given the above case number, which you should quote in all correspondence

"...

"I have also sent a copy of your claim to the Advisory Conciliation and Arbitration service (Acas) whose services are confidential and free of charge when a copy of your claim has been received by ACAS a conciliator will contact you to start to explore possible settlement.

"A copy of the booklet "Your claim, what happens next" can be found on our website at [link to the booklet on gov.uk – it is leaflet T421]

18. The booklet is a publicly available document on gov.uk. It says in particular:

"Acas's role

"In most cases we will send a copy of your claim form and the respondent's response form to Acas, (the Advisory, Conciliation and Arbitration Service) an independent, impartial organisation. An Acas conciliator will contact you to explore whether it may be possible to resolve the claim through conciliation, and without the need for a tribunal hearing. This step is required by law even though you have already been through early conciliation.

"…

"Can I correspond with the tribunal by e-mail?

"Yes – a full list of employment tribunal e-mail addresses can be found at the back of this publication. You should make sure you quote the case number in any correspondence and in the title bar of the e-mail and send it to the tribunal office dealing with the claim.

"The office will correspond by email if this is your preference.

"…

"If you want us to communicate with you by e-mail, you will need to supply a valid e-mail address if you have not already done so on the claim form. When you ask us to communicate with you by e-mail, you are agreeing that you check for incoming e-mail at least once every day and that we may pass your e-mail address to other people involved in your claim.

19. After presentation of the response, on 24 March 2022 the respondent applied, in effect, to stay the case management orders. It raised the fact Dr North had not provided a schedule of loss as ordered. The application was by email and was carbon-copied to Dr North at her email address. She did not respond. Legal Officer J Skinner granted the application on 23 May 2022. This was sent by email to the claimant at her email address.

20. On 26 May 2022 the respondent emailed its completed case management agenda to the Tribunal, copying in the claimant at her email address. The claimant did not reply and did not provide her own agenda.

21. On 6 June 2022, the case management hearing took place by telephone before Employment Judge Broughton. The claimant did not dial in to attend. At the Learned Judge's request, the Tribunal emailed the claimant to ask her to dial in by 2:15 after being unable to contact her. It was not successful.

22. The Learned Judge ordered the provision of further information, because of the "deficiencies in the claim as currently pleaded" – to use the Learned Judge's words. She also noted as follows:

"11. The claims are not clearly identified. The claimant refers in the claim to there being many dates throughout her employment from March/April to August/September when acts took place that she complains about but she has not attempted to set out what those dates and relevant acts are. She refers to harassment and an environment in which women are disrespected but does not elaborate. She complains of being lured to a meeting where she was dismissed without a right to appeal.

"12. Unfortunately, not least given the deficiencies with the claim as currently pleaded, we were not in a position to make any progress today without having the opportunity to discuss the complaints with the claimant.

"Orders for compliance by the claimant :see attached Appendices

"13. Given the failure by the claimant to contact the tribunal, I set out in Appendix 1 an Order which she must comply with otherwise her claims may be struck out in their entirety.

"14. I have also set out in Appendix 2 a list of the details she must provide about her claims if she intends to pursue them, which should assist at a reconvened Preliminary case management hearing. I attach a guidance document from the ECHR to assist the claimant in providing the further and better particulars set out in the Order at Appendix 2.

"…

"Appendix 1.

ORDERS

"Rule 37

"Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013

"The claimant having failed to attend the Preliminary hearing for case management by telephone on Monday 6 June 2022 and not having contacted the tribunal to request an adjournment or provide reasons why she could not attend, Employment Judge Broughton ORDERS that-

23. "The Claimant must within 7 days from the date this order is sent out to the parties comply with paragraphs 1 and 2 below, if she fails to do so the claims in their entirely **may** [my emphasis] be struck out pursuant to section 37(1)(d) [I add that **rule 37(1)(d)** empowers a Tribunal to strike out a claim if the claim has not been actively pursued] on the grounds that the claims are not being actively pursued;

"1. The Claimant must write to the Tribunal copying in the Respondent, explaining why she failed to dial into the Preliminary hearing on 6 June 2022; and

"2. The Claimant must write to the Tribunal copying in the Respondent, confirming that she wants to pursue her claims.

