Neutral Citation Number: [2023] EAT 16

Case No: EA-2020-000587-LA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24 February 2023

Before :

HIS HONOUR JUDGE JAMES TAYLER
MISS NATALIE SWIFT
MR STEVEN TORRANCE

- -

Between :

MS A MOHAMMED **Appellant**
- and -
GUY'S AND ST THOMAS' NHS FOUNDATION TRUST **Respondent**

- -
- -

ALICE MAYHEW KC instructed through Advocate for the **Appellant**
NATHANIEL CAIDEN (instructed by DAC Beachcroft LLP) for the **Respondent**

Hearing date: 24 January 2023

- -

JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE

The claimant brought a claim asserting a number of types of discrimination. The employment tribunal erred in law in making an unless order requiring the provision of additional information about most of the types of discrimination asserted, under the terms of which the entire claim would be struck out if there was any material non-compliance with the order; including one complaint about which no request for additional information was made, and two complaints that were already particularised in large part.

HIS HONOUR JUDGE JAMES TAYLER

Introduction

1. This is an appeal against an unless order made by Employment Judge Siddall on 27 May 2020, sent to the parties on 16 June 2020:

> **UNLESS** by 4pm on **8 July 2020** the claimant provides to the tribunal and to the respondent further details of her claims for discrimination, as requested and highlighted in yellow on a List of Issues prepared by the respondent and dated 20 April 2020, her claim shall be dismissed without further order.

2. The claimant commenced employment with the respondent on 31 August 2003. From October 2012 the claimant worked as a Clinical Research Sister in the Research and Development Team at Guy's and St Thomas Hospital. The claimant submitted a claim to the employment tribunal. She ticked the boxes asserting race and disability discrimination. A seven page document entitled "Details of Claim" was attached to the claim form. The details of claim were drafted by solicitors instructed by the claimant. The factual allegations were set out with reasonable clarity. It was also clear that some of the treatment she complained about was asserted to be race discrimination. It was not so clear what she asserted was direct disability discrimination, harassment, discrimination because of something arising in consequence of disability and/or a failure to make reasonable adjustments. It should have been possible to clarify the complaints at a preliminary hearing for case management if both parties actively engaged in the process in accordance with the overriding objective, ideally without having to send the claimant away to provide additional information, with the inherent risk that the information produced would be considered inadequate by the respondent and/or the tribunal.

3. The matter was considered at a preliminary hearing for case management on 27 February 2019. The respondent had provided a draft list of issues with a number of questions highlighted. There was no significant consideration of the issues. Instead, the claimant was ordered to provide the respondent with further and better particulars of the claims identified in the draft list of issues, probably because both parties were represented at that time so it was not expected to be problematic.

4. The claimant's solicitors provided further particulars on 13 March 2019, that were limited to providing more detail in respect of the claim of failure to make reasonable adjustments. They asserted that the other claims were adequately particularised. On 22 March 2019, the respondent made its first application for an unless order. The claimant's solicitor responded asserting that sufficient particularisation had been provided. The application for an unless order was refused.

5. No further progress in clarifying the issues was made by the parties. On 13 September 2019, the respondent made a second application for an unless order. The employment tribunal responded on 13 November 2019, ordering that the claimant provide the further particulars requested in the questions inserted into the draft list of issues within 7 days, failing which consideration would be given to striking out the claim.

6. On 20 November 2019, the claimant sought an extension of time stating that she was seeking alternative legal representation. On 7 January 2020, the respondent made a third application for an unless order:

> In light of the above, the Respondent seeks an Order that unless the Claimant provide us with **further and better particulars of her direct discrimination and discrimination arising claims** and complies with the Tribunal's Order within 7 days, **her claim be struck out in its entirety** and without further Order. The Respondent submits that the Claimant has had approximately 11 months to provide this information and has failed to set out any good reason why she has been unable to do so. We suggest that the Claimant should know the detail of her own claim. [emphasis added]

7. On 15 January 2020, the claimant wrote to the tribunal objecting to the application on the basis that particulars had already been provided, and stating that she had been recovering from surgery which meant that she had not been able to instruct new solicitors. On 19 March 2020, the respondent sought a postponement of the full hearing of the claim that was due to commence on 20 April 2020. The respondent asserted the claim was not ready to proceed because of the claimant's failure to comply with the order for additional information and because of the Coronavirus pandemic. There was correspondence about whether the application for an unless order could be dealt with on the papers.

