EMPLOYMENT TRIBUNALS

Claimant: Miss M Miller

Respondent: Greggs plc

Heard on the papers: at London South **On:** 10 January 2023

Before: Employment Judge C H O'Rourke

JUDGMENT ON RULE 38 APPLICATION

The Claimants' application under Rule 38(2) for relief from the sanction of dismissal of her claim is refused.

REASONS

Background and Issues

1. The Claimant made an application on 14 November 2022 (wrongly dated 2020 in her letter), subject to Rule 38(2) of the Tribunal's Rules of Procedure 2013, to set aside a notice of 9 November 2022, dismissing her claim, following non-compliance with an 'unless' order of 13 September 2022.

2. She contends that she did not fail to comply with the 'unless' order and that in any event it would be in the interests of justice to set aside the notice of dismissal.

3. The Respondent has responded to that application, by email of 7 December 2022.

4. Neither party having requested a hearing, the application is determined on the basis of the above written representations.

5. Outline Chronology.

    a. December 2019 - the Claimant brings claims of disability discrimination, unlawful deductions from wages, notice and holiday pay.

b. June 2020 – despite the Claimant applying for its postponement, on health grounds, a first Preliminary Hearing is held and case management orders were made, with the Claimant being ordered to provide a list of issues, based on the contents of her ET1. Her disabilities were identified as dyslexia and 'anxiety and other mental health problems'. A final hearing is listed for six days, commencing on 16 August 2021.

c. December 2020 – the Claimant sends a document to the Tribunal, which is effectively further and better particulars of her claim.

d. 15 January 2021 – the date ordered for disclosure of documents. The Claimant requested an extension of time, to 25 January, due to family bereavement and ill-health. The Respondent complied with disclosure on 26 January, but the Claimant did not.

e. 16 July 2021 – a second Preliminary Hearing is listed for 2 August. The Respondent complains of continuing failure by the Claimant to disclose documents, in particular in relation to mitigation and unredacted medical records. It also applied to the Tribunal to postpone the final hearing, on the basis that case management orders had not been complied and therefore that the case could not be ready for hearing in late August 2021.

f. 2 August 2021 – the second Preliminary Hearing takes place. The final hearing is postponed due to the Claimant's failure to comply with Tribunal orders. Revised dates are provided for compliance with various orders and a further Preliminary Hearing is listed for 4 January 2022.

g. 24 August 2021 – the Tribunal grants the Claimant an extension of time for disclosure, from 16 August to 30 August.

h. 30 September 2021 – following chasing by the Respondent as to disclosure and renewal of its application for an 'unless' order, the Claimant wrote to the Tribunal, explaining why she had not complied with disclosure and provision of a schedule of loss, namely that her mother was seriously ill. She requested a further extension of time.

i. 6 October 2021 – the Tribunal ordered compliance with existing orders by 13 October, warning that if not complied with, it would consider an application for strike-out at the January 2022 Preliminary Hearing.

j. 4 January 2022 – the Claimant applied to adjourn the Preliminary Hearing to take place on that day, on the basis that her mother had Covid, which was granted.

k. 14 February 2022 – a fourth Preliminary Hearing was conducted, at which the Respondent's application for strike out was considered, but not granted. EJ Truscott KC observed that the Claimant had not complied with orders and that, "*The Respondent has been put to a deal of wasted time and expense seeking to progress the claim and obtain compliance from the claimant….[I]t was apparent to the Tribunal that*

medical issues and difficulty obtaining legal representation had been advanced on previous occasions for non-compliance with Tribunal orders. It seemed to the Tribunal that the respondent had very good reason to make the application for strike out that it did….[T]he claimant was left in no doubt that it would be unlikely that any further excuses for failure would be accepted. The Tribunal continued the application for strike out to 12 May 2022." The Tribunal further ordered compliance with orders, by 18 March and listed a further Preliminary Hearing for 12 May.

l. 12 May – the hearing did not proceed as the Employment Judge conducting it considered that there were matters that were part-heard by EJ Truscott and it was postponed to be heard before that Judge. The Claimant was ordered, by 26 May, to provide further and better particulars of her claim, in particular linking the claims she now sought to bring to the contents of her ET1 and also to provide an 'original copy' of a document referred to, in shorthand, as the 'two-tick document' (of which more below).