24. In Appendix 2, Employment Judge Broughton noted that the claimant had intimated claims for age, pregnancy and maternity, sexual orientation, religion or belief, race, marriage or civil partnership or sex discrimination, but had failed to specify even

24.1. her age or age group,

24.2. her sexual orientation,

24.3. how she defines her race,

24.4. how she defines her religion or belief,

24.5. what actual act she is complaining about,

24.6. who did it,

24.7. when they did it,

24.8. why she believed it any act to be because of or related to one or more of the above protected characteristics,

24.9. what type of discrimination she believes it to be for example harassment, direct or victimisation,

24.10. and if she believes it to be direct discrimination, the person to whom she compares herself

24.11. her disability on which she relies, even though she brings a claim of disability discrimination.

25. She also noted that the claim as presented lacked any details of her whistleblowing claim, details of her claim for wrongful dismissal, or even the most basic information to show she had been employed for a sufficient period to claim procedurally unfair dismissal.

26. The Learned Judge set out detailed questions in Appendix 2 for the claimant to answer. Had Dr North done that, the Tribunal and respondent would be in a better position to understand the claims. Dr North did not, and has not, attempted to comply.

27. The effect of her order was clear: Employment Judge Broughton was warning the claimant that she was at risk of her claim being brought to an end and explaining why she had given that warning. It made clear what was expected of Dr North. While Dr North was keen to emphasise she represented herself and is not legally qualified, the questions and order are clear. It would require significant effort and work on her part, I accept. However that arises from the lack of detail the first-time round and the number and variety of claims she chose to present. The orders in appendix 1 are not onerous and do not require any legal training to answer. She was perfectly able to explain why she did not attend, and confirm she was actively pursuing her claim.

28. The Tribunal send the Learned Judge's order to the parties on 10 June 2022. It was sent to Dr North at her email address.

29. Dr North did not comply with the orders in that she did not send any communication to the Tribunal.

30. On 24 June 2022, the matter came before me. I considered the case, the Tribunal's file, and in particular Employment Judge Broughton's orders and case management summary, that Dr North had had a chance to make submissions and had not send anything to the Tribunal. I struck the claim out and reasoned:

"1. By case management Order dated 6 June 2022 (issued to the parties on 10 June 2022) the Tribunal gave the Claimant an opportunity to make representations as to why the claim should not be struck out because:

"• It has not been actively pursued.

"2. The claimant failed to make any representations and has not attended the previous hearings. No reason was provided for non-attendance at the

previous hearing. The Tribunal concludes that the claims are therefore not being actively pursued.”

31. No party has suggested I did not have the jurisdiction or power to make the order or that the order was wrongly made at the time in light of things as they appeared to be.

32. The Tribunal sent my order to the parties on 19 July 2022. It was sent to Dr North’s email address as before.

33. Dr North told the Tribunal today that she went to Canada in early July and stayed there until early September. I accept what she says on this because she was clear about this at least, and there is no reason to disbelieve her.

34. It follows that what happens between those dates, Dr North was at all material times in Canada. While she says she contacted Acas to let them know she was abroad, she accepts that she did not inform the Tribunal. She believed Acas would tell the Tribunal.

35. On 28 July 2022 the Tribunal sent to Dr North, again at her email address, information about seeking e.g. reconsideration.

36. On 29 July 2022, Dr North emailed the Tribunal. I find as a fact she was in Canada at the time because of when she says she travelled out, and 29 July 2022 is late July by any definition. She wrote:

“Hello,

“I think this has been miscommunicated. I am out of the country and had contacted Acas conciliation before my departure to get an update and make aware I am out of the country for a while.

“I have actively pursued the case and even sought to update the process with contact before I departed.

“Can you please see the contact of calls, and emails. As my contact was away at the time maybe some communication has been lost or misunderstood. Yet please note I am not in the country and just saw this email by chance. Can you please update and keep the case set as I have been treated very unfairly and seeking justice.

“This is the first time I have received an update without seeking myself and was informed that the process was continuing and had asked Acas to go back and see if they wanted to reconcile again…

“Warm Regards,

“Dr D North

37. This was sent as a reply to the Tribunal’s email of 28 July 2022. This means she received emails from the Tribunal at least on that occasion.

38. On 5 August 2022, the respondent requested clarification of whether the claimant was seeking reconsideration of the index judgment. She replied on 5 August 2022 as follows:

“Thanks for your email.

"Apologies for lost information on the 10th June and yes I would like reconsideration.