Making the unless order

8. On 20 April 2020, the respondent's solicitors provided an updated draft list of issues, including the information the claimant had provided about the reasonable adjustments claim, and setting out the complaints in respect of which the respondent contended further particularisation was still required. The draft list of issues identified the claims and sought additional information as follows:

> Direct Disability Discrimination: Claimant to identify all allegations of less favourable treatment
>
> Discrimination Arising from Disability: Claimant to identify the "something arising" from her alleged disability. Claimant to identify all allegations of unfavourable treatment arising from her alleged disability
>
> Failure to Make Reasonable Adjustments: Respondent's failure to extend the provision of sick pay beyond the contractual entitlement in this concern also constitutes a failure to make a reasonable adjustment / Pro rata extension of provision of sick pay beyond the contractual entitlement [Claimant to confirm whether this is a PCP?]
>
> Harassment: no request
>
> Direct Race Discrimination: Claimant to identify all allegations of less favourable treatment. Claimant to identify actual or hypothetical comparator.
>
> Victimisation: Claimant to identify all allegations of detrimental treatment.
>
> Discrimination in relation to Terms of Employment: the Claimant is asked to particularise this claim further.

9. The questions were the same as originally asked, save that a question had been added asking what detriments were relied on in the victimisation claim and in seeking confirmation of one of the PCPs in the reasonable adjustments claim.

10. Eventually, a telephone preliminary hearing for case management was fixed for 27 May 2020 at which the unless order was made. EJ Siddall gave her reasons for making the order:

> 4. The claimant was previously represented by solicitors and appeared to be under the impression that the information had already been provided. I am satisfied that it has not. This case commenced in 2018. It was due to be hearing in April 2020 and it is a matter of great concern that the issues in the case are still not entirely clear. In addition I was advised by the respondent that none of Judge Balogun's other directions have yet been

> complied with: the claimant has not provided a schedule of loss or disclosed her documents, and exchange of witness statements has not yet taken place.
>
> 5. **It is very clear that the claimant is struggling to understand the information she needs to provide and the tasks she needs to complete.** However that is part of the tribunal process. It is necessary for her to take steps to ensure that the case will be ready for hearing on the next occasion, which will be on 19 April 2019. Part of that process is to clarify the claims she brings to the respondent and the tribunal. The further information requested of her is not onerous or unreasonable: the task is to identify which parts of her claim should go under the different sections set out in the List of Issues, which refers to the various types of discrimination claims that she has brought. If the claimant continues to struggle with that task I urge her to seek assistance, for example from a law centre, citizens advice bureau or from an organization like the Free Representation Unit.
>
> 6. The claimant is ordered to provide the information requested and highlighted in yellow on the respondent's draft List of Issues by 4pm on 8 July 2020. If she does not do so, **the claim will be struck out** on 8 July 2020 without the need for any further hearing. [emphasis added]

11. The employment judge noted in case management summary:

> 2. It is a matter of great concern that the detailed case management orders made by Judge Balogun back in February 2109 appear not to have been complied with for the most part, despite the fact that the case was due to be heard on 20 April. It was necessary to set a fresh timetable to get this case ready for hearing. **It is now vitally important that both parties comply with all the orders by the dates given. If not, the tribunal will have to decide if a fair trial is still possible or whether any of the claims should be struck out.**
>
> 3. **It is of particular concern that the issues in this case have still not been clarified.** Judge Balogun ordered in February 2019 that further details of the discrimination claims should be provided. **The claimant appears to be under the impression that they have been provided by her former solicitors. I am satisfied that they have not. I have therefore made an Unless orde**r that the claimant must by 8 July 2020 provide details of the matters highlighted in yellow on the respondent's proposed List of Issues dated 20 April 2020. **If she does not, her claim cannot proceed further.**
>
> 4. **I appreciate that the claimant is not represented and she is clearly struggling to understand what she needs to do to get her case ready. She became upset at points today.** In light of that I have set a generous timetable to complete the tasks that are necessary before April next year. I spent some time at the hearing going through the case management orders and explaining to the claimant what she needed to do. If there are any points within this order that she does not understand, I urge her to try to seek legal advice upon it. She may be able to obtain this from a local law centre, citizens advice bureau or from an organisation like the Free

> Representation Unit. [emphasis added]