m. 13 September – a sixth Preliminary Hearing took place, before me. I refused the Respondent's application for strike-out as I '*considered it <u>just</u> possible that if the issues could be defined today, based on the Claimant's original pleadings and promptly sent to the parties that a fair hearing could proceed in February next year'* (as already then listed). I also made the 'unless' order which is the subject of this Hearing and made Deposit Orders, firstly in respect of the Claimant's claim of associative discrimination and secondly in respect of her claims of unlawful deductions from wages and arrears of holiday pay, on the basis that they were not sufficiently particularised. The Claimant has subsequently paid those deposits, albeit without further particularising her wages and holiday pay claims.

n. 4 October – the date by which the orders for disclosure were to be complied with, under the terms of the 'unless' order.

o. 11 October – again, under the terms of the 'unless' order, the date by which the Claimant was to provide a disability impact statement for her grandmother (in respect of her claim for associative discrimination) and disclosure of fully unredacted medical notes for herself and any up-to-date medical record for her grandmother.

p. 9 November – following notification by the Respondent of breaches of the 'unless' order and having read submissions from the Claimant, the notice of dismissal was sent.

<u>The Law</u>

6. Rule 38(2) states that:

'*a party whose claim or response has been dismissed, in whole or part, as a result of such an order* (an unless order) *may apply to the Tribunal in writing, within 14 days of the date the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so …'*.

7. I referred myself to the following authorities:

   a. **Thind v Salvesen Logistics Ltd [2009] UKEAT 0487** which indicated that relevant factors were the reason for and seriousness of the default, the prejudice to the other party and whether a fair trial remained possible.

   b. The EAT in **Singh v Singh (as representative of the Guru Nanak Gurdwara West Bromwich) 2017 ICR D7, EAT**, when explaining the precepts underlying the consideration of an application for relief against sanctions under rule 38(2) said that the obvious starting point is that the tribunal is bound to determine such applications on the basis of what it considers to be in the interests of justice. The determination of that question necessarily requires that the tribunal exercise its judgement, and it must do so rationally, not capriciously, taking into account all relevant factors and avoiding irrelevant factors. As regards what a tribunal has to take into account when determining such an application, that will depend upon the particular circumstances of the case. The fact that an unless order has been made will be a factor but is not determinative. Indeed, no single factor will necessarily be determinative of the course the tribunal should take. As was made clear in **Thind v Salvesen Logistics Ltd** (above), what is required is a broad assessment of what is in the interests of justice in the particular case under consideration. This will inevitably involve a balancing exercise on the part of the tribunal.

The Evidence and Findings

8. Compliance with the Unless Order. As already indicated in the Tribunal's letter of 9 November 2022 [670], there had been material non-compliance by the Claimant with the 'unless' order, by her failure to provide completely unredacted copies of her medical notes. That order required her to provide such notes by 11 October. As recorded in the Tribunal's letter:

   '2. Paragraph 16 of the Tribunal case management order of 13 September 2022 directed that the Claimant, by 11 October 2022, send to the Respondent:

   Complete unredacted copies of her GP and other medical records for the period 18 February 2018, to 11 December 2019;

   3. The Tribunal's 'unless' order of 13 September 2022 ordered full compliance with that paragraph (and others), by the date set out in the case management order, in the absence of which the claims would stand dismissed, without further order.

   4. The Respondent alleges failure by the Claimant to comply. The unredacted copies of her GP's notes, since provided, run from 26 September 2018, to 23 December 2019. They do not, therefore, include any records for the period 18 February to 25 September 2018, as required in the order. It is clear from the previously (redacted) notes provided by her that under the heading 'minor past', on page 3 of those notes that there is a

considerable redacted section, starting below the 26 September 2018 entry, indicating medical history prior to that date and likely to cover the period 18 February to 25 September 2018, which she has not disclosed.

5. In respect of this matter, the Claimant states, in her response of 6 November 2022 that she has complied, stating that 'the Respondent continues to mislead the court because they provided the court with an older copy of December 2020 and failed to provide a more recent copy of the several unredacted copies sent to them by the Claimant nor had they mentioned they had done so.'

6. However, I see no reason to doubt the Respondent's submission on this point. It is clear, from the documents provided by them that there is still a gap in the Claimant's medical records for the period 18 February to 25 September 2018, which the Claimant's response has not (as far as it can be understood) explained, nor has it provided her correspondence enclosing such documents, showing compliance with the unless order and nor has it attempted to rectify the gap. I take into account also the Claimant's past 'considerable non-compliance by the Claimant with Tribunal orders, over an extensive period of time' (as recorded in the case management order) and accordingly therefore give notice of dismissal of her claims.'