"I have called the office number yet it has just rang out. To try and speak to someone.

"I can only apologize if there was emails sent at this time, I did have a few issues with my emails and did change passwords around this time so that could have been a contributing issue.

I would like to state clearly I am Actively pursuing the case and wish to continue for justice. It is important to me that this case does not fail, this has taken nearly a year of my life and the way I was treated was wrong. I would like to ensure this is justified and hopefully prevent going forwards for anyone else.

"May I please understand what the order is and how we can make arrangements to continue. Of course on my side

"I have Actively been in contact with Acas and thought they were dealing with matters for me until a court date yet I felt confident countryside would want to settle before this as the exposure of harassment, bullying and discrimination would be bad for any organisation.

"And again apologies, I have never done this process before so I am trying to understand and comply with the process yet have limited knowledge of understanding and expectations. Acas have been my main communication since this started and I do seek justice. I am back in the UK end of august. My family and I are currently away celebrating milestone birthdays and this of course took me by surprise. I am happy to do what is necessary yet struggling a little as I'm working of an iPhone so it's difficult to open links and try to respond better.

"Hope this is all understandable. Please let me know if you need more from me and I will see what I can do or maybe ask some help from the uk. If you know of options or support I can get for this please let me know."

39. On 18 August 2022 in my absence and with Regional Employment Judge Swann's authority, Employment Judge Ayre directed the matter be treated as an application for reconsideration. She was plainly satisfied that there was a reasonable prospect of the Tribunal varying or setting aside its decision, because she directed the respondent to file submissions. The Learned Judge added:

"The claimant should note that it is her responsibility to remain contactable in relation to these proceedings, and that communication about her claim should take place with the Employment Tribunal rather than with ACAS, save in relation to any discussions about settlement."

40. After receiving the respondent's submissions, I directed the matter be listed for a hearing. This was that hearing.

41. At no time did Dr North tell the Tribunal she would be out of the country, that she had issues receiving emails, to use a different email address or to use post, or to chase up what was happening to her claim. In relation to the latter, she referred to the widely known delays in the system. With

hesitation, I accept that explanation. She had submitted the claim online and nothing had happened to suggest the claim was not received.

42. Dr North gave me a number of speculative explanations about why she may not have received these emails.

42.1. She indicated that there may well have been a problem with her email service provider forwarding emails from certain senders and/or with attachments. However this is mere speculation. There is no evidence that there were malfunctions with the service at the time. the best was that she said some people told her that they had had difficulty getting in contact with her. However she was unable to confirm that the problems were exclusive to those contacting her by email.

42.2. She indicated that there may have been problems because of her IP address. This is mere speculation which, to be fair to her, she conceded was the case. There is no evidence that even begins to lend credibility to this explanation. She did suggest that being abroad may have caused problems. The coincidence of when she was abroad and when she did receive and reply to emails show this cannot be the case.

42.3. She wrote in her email of 5 August 2022

"I can only apologize if there was emails sent at this time, I did have a few issues with my emails and did change passwords around this time so that could have been a contributing issue."

Again this is speculation. The "issues" were not amplified in any comprehensible way. I cannot see how a change in password would affect her ability to receive emails. There is no evidence it affected her ability to access her account.

43. She did however accept that her email provider filtered messages for spam, moving them to a spam folder. She indicated that the spam folder was automatically emptied after a set time. She also told me that she did not check her spam folder unless someone specifically phoned her, and asked her to do so, because she had not replied to a message. In my opinion it is inherently more likely that any emails she did not receive were put into the spam folder. Because she did not check the folder, she did not see the messages. This is more plausible explanation, and there is no evidence to support the other speculative ideas. Moreover her suggestion about being abroad having an impact is undermined by the chronology and the messages that are known to be received.

44. Dr North did tell Acas she was going out of the country. She described her good working relationship with the Acas conciliator. She said they were unaware of any hearing listed by the Tribunal. There is no reason why they would know. She told me she believed that keeping Acas informed was sufficient. With hesitation I accept that explanation. It is credible, albeit it is notable

44.1. in the judge's experience no other litigant appears ever to have had that misunderstanding,

44.2. the letter acknowledging the claim and setting directions makes it clear the Tribunal is separate from Acas,

44.3. the guidance leaflet does the same,

44.4. she must have spotted the difference between the Acas site used for example to request early conciliation and the Employment Tribunal's site to present a claim. I do not believe she could reasonably have conflated the 2 sites.