12. There was no reference to, or consideration of, Rule 38 of **the Employment Tribunal Rules 2013** ("**ET Rules**") that makes provision for unless orders, or of the relevant authorities about unless orders, in the reasons or the case management summary. There was no consideration of the claim form and the particulars that had been provided to analyse to what extent particulars were lacking in relation to each of the complaints. The treatment that was asserted to be direct race discrimination was reasonably clear from the claim form but was still subject of one of the questions. The identity of colleagues with whom the claimant compared herself required specification, albeit that, in the absence of named comparators, the claim was triable on the basis of a hypothetical comparator. No question had been asked about the harassment claim. There had been no previous order in respect of the detriments in the victimisation claim. The reasonable adjustments claim was clear save for a question about a PCP in respect of a contention that sick pay should have been extended. None of these points about the state of the pleadings was considered by the employment judge.

Non-compliance

13. The claimant did not provide additional information but sought a reconsideration of the unless order. On 22 July 2020, the employment tribunal sent an email in which it was stated:

> As the claimant has failed to meet the deadline of 8 July for compliance with the Unless Order, the six day hearing that was due to take place from 19-26 April 2021 will now be cancelled. Her claims for discrimination can proceed no further.
>
> However the claimant's separate Wages Act claim remains listed for 1 December 2020 and will go ahead.

14. A wages act claim was not struck out because it had been brought in a separate claim form and was to be heard at a separate hearing.

The law

15. Rule 38 **ET Rules** provides:

> 38.—(1) An order may specify that **if it is not complied with** by the date specified **the claim** or response, **or part of it**, shall be **dismissed without further order**. If a claim or response, or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what

> has occurred.
>
> (2) A party whose claim or response has been dismissed, in whole or in part, as a result of such an order may apply to the Tribunal in writing, within 14 days of the date that the notice was sent, to have the order set aside on the basis that it is in the interests of justice to do so. Unless the application includes a request for a hearing, the Tribunal may determine it on the basis of written representations.
>
> (3) Where a response is dismissed under this rule, the effect shall be as if no response had been presented, as set out in rule 21.

16. The rule draws a clear distinction between orders in respect of which non-compliance will result in the dismissal of the "claim" and those where non-compliance will result in the dismissal of "part of it". We consider the reference to the "claim" means the entirety of the complaints set out in the claim form, just as the rule contrasts the "response" or "part of it". Thus, where there are a number of complaints in a claim form, such as complaints of direct race and direct disability discrimination, an unless order requiring particularisation of both complaints could provide that if there is non-compliance the "claim" will be struck out or that only the "part" of the claim in respect of which there is non-compliance will be struck out. If an order is made of the former type and the party provides particulars of one claim but not the other, the entire claim will be struck out, whereas if the order is of the latter type only the complaint in respect of which there has been non-compliance would be stuck out.

17. In **Wentworth-Wood & Others v Maritime Transport Limited** UKEAT/0316/15/JOJ HHJ David Richardson considered the potential judicial decisions to be made in in respect of an unless order:

> 4. Rule 38 clarifies Employment Tribunal procedure concerning Unless Orders. The Employment Tribunal, usually the Employment Judge alone, is potentially involved at three stages, each involving different legal tests.
>
> 5. Firstly, there is the decision whether to impose an Unless Order and if so in what terms. ….
>
> 6. Secondly, there is the decision to give notice under Rule 38(1). … The decision to give notice simply requires the Employment Tribunal to form a view as to whether there has been material non-compliance with the Order …

> 7. Thirdly, if the party concerned applies under Rule 38(2), the Employment Tribunal will decide whether it is in the interests of justice to set the Order aside. …
>
> 8. At each of these stages there will be a decision for the purposes of section 21(1) of the Employment Tribunals Act 1996; so there may be an appeal to the Employment Appeal Tribunal on a question of law. They are, however, separate decisions taken at different times under different legal criteria. An appeal against one is not an appeal against another; and the time for lodging appeals will run from different dates. This point must be kept carefully in mind by any party considering an appeal.

18. HHJ Richardson considered how an unless order should be construed:

> "The starting point, in construing an Unless Order, as any other Order, is the ordinary meaning of the words used. The legal and procedural context will always be relevant: for example the context may show that the ordinary meaning cannot have been the meaning in the Order. In any event the party who has to comply with an Order must be able to see from its terms what is required to comply with it; an Order cannot be read expansively against the party who has to comply."