9. The Claimant now states, in her application to set aside the dismissal of her claim [678] that in fact she has no entries in her GP's records for the period 18 February to 25 September 2018 and that it is therefore impossible for her to provide details of treatment that did not take place. She also asserts (as recorded above) that the Respondent provided the Tribunal with older redacted copies of the notes, not the unredacted versions sent to them by the Claimant.

10. In their response to the application, the Respondent dealt (at length) with this issue, which I record in full below, as the detail is relevant and (I find) instructive:

'160. The Claimant had originally disclosed a redacted copy of her medical records on 4th September 2020 (pages 41 – 50). The majority of this report had been redacted, including the page numbers of the report in the bottom right-hand corner of the page.

161. By email on 19th December 2020, the Claimant disclosed a further heavily redacted copy of her medical report (pages 90 – 99). The eight-page report contained at pages 92 – 99, contained several redacted sections, with the duration from 26th September 2018 to 16th July 2020 being redacted completely (pages 92 and 93). This section would logically contain the GP and medical records from the period 18th February 2018 to 11th December 2019 that the Tribunal has identified.

162. After the start of the May 2022 PH, the Claimant disclosed another redacted copy of her medical records (pages 391 – 405). The Claimant provided nine pages of redacted GP records (pages 394 – 402). Several redactions had been made to these records, including in respect of January 2019. The Claimant did not provide pages of her GP records after 11th

January 2013 until 26th September 2018 (pages 401 and 402). The Claimant had conspicuously redacted the pages numbers of these GP records. (my emphasis)

163. Following the recent case management Unless Order that the Claimant send to the Respondent "Complete unredacted copies of her GP and other medical records for the period 18 February 2018, to 11 December 2019" (page 537), the Claimant disclosed yet another incomplete copy of her medical records. By email dated 11th October 2022 (23.17), (pages 582 – 591), the Claimant stated, "Please find attached a copy of the Claimant's…[u]nredacted Medical Report (In compliance with 16.1 from 18th February to 11th December 2019)…" Attached to that email was four pages of her GP records from 26th September 2018 to around 23rd December 2019 with the page numbers of the medical report still redacted (my emphasis) *(pages 583 – 586).*

Breach of Unless Order to provide medical records

164. As noted in the Respondent's email on 18th October 2022 (page 599), the Claimant failed to disclose a fully unredacted copy of her medical records from the period 18 February 2018, which would clearly have been contained in the original GP report. The Claimant had only provided the final four pages of the medical report of the original GP report. This was a breach of the Tribunal's Unless Order ("Records Breach").

165. Since the Recordings Breach, SPB was able to lift the redactions on the Claimant's original medical report (page 614). This page clearly shows that the Claimant had deliberately concealed and redacted page numbers in the bottom right-hand corner of the report as it reads "page 10 of 35", whereas on page 613 the copy that the Claimant provided on 11th October 2022, has redacted the page number and simply labelled it "10". This demonstrates that the Claimant was deliberately attempting to conceal that the part of report provided by the Claimant during this litigation was part of a much longer report, which would logically contain medical records from 18th February 2018 onwards. This also shows that the Claimant has failed to disclose the majority of her medical records, including specifically the records before 26th September 2018, as the report runs to some 35 pages after the page 10 that the Claimant has disclosed.

166. The Claimant had also been ordered by Unless Order to disclose all documents relating to remedy by 4th October 2022, as set out in paragraph 159 above. The Claimant has maintained that she has been too ill to work since she resigned in December 2019, yet she has failed to provide a full unredacted copy of her original GP records (which only went up to July 2020) to support this. For the purposes of remedy, these records are over two years out-of-date and the Respondent still does not have a full copy of the Claimant's unredacted medical records for the entire period from the date of dismissal until the date for disclosure. Attached to the Respondent's email of 18th October 2022 were the redacted and unredacted copies of the Claimant's medical records which highlight this issue (pages 600 – 613).

167. On 3rd November 2022, the Claimant wrote to the Tribunal to provide her account regarding the medical records (pages 629 – 640). The Claimant

stated that "The Claimants [sic] duly complied with the order of 13th September 2021 [sic – should read 2022] to provide copies of her GP medical reports in which they wish to rely for the periods requested by the Respondent to be unredacted. Despite sending various unredacted copies over the course of the proceedings the Respondents still presents to the court the original heavily redacted form citing non-compliance. The medical fit notes up to October 2022 has also been supplied and her therapy information was said not to be of any use. This has left the Claimant confused" (pages 638 – 639).