45. For those reasons, however, I do not accept it was reasonable or a good explanation.

Law

46. I can reconsider a judgment where it is necessary in the interests of justice to do so. I may confirm, revoke or vary the decision: **rule 70**.

47. In seeking to exercise my discretion, I must have regard to the overriding objective in **rule 2** (so far as relevant):

"Overriding objective

"2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

"(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;

"(d) avoiding delay, so far as compatible with proper consideration of the issues; and

"(e) saving expense."

48. The words "necessary in the interests of justice" the Tribunal a broad discretion to determine whether reconsideration of a judgment is appropriate in the circumstances. However, this discretion must be exercised judicially, 'which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation: **Outasight VB Ltd v Brown 2015 ICR D11 EAT**. See also **Flint v Eastern Electricity Board [1975] IRLR 277 QBD; Newcastle Upon Tyne City Council v Marsden [2010] ICR 743 EAT; Ministry of Justice v Burton [2016] ICR 1128 CA**.

49. In **T and D Transport (Portsmouth) Ltd v Limburn 1987 ICR 696 EAT**, the EAT confirmed that, where it can be shown that a notice was properly sent, the applying party must satisfy the tribunal that the notice was not properly received.

50. There is no need for exceptional circumstances: **Williams v Ferrosan Ltd [2004] IRLR 607 EAT**, and each decision is unique to its own facts.

However the discretion must be exercised in accordance with recognised principles and judiciously: **Sodhexo Ltd v Gibbons [2005] IRLR 836 EAT**.

51. The respondent suggested that I need to look only at whether there is a good reason for the failure of Dr North to engage. I disagree. That is not the wording of **rule 70**. The interests of justice encompass a wide range of facts, of which the question of whether there is a good reason is a relevant issue but is just one factor.

52. I also remind myself of the principle of striking out a case where the claimant has not actively pursued the claim. I am not hearing an appeal and proceed on the assumption the decision was correct as things stood them. A Tribunal can strike out a claim where:

    52.1. there has been delay that is intentional or contumelious (disrespectful or abusive to the court), or

    52.2. there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause serious prejudice to the respondent.

    See **Evans and anor v Commissioner of Police of the Metropolis [1993] ICR 151 CA; Birkett v James [1978] AC 297 UKHL**.

Conclusions

53. In my opinion the following matters point in favour of setting aside the decision:

    53.1. It is an early stage in the proceedings. There has been only one abortive case management discussion. No preparation has been undertaken for the final hearing because the directions had been suspended. The lack of a schedule of loss is something that, in my view, has no real impact on the progress of the case, because it is a defect that can easily be rectified and a fair hearing is still possible;

    53.2. The application in my view was made promptly on discovering that the claim had been struck out. The 29 July 2022 was only one day after the Tribunal gave her the information on how to seek reconsideration, and 10 days after she was sent the order striking out her claim;

    53.3. She made some effort by telling Acas that she was overseas for a period;

    53.4. She had a belief that telling Acas was enough;

    53.5. To refuse to set aside my order would deny the claimant from pursuing her claim, which is clearly prejudicial to her; and

    53.6. The allegations that she makes are serious;

54. In my view the following matters point against exercising my discretion.

    54.1. The claim makes a number of serious allegations, judging by the jurisdictions on which the claimant says she relies and what she has written. However it provides no details to understand what the legal or factual issues are. For example it does not set out

how the claimant manifested the particular protected characteristics on which she says she relies. As Employment Judge Broughton pointed out, she failed to specify even

54.1.1. her age or age group,

54.1.2. her sexual orientation,

54.1.3. how she defines her race,

54.1.4. how she defines her religion or belief,

54.1.5. what actual act she is complaining about,

54.1.6. who did it,

54.1.7. when they did it,

54.1.8. why she believed it any act to be because of or related to one or more of the above protected characteristics,

54.1.9. what type of discrimination she believes it to be for example harassment, direct or victimisation,

54.1.10. and if she believes it to be direct discrimination, the person to whom she compares herself

54.1.11. her disability on which she relies, even though she brings a claim of disability discrimination.

54.2. In addition she failed to provide any details of her whistleblowing claim, proper details of her claim for wrongful dismissal, or even the most basic information to show she had been employed for a sufficient period to claim procedurally unfair dismissal.