19. In **Uwhubetine v NHS Commissioning Board England** UKEAT/ 0264/18/JOJ, HHJ Auerbach stated:

> 45 The starting point for the Tribunal engaged in that task is to consider the terms of the Order itself and whether what has happened complies with the Order or not. This may call for careful construction of the terms of the Order, both as to what the Order required and as to the scope of the Order in terms of the consequences of non-compliance, particularly in cases where there are multiple claims or multiple parties. If there is an ambiguity the approach should be facilitative rather than punitive, and any ambiguity should be resolved in favour of the party who was required to comply. However, what the Tribunal cannot do is redraft the Order or construe it to have a meaning that it will not bear, though its words should of course be construed in context.

20. This appeal concerns only the making of the unless order at stage one. Considerable care should be taken before making an unless order because, depending on the wording, material non-compliance with part of the order may result in the entire claim being struck out: **Royal Bank of Scotland v Abraham** UKEAT/0305/09/DM. In **Johnson v Oldham Metropolitan Borough Council** UKEAT/0095/13/JOJ Langstaff J held:

> 6. I accept that such an unyielding approach may be appropriate when

considering one claim on its own. In the *Abraham* case however there were three claims under consideration: sex discrimination, disability discrimination and unfair dismissal. A consequence of a failure to provide material in respect of the first two had the consequence that all three were struck out. **Where an ET1 raises two or more separate claims it must, in my view, be remembered that they are legally separate claims. They are separate causes of action, albeit closely factually connected. Any decision needs to be considered in that light.** I accept the broad thrust of Ms Woodward's submission for Oldham that *Abraham* is properly to be regarded as a case turning upon the wording and application of the particular order made in that case. **I accept that, in any case where the consequences of non-compliance with an unless order fall for consideration, all is likely to be depend the precise terms of the order.** For the assistance of Tribunal Judges, given the concern that Judge Feeney here expressed about her own position in respect of *Abraham*, **I would simply note that because so much in my view turns upon the precise form of the unless order made and because the consequences of an unless order may be draconian, judges making such an order in the first place may wish to consider tailoring it with particular care. For instance, such an order might provide that any allegation not sufficiently particularised might be struck out. Such an order would leave it open to a subsequent Judge to conclude that there had been compliance in respect of some allegations, which would not therefore automatically be struck out, even though there had been non-compliance in respect of others which were**.

7. The phrase used by Pill LJ in Marcan was, "..any **material** respect": I would emphasise the word "material". It follows that compliance with an order need not be precise and exact. It is agreed by counsel before me that Employment Judge Feeney in adopting a test of substantial compliance therefore adopted one in accordance with the law. **I would make this comment however: "material" may be a better word than "substantial" in a case in which what is in issue is better particularisation of a claim or response.** That is because it draws attention to the purpose for which compliance with the order is sought; that it is within a context. What is relevant, i.e. material, in such a case is whether the particulars given, if any are, enable the other party to know the case it has to meet or, it may be, enable the Employment Tribunal to understand what is being asserted. To use the word 'substantial' runs the risk that it may indicate that a quantitative approach should be taken: thus, where 11 matters must be clear to enable a party to deal fairly with a claim, of which 9 have been provided but not 2, which remain necessary, compliance has not materially been provided because the purpose of seeking compliance has not been achieved in the context; the other party still cannot obtain a fair trial. To adopt a quantitative approach may erroneously lead the Judge in such a case to conclude that there had been sufficient compliance (9 out of 11) even if the further particulars remained necessary before a fair trial could take place. **Substantial compliance has thus in my view to be understood as equivalent to material compliance not in a quantitative but in a qualitative sense.** [emphasis added]

21. In **Ijomah v Nottinghamshire Healthcare NHS Foundation Trust** UKEAT/0289/19/RN

HHJ Auerbach emphasised the great care that should be taken before making an unless order, particularly where it is done by converting a previous order for additional information into an unless order:

