EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr. Shamir Ahmed Ali	v	**Birmingham City University**

Heard at: **Birmingham via CVP** **On:** **2, 5,6,7 and 8 June 2023**

Before: **Employment Judge Wedderspoon**

Members : **Mrs. R. Pelter**

Mr. K. Palmer

Representation:

Claimant: **In Person**

Respondents: **Mr. Salter, Counsel**

JUDGMENT

1. The application to amend the claim to add new claims of direct sexual orientation discrimination and harassment related to sexual orientation is refused.
2. The application to amend the claim to add in new factual allegations at paragraph 3.3; 3.10; 3.12; 3.13; 3.14; 3.22; 3.27 and 3.67 is refused.
3. The application to strike out the ET3 is refused.
4. The claimant's application for witness attendance of 7 witnesses is refused.
5. The claimant has conducted the proceedings unreasonably, scandalously and vexatiously and his entire claim is struck out.

REASONS

1. These are the written reasons for the Tribunal's decision to strike out all of the claimant's claims. The Tribunal has set out the detail of the hearing in order to provide context and background to its decision.

<u>The claim</u>

2. By claim form dated 26 June 2021 the claimant made complaints about unfair dismissal and discrimination, harassment and victimisation.
3. The claimant was employed as an IT support technician from 11 September 2017 until his dismissal on 31st March 2021 by reason of misconduct. The respondent is a higher education corporation. Early conciliation started on 22 April 2021 and ended on 3rd June 2021. The claimant's discrimination allegations date from 16 November 2019.
4. The claimant was subject to three disciplinary investigations. First, he was investigated for allegations of filming on his mobile phone (without consent and with requests to stop) a female member of the public over a period of 5

to 6 months leading up to October 2019 and on several occasions knowingly and deliberately followed the female which caused her to feel threatened and caused significant distress to her (the first matter). Secondly, he was investigated for attending work during the global pandemic suspecting he had symptoms of COVID 19 (it was alleged he frightened colleagues by attending work and having a contagious rash) (the second matter). Thirdly he was investigated for failing to comply with sickness procedures and was issued with a first improvement notice (the third matter).

5. The respondent's case is that it dismissed the claimant having issued a final written warning for the second matter and with the addition of a further final warning for the first matter it was appropriate to terminate the claimant's employment. It denies discrimination. The claimant's case is that fabricated allegations were made against him; the university procedures were not followed; he was subjected to a campaign of bullying and harassment and unfairly and for discriminatory reasons was dismissed. There are significant factual disputes in the case and accordingly the credibility of the claimant and the respondent witnesses is key.

Pleaded case

6. The claimant relied upon the protected characteristics of race, sex and religion or belief in his claim form. The case had been subject to three preliminary hearings for case management. The case came before Judge Dean on 30 May 2022 who set out the claims as pleaded in the ET1 and required the claimant to provide further information about his pleaded claims. In fact, the case management order set out a structure for each claim leaving gaps to be completed by the claimant with the further information.
7. On 29 September 2022 15 months post issue the claimant provided a 26 page witness statement to the Tribunal and to the respondent for the purposes of a telephone preliminary hearing on 26 October 2022. Within the witness statement the claimant made new factual allegations now set out in respondent's list (see counsel's note) namely
   (i) 3.3 on 8 November 2019 Mr Mark Cope moved the claimant from Parkside to the Joseph Priestley building;
   (ii) on 10 January 2020 Mr Richard Coubry interrupted the claimant whilst he was helping a student (WS) and told the claimant he had to attend a meeting with Miss Amos straight away;
   (iii) Mr. Zach Hart was also present at the meeting on 10 January 2020 when it was supposed to be a confidential meeting;
   (iv) on 17 January 2020 Miss Amos called the claimant whilst he was at work on the front desk to discuss the disciplinary investigation which was confidential;
   (v) on 17 January 2020 Miss Amos again changed the claimants shift pattern and he was required to work 9:00 AM to 5:00 PM in order to cover for others;
   (vi) Whilst the claimant was off sick in October 2020 the respondents HR department made no contact with him about his sickness absence;
   (vii) On 29 October 2020 Indef Najran shouted at the claimant contagious coronavirus;
   (viii) Throughout his employment with the respondent the claimant was required to work without taking any breaks and was left to work alone

on the front desk. The man is said to be responsible for this or Mr Mark Cope and Mr Coubry.