54.3. If the claim proceeded therefore, the Tribunal would have to allocate more time to enable clarification of the claims, and to allow the opportunity to the respondent to respond accordingly. This would necessitate at least one lengthy preliminary hearing, possibly two on the basis that it may not be possible to give directions until one knows what the claims are. In effect the claim is not really ready for case management. These run against the overriding objectives of saving expense and avoiding delay so far as compatible with proper consideration of the issues. In my opinion it also points to the fact that the claim will require disproportionate management.

54.4. There is no reason why the claimant could not have put this information in her claim in the first place. The information is all within her knowledge – or should be. If she chooses to allege every form of discrimination, to bring claims for whistleblowing and to claim unfair and wrongful dismissal, it is incumbent on her to set out the facts on which she relies. She emphasised that she was representing herself and not a qualified lawyer. That may be, but it does not stop a person setting out the facts on which they rely when they start the claim. I am satisfied that, so far as possible, she has been on an equal footing.

55. In addition the following matters also point to refusing to exercise my discretion:

    55.1. There is a significant lapse of time since the claim was presented and when she next contacted the Tribunal: about 7 months. The fault in my view lies entirely with Dr North. I cannot accept her assertions she had difficulty with the email. Her evidence about what she did and did not receive is too vague. In addition the emails that one knows she did receive undermine any difficulty about being overseas. It seems to me far more likely to me, and I find as a fact that, that any emails she received were transferred to her spam folder. Because she checks it only when asked to, emails that were put there were deleted. There is no reason why she could not or did not check the spam folder for emails. The onus is on her to check for communications. In effect she did not monitor the communications from the Tribunal or respondent.

    55.2. As I found above, she received the notice of claim and letter of the telephone case management hearing. She had some vague recollection she may have received it. She knew of the final hearing. There is no evidence from which to conclude she did not. It was properly addressed to the address she gave.

    55.3. She has no good reason for not contacting the Tribunal. The process of submitting the claim (i.e. online) is through a different process to contacting Acas. The letters from the Tribunal make it clear to the reasonable reader that the Tribunal is not Acas, they are separate. It is notable that, from the Tribunal's own experience, never before has any claimant ever appeared before it not appreciating that it is not enough to contact Acas and expect it to relay information to the Tribunal. Besides form T421, to which the claimant was referred and which is available online makes clear, Acas is an independent organisation.

    55.4. I also feel it is important that the claimant has already had a fair chance to put forward her claims. While not enough alone to justify refusing to set the order aside, it is something that in my opinion that should be taken into account.

    55.5. Employment Judge Broughton provided the claimant with a clear opportunity to demonstrate she was actively pursing her claim simply by confirming she was pursuing it. She did not take that opportunity. There is no good reason for her not to do so.

    55.6. If I set aside the strike out, then there would be a need for one more preliminary hearing, possibly 2. There is also the possibility of a need for a preliminary hearing to determine disability. If the claimant pursues all claims (and she did not give an indication she saw any reason to reduce them), this is going to require a hearing of more than the usual 3 days allocated in this region on presentation of a claim for discrimination and whistleblowing claims. A very rough estimate is at least 7 days, and that will

result in a hearing most likely in 2024. This again is excessive delay that arises from Dr North's failure.

55.7. Finally I reflect on the need for finality of litigation, albeit I do not think it is a decisive factor in this case, and on the interests of the respondent in benefitting from the claim coming to an end, and not having to deal with a claim where memoires will inevitably have faded about events from 2021.

56. When I reflect on the facts of the case, and in particular Dr North's receipt of documents, failure to engage with the Tribunal process for no good reason, failure to attend a hearing for no good reason, lack of particularity, breach of one order by failing to provide a schedule of loss and failure to abide by Employment Judge Broughton's order, it seems inevitable that the Tribunal would conclude there has been intentional or contumelious delay. She had a chance to make submissions on the issue before I considered whether to strike out the claim because Dr North had not actively pursued it. She simply had to explain why did not attend and to confirm she pursued her claim. There is no good reason she could not have made them. Weighing that up and taking into account the factors above, I am not persuaded it is necessary in the interests of justice to set aside or vary the judgment striking the claim out. Therefore the application is refused.

Employment Judge Adkinson

Date: 28 November 2022

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