> 26. Thirdly, **because of the draconian nature of an Unless Order, particular care is required both when making and framing such an Order**, and when considering whether there has been material non-compliance with it. **The authorities particularly highlight the dangers in cases where there are multiple claims, as, were the Tribunal to find itself striking out a claim that it was "perfectly possible to litigate" and in respect of which "no further particulars were required"**, on account of failure to comply with an Order in respect of another claim, that would "amount to taking a penal rather than a facilitative approach." (See Johnson at [4] and [5]). …
>
> 57. Unless Orders relating to the provision of particulars present particular hazards and challenges. Very often, an Order which was not originally made as an Unless Order is then, on a later occasion, converted into one, but not always with sufficient consideration of whether the language of the original Order is suitable for conversion. The making of an Unless Order in such a case may also, in due course, give rise to a particularly challenging exercise in the application of the test of material non-compliance. Further, where, as so often occurs, the Order relates to a case in which there are multiple complaints, particular care and attention needs to be given, both when making, and interpreting, such an Order, to what it has to say about the consequences of any material non-compliance. [emphasis added]

22. An unless order is not just a case management order. Before making an unless order an employment judge must consider with great care what the consequence of non-compliance will be. If an order will result in the entire claim being struck out if there is any material non-compliance the judge must be satisfied that the strike out of the entire claim, that will be the automatic consequence of material non-compliance, is a proportionate response to any material breach of the order, no matter how minor. An unless order is, in effect, a contingent decision to strike out the claim if there is any material non-compliance. The whole point of an unless order is that the dismissal of the claim is automatic without any further consideration of proportionality or the interests of justice.

23. There is only limited scope for the EAT to uphold an appeal against the making of a discretionary case management order. It can do so where the tribunal has failed to take account of a relevant consideration, or has taken account of an irrelevant consideration, or has acted perversely.

The EAT may have regard to the particular care that should be taken in making an order that may result in dismissal of the proceedings: **Andreou v Lord Chancellor** [2002] EWCA Civ 1192, [2002] IRLR 728. The EAT can also interfere where the employment tribunal has misdirected itself as to the relevant law, but should be slow to conclude that a proper direction as to the law has not been applied: **DPP Law Ltd v Greenberg** [2021] EWCA, Civ 672, [2021] IRLR 1016.

The appeal and response

24. The claimant appealed against the making of the unless order. The original Notice of Appeal was initially considered by HHJ Martyn Barklem who was of the opinion that there were no reasonable grounds for bringing the appeal. The appellant challenged that decision pursuant to Rule 3(7) of the **Employment Appeal Tribunal Rules 1993** (as amended) with the benefit of assistance under the ELAAS scheme and was permitted to rely on amended grounds of appeal asserting, at paragraph 4, that the employment tribunal erred in law or acted perversely in ordering that the totality of the claim would be struck out if she failed to comply with the unless order because: (1) the claims were sufficiently particularised (2) the particular causes of action should have been considered, in particular i) there was no request for particularisation of the harassment claim; ii) further particulars of the reasonable adjustments claims had been provided; iii) particularisation of the detriment relied on in the victimisation claim had not been requested prior to the draft list of issues produced on 20 April 2020 and had not been the subject of previous orders; iv) the claim of discrimination because of something arising in consequence of disability was adequately particularised; and v) the correspondence between the parties proceeded on the basis that the request for additional information related to the disability discrimination claims only.

25. The respondent asserts that the claim was insufficiently particularised and that the decision to make the unless order must be seen in context of the extensive steps that had been taken to ascertain the legal claims asserted in respect of the facts that had been pleaded. The decision to make the unless order was one that fell within the employment tribunal's case management discretion. The EAT must not substitute its decision for that of the ET. The making of the order could not be said to be perverse.

The respondent asserted that it was not perverse for the order to have the consequence that the entire claim would be dismissed if there was non-compliance with any part of it or, alternatively, the order could be construed so that only any claim in respect of which there was non-compliance would be dismissed. The respondent asserted that we should take into account the fact that the claimant made no attempt to comply with the order but instead put all her efforts into challenging it. If there had been partial compliance and all claims were struck out the claimant could have sought relief from sanction.

Conclusions

26. We do not accept the respondent's alternative argument that the unless order could be read so that only any complaint in respect of which there was material non-compliance would be dismissed. The terms of the order clearly set out that non-compliance would result in "her claim" being dismissed. That was the order that the respondent had requested and the employment tribunal made. Rule 38 **ET Rules** clearly distinguishes between a claim or part of a claim. We consider that the Order was unambiguous.