168. After six preliminary hearings to clarify the matters in this case and clear case management orders from the Tribunal, it is unreasonable that the Claimant claims that she is confused regarding the medical records which she is obliged to disclose. As far as the Respondent can identify, the Claimant has sent only one updated Fit Note by email to the Respondent and the Tribunal dated 13th September 2022 (08.17), which is dated 9th September 2022 and yet inexplicably back-dated for the period from 15th March 2022 to 31st October 2022 (pages 521 – 522). The Claimant has not sent updated GP records or any documentation related to her claim for benefits.

169. The Claimant falsely claims at pages 638 – 639 that she has provided several unredacted copies of her medical records throughout the proceedings. This is demonstrably untrue, as shown by the many varieties of unredacted or incomplete medical records provided by the Claimant at pages 41 – 50, 92 – 99, 394 – 402 and 583 – 586. The Claimant has also not provided any GP records beyond those originally provided up to 16 July 2020 (as referenced in paragraph 161).

170. Further, contrary to the Claimant's assertion, she was not ordered to provide medical reports on which she wished to rely (page 638). Instead, she was ordered to disclose complete unredacted copies of her GP records and other medical records, as well as all relevant documents for remedy (page 537).

171. On 6th November 2022, the Claimant wrote to the Tribunal again (pages 661 – 664). The Claimant maintains her position in paragraph F of this correspondence (page 663) that she had provided unredacted copies of her GP records and medical reports and that the Respondent was incorrectly referring to historic copies of her medical documentation. As set out above, in particular at paragraph 169, the Claimant has provided many copies of her medical records, however such records have been incomplete or redacted.

172. The Tribunal addresses the Claimant's non-compliance in its letter at pages 670 – 672. Paragraph 4 of the letter states:
"The Respondent alleges failure by the Claimant to comply. The unredacted copies of her GP's notes, since provided, run from 26 September 2018, to 23 December 2019. They do not, therefore, include any records for the period 18 February to 25 September 2018, as required in the order. It is clear from the previously (redacted) notes provided by her that under the heading 'minor past', on page 3 of those notes that there is a considerable redacted section, starting below the 26 September 2018 entry, indicating medical history prior to that date and likely to cover the period 18 February to 25 September 2018, which she has not disclosed" (page 671).

173. The Tribunal also addresses in its letter the Claimant's assertion that the Respondent had misled the Tribunal by referring to historic copies of the Claimant's medical records, ignoring the more recent unredacted copies of the medical records that the Claimant had allegedly provided (page 671). Paragraph 6 of the letter reads: "However, I see no reason to doubt the Respondent's submission on this point. It is clear, from the documents provided by them that there is still a gap in the Claimant's medical records for the period 18 February to 25 September 2018, which the Claimant's response has not (as far as it can be understood) explained, nor has it provided her correspondence enclosing such documents, showing compliance with the unless order and nor has it attempted to rectify the gap."

174. In response to this point, notably, the Claimant then changes her account in her correspondence with the Tribunal dated 14th November 2022 (pages 674 – 680). The Claimant stated that "Between 18th February 2018 – 25th September 2018 the claimants [sic] does not have any further entries in her GP records covering this period as seen in 'Minor Past' (see attached document)" (pages 678 – 679). The Claimant further writes on page 679, "In any event it would have been impossible for Miss Miller to produce copies of her medical history covering the period of 18 February 2018 – 25th September 2018 because it does not exist." The Claimant therefore appears to accept, for the first time, that there are gaps in her medical records but her explanation, now, is that they do not exist.

175. The Claimant appears to be suggesting that, because there is nothing listed in the "Minor Past" summary list between the dates of 6th November 2017 and 26th September 2018 (page 394), that means that there were no visits or interactions with the GP and, consequently, no GP records of such visits during that time period. That is demonstrably untrue. By way of examples below:

a. There is an entry in the GP records dated 1st October 2018, which records, "Got stung by bee on Saturday on (R) foot – Check foot could not see anything – fine…" (page 401). This is clear evidence that the Claimant attended the GP on 1st October 2018. That attendance is not listed in the "Minor Past" list on page 394.

b. There is an entry in the GP records dated 21st August 2019, for an attendance at the medical centre for an annual asthma review (page 399). That attendance is not listed in the "Minor Past" or individually referenced on thatpage (page 394).

c. There is an entry in the GP records dated 17th October 2019, for an attendance at the medical centre for anxiety / depression (page 398). That attendance is not listed in the "Minor Past" or individually referenced on that page (page 394).