27. In determining whether the employment tribunal erred in law we have to consider the situation as it was when the order was made. If there was no error of law at the time the order was made subsequent events could not retrospectively result in the order having been made in error of law. Conversely, if the employment tribunal erred in law in making the order subsequent events cannot erase that error. If the making of the order was in error of law that cannot be altered because there was, or was not, compliance with it, although there may be no practical purpose in pursuing an appeal if there has been material compliance with such an order, so the claim was not dismissed.

28. It is not necessarily an error of law for an employment tribunal to make an order that will result in the entire claim being dismissed if there is a failure to comply with any one of a number of requests for additional information in respect of different causes of action, or where sufficient information had been provided in respect of one or more of the complaints. However, generally it will be proportionate to limit the dismissal to any cause of action in respect of which there is a material

failure to provide additional information. Any unless order is potentially of draconian effect, but that is especially the case if a complaint that was sufficiently particularised and/or in respect of which the requested particulars have been provided will be struck out because of a failure to comply with a request for additional information in respect of a different complaint. An order dismissing the entire claim if there is a material failure to provide additional information in respect of any one of a number of requests will generally only be appropriate where there has been serious ongoing default in compliance with the orders that suggests that the claimant is refusing to engage with the tribunal process and there has been express consideration of why such a draconian order is required when a more focussed order could be made.

29. Rule 38 **ET Rules** specifically permits an order that would provide that "part" of a "claim" be dismissed if there is non-compliance. The employment judge did not direct herself to the law. There was no reference to Rule 38 **ET Rules** or any of the many authorities that stress the care that should be taken before making this type of unless order. We have concluded that the employment judge erred in law in making this unless order. We consider that the employment judge failed to direct herself to the relevant law and failed to take into account a relevant factor that any breach of the order would result in the entire claim being struck out, including the claim of harassment in respect of which no request had been made and the claims of direct race discrimination and failure to make reasonable adjustments that were substantially particularised. There is nothing to suggest that the employment judge considered making an order that only those complaints in respect of which there was any non-compliance would be struck out or considered why the much more draconian order that she made was proportionate.

30. In making an unless order an employment judge could have some regard to the fact that there is a possibility of a party that is in material non-compliance seeking relief from sanction. However, there is nothing to suggest that the employment made this order on the basis that if there was compliance in respect of some of the complaints an application could be made for relief from sanction to allow the claimant to proceed with those complaints. Indeed, if the employment judge had thought

that complaints in respect of which there was compliance might be permitted to proceed it would have made much more sense for her to have made an order that only those complaints in respect of which there was non-compliance would be struck out rather than on order that would result in the entire claim being struck out if there was any material non-compliance and then hoping that the defect would be remedied by the claimant making an application for relief from sanction.

31. We have taken into account the fact that the claimant, following the lead of her previous solicitors, has spent a great deal of effort in challenging the requests for additional information rather than seeking to provide it. That said, the respondent has shown something of an obsession in seeking unless orders that would result in dismissal of the entire claim if there was any breach. The parties should have co-operated in accordance with the overriding objective to clarify the issues from the details of claim that were initially served and should have provided a good starting point. The employment tribunal could have done more to require that the parties co-operate and to facilitate them doing so. The employment tribunal could have drawn out the additional information required at one of the preliminary hearings for case management rather then sending the claimant away to provide it, particularly once she was acting in person. We can see that this must have been a frustrating case to manage but in the end we conclude that cannot alter the fact that this unless order was made in error of law so the appeal must be allowed.

32. In preparation for the hearing of this appeal the claimant was asked to provide answers to the questions highlighted in the draft list of issues. We considered it might assist in examining the contention that the particularisation was already within the details of claim. The intention was the list would also include any information necessary to give full particulars of all of the complaints. There was a misunderstanding with the consequence that only the information already in the details of claim was set out in the draft list of issues – leaving a few limited issues that still require additional information: the something arising in consequence of disability and the unfavourable treatment for that claim, confirmation of the contested PCP for the failure to make reasonable adjustment claims, and the names of any actual comparators for the direct race discrimination claim. Because a

regrettable consequence of allowing this appeal is that the matter now returns to the employment tribunal after such a significant delay, we direct that the claimant finalise her answers to the questions in the draft list of issues within 14 days of the order allowing this appeal (hopefully with the assistance of her current counsel) so that when the matter returns to the employment tribunal it should be possible after a brief preliminary hearing for case management to list the matter for a final hearing.