176. The Respondent submits that the Claimant's point is disproved by an analysis of this evidence.

177. In any event, as we have made clear in paragraph 165, the extract of the medical report provided is part of a 35-page medical report for which there

must be medical records dating back to February 2018 and so the Respondent asserts that this is not correct.

178. The Claimant claims that she sent the Respondent unredacted copies of her medical records covering the period from 18th February 2018 to 25th September 2018 around the following dates: August 2021, March 2022 and May 2022 (page 679). The Claimant has provided screenshots of part of one page of her medical records on pages 675 – 677. Although these screenshots are unredacted, they only show a small section of one page of the Claimant's medical records and prove the very point that the Respondent is making; she does have medical records dating back to February 2018.'

11. Conclusion on non-compliance. I have no reason to doubt the Respondent's submissions on this issue. It is clear that for some time the Claimant has been 'picking and choosing' which medical notes she will release, in contravention of both the 'unless' order and previous orders. Her altering of the page numbers of the medical notes clearly indicates a desire to mislead as to the true extent of such notes. Further, as indicated in the chronology above, this is not the first time that she has failed to comply with orders in this respect and generally, throughout this matter, she has been dilatory or failed to co-operate in the disclosure process. I note also that she has not sought to provide counter-submissions to those made by the Respondent. I see no reason, therefore, to conclude that, as she asserts, she has complied with the 'unless' order, in this respect.

12. Seriousness of the Default. I am in no doubt that this is a serious default. Medical evidence is core to the Claimant's claim of disability discrimination and to the Respondent's ability to challenge it, but which is potentially greatly weakened by selective disclosure by the Claimant. The seriousness of the default is also exacerbated by the repeated nature of the Claimant's failure to comply with this requirement, despite repeated requests from the Respondent and several orders by the Tribunal.

13. Reason for the Default. I don't accept that there has been any 'confusion' on the Claimant's part, or that being a litigant-in-person is a significant factor excusing the default. Rather, it is clear to me that the default has been deliberate and calculated, to seek to benefit the Claimant's case, or disadvantage that of the Respondent's. In this context, I note also the 'one tick/two tick' medical declaration form issue, briefly mentioned in the chronology. As part of her disclosure, the Claimant provided a copy of her medical declaration form, as completed at the time she was first recruited [258-261 and 520]. That document showed that she had 'ticked' two boxes on the form, one stating that she considered herself as having a disability and another stating that '*I currently have no health problems'.* She stated in her claim that the Respondent had been aware, therefore, from the outset of her employment that she was disabled and the issue as to the Respondent's knowledge of her disability was a live issue in this case. However, on the Respondent comparing that document to the one held in their records, their version had only one tick, by the box referring to '*no health problems'*. They asserted, therefore that the Claimant had fabricated her copy of the form, to show her disclosing her disability (when, as far as they were concerned, she had not) and, in December 2021, demanded an explanation of this discrepancy, to which the Claimant did not respond. A 'catch up' case

management hearing, which could have dealt with this issue, was listed for 4 January 2022, but which was postponed, at the Claimant's request, on health grounds. At a re-listed case management hearing, on 14 February 2022, by which point the Claimant had still not responded to the query, she was ordered to do so. She was specifically ordered to provide '*an email which has attached to it the email to the Respondent dated 18 February 2019 with attachments in its original form'* (my emphasis). In response, by letter of 17 March 2022 [250] she said that in fact the Respondent had sent her two copies of the form, in response to a SAR's request of hers, one with two 'ticks' and another with only one, which 'confused' her, but that the 'two ticks' document was the correct one. She did not comply with the detail of the order. The Respondent, in their submission, also points out the following matters:

'101. Further, at the time of submitting the induction documents on 18th February 2019, the Claimant submitted an "Equal Opportunities Form", which stated, "Prefer not to say" when asked if she had any disabilities, which is wholly inconsistent with the Claimant's version of events that she had disclosed that she was disabled on the Health Form (pages 262-263).

102. Further still, there is an email dated 13th May 2019 (01.21) (pages 259 to 260) from the Claimant to Greggs, which states:
"As a result of the above [Claimant complaints about her manager] I would like to update my employee profile (my emphasis) *to show that I consider myself as having a disability and I would like to discuss my condition with OHA in the event that I require work considerations*

[examples of disability are Diabetes, Epilepsy, Dyslexia, Physical Disability or Mental Disability such as Cerebral Palsy, Bipolar / Schizophrenia, Long Term Conditions and or conditions on Long Term Medication]

I consent to the OHA communicating about my condition with my employer if during the telephone consultation it is agreed that it is in my best interest the business is aware of my condition to enable reasonable adjustments or modifications for me to do my job….

"When I completed the started [sic] forms I was of the belief that making sandwich [sic] a practical task would not be impeded by my disability. However I find myself having to read text material to try and learn how to make sandwiches initially before Balham training and would have to do so for the new line of sandwiches coming in. This will however have an impact on my disability [our emphasis]".

14. The Claimant was again ordered, at the September 2022 case management hearing, to provide the document in its 'original form' (using the same wording as the previous order of February 2022). She did so, on 4 October, attaching to an email the original email of 18 February 2019, from her to the Respondent, to which, as an attachment, is the 'one-tick' form, not the 'two-tick' form she sought to rely on [554-555]. That enclosed email and document match those held by the Respondent, with the metadata on the form matching that of the copy held in their records [566-567].

15. The Respondent asserted scandalous conduct of the proceedings by the Claimant and dishonesty on her part. Her only response was to state that

she '*stay(ed) true to the events as stated in March 2022'* in relation to her disclosure of the 'two-tick' form [639].

16. Conclusion on Reasons for Default. I can only conclude that the reason for the default in respect of the unredacted disclosure of medical documents, when seen also in the light of the Claimant's obvious deceit as to the 'two-tick' form, is that she sought to bolster her case and/or weaken the Respondent's.

17. Possibility of Fair Trial. I see no possibility of a fair trial, for the following reasons:

    a. The Claimant has acted unreasonably in her conduct of her claim (as set out above) and I see no reason why such behaviour would not continue to trial.

    b. The time period since the events in question is three years and were this matter to be re-listed for a final hearing, would be likely to be up to four years. Such a time lag must inevitably prejudice the possibility of a fair trial, due to witness availability and memory of events.

    c. A final hearing has now twice been adjourned, due to the fault of the Claimant and while at the last case management hearing I was prepared to give the Claimant one more opportunity, as I considered it '*just possible'* that a fair hearing could proceed in February this year (as then listed), I no longer consider that to be the case.

18. Interests of Justice. The interests of justice apply of course to both parties, not just the Claimant. Clearly, her application having been refused, she will suffer the prejudice of being unable to pursue her claims. I balance that prejudice, however against that suffered by the Respondent, if this matter were to proceed and find that the balance falls in the Respondent's favour, for the following reasons:

    a. As identified by EJ Truscott KC in the February 2022 hearing, the Claimant had not complied with orders and he recorded that, "*The Respondent has been put to a deal of wasted time and expense seeking to progress the claim and obtain compliance from the claimant….[I]t was apparent to the Tribunal that medical issues and difficulty obtaining legal representation had been advanced on previous occasions for non-compliance with Tribunal orders. It seemed to the Tribunal that the respondent had very good reason to make the application for strike out that it did….[T]he claimant was left in no doubt that it would be unlikely that any further excuses for failure would be accepted. The Tribunal continued the application for strike out to 12 May 2022*" [247]. Despite this warning, however, the Claimant's failed or dilatory compliance continued, incurring wasted time and expense for the Respondent. I have no confidence that such wasted time and expense would not continue to any trial.

    b. I have no reason to doubt the figures advanced by the Respondent for their costs to date (plus of £80,000), bearing in mind that there have been six preliminary hearings (at least four of which were due

to failures by the Claimant) and the necessity to adjourn the August 2021 final hearing, at short notice, again due to default by the Claimant and for which time had been spent in preparation by the Respondent. Such costs (and any additional costs, if the matter were to proceed), are clearly grossly disproportionate to the issues in this case.

c. I see no reason why the Respondent should have to face a claim at trial, at which, based on the current behaviour of the Claimant, she would seek to advance evidence of dubious probity.

d. Applying the 'overriding objective' (Rule 2), it is clear to me that the need to avoid delay and to save expense, in a claim where the Claimant has had ample time to put her case, but has failed to do so, while taking more than her fair share of Tribunal resources, indicates that it would be fair and just to refuse her application.

19. Conclusion. The Claimant's application is therefore refused.

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Employment Judge O'Rourke

Date: 10 January 2023