8. There was no suggestion at this stage that the claimant sought to amend his claim. The telephone preliminary hearing did not take place on 26 October 2022 by reason of congestion in the list. The case came before Judge Harding on 12th January 2023 when it was listed for an ADR hearing. The case was not reading for ADR because the necessary preparatory work had not been completed including the finalisation of an agreed list of issues. In the circumstances it was agreed that the ADR hearing should be converted to a case management hearing to focus on compiling an agreed list of claims.
9. Judge Harding worked through the relevant documentation and made a list of 28 allegations. There was insufficient time on that day to complete the list. The claimant informed the Tribunal that he wished to pursue every complaints as allegations of direct discrimination and on the basis of the additional protected characteristic of sexual orientation. Judge Harding referred the claimant to the fact that he had not ticked the sexual orientation box at 8.1 of the claim form; to which the claimant acknowledged but stated it was contained within the body of information he had provided to the Tribunal. The claimant described himself as straight for the purposes of any sexual orientation claim.
10. On 30th of January 2023 the Judge Harding resumed the preliminary hearing and completed the list of allegations; noting 67 allegations. The respondent represented by Mr. Taylor, solicitor noted that some matters appeared to be new matters and he was given time to inform the Tribunal whether any of the 67 allegations were new claims.
11. The respondent wrote to the Tribunal on the 27th of February 2023 confirming that 8 new claims had been made by the claimant and that an amendment application was necessary. It was submitted that the application could be dealt with at the outset of the final hearing.

Amendment application

12. The claimant submitted all his allegations had been included in a grievance dated 23 April 2021 to the respondent. He had not provided all the allegations in his original claim form because he was restricted in terms of space as to what he could plead in the claim form. He had given particulars about his sexual orientation in the document he sent to the tribunal in September 2022.
13. The respondent objected to the application to amend. There was no justification as to the reason for delay. There was forensic prejudice to the respondent if the claimant was permitted to amend his case because Mr Cope who is named in the new allegation 3.3 is unwilling to attend the hearing by reason of the claimant's conduct and is not comfortable to give evidence to the Tribunal. The respondent intended to invite the tribunal to simply read his witness statement as a written representation. The individual named at allegation 3.27 Mr. Najran is no longer an employee of the respondent. The allegation at 3.67 is a wholly new matter which had never been put. The prejudice weighs heavily in respondent’s favour. The claimant still had 59 allegations he can pursue before the Tribunal. There was no plausible reason given by the claimant why he did not tick the sexual orientation box on paragraph 8.1 of the claim form. This was not a simple relabelling exercise but a wholesale new cause of action which would require further evidence to

be given. The claimant's grievance is not a claim before the Tribunal. The first mention of an amendment application was before Judge Harding in January of 2023 some 19 months post issue.

14. The claimant responded that Judge Dean had been informed about the claims but did not write them down in her case management order but Judge Harding did. He submitted the Judges Dean and Harding were denying his human rights and he was being denied them by the *"so-called barrister"*. The claimant was directed to be respectful to others during the hearing and not to refer to counsel as *"so called barrister"*.

Law on amendments

15. The relevant law in considering an amendment application is that set out by HHJ Tayler in the recent case of **Chaudhry v Cerberus Service Security (2022) EAT 172**. Judge Tayler provided guidance to Tribunals considering applications to amend : the first step when considering an amendment application is to identify the amendment made; second to expressly consider the balance of the injustice and or hardship of allowing or refusing the amendment and thirdly to take account of all relevant factors and those set out in Selkent case (namely nature of application and timing or manner of application).

Conclusions on amendment application

16. The Tribunal determined that the addition of eight new allegations and a new protected characteristic of sexual orientation was a significant amendment to the pleaded case. The claimant had not ticked the sexual orientation box at paragraph 8.1 of the claim form. He had particularised the factual matters of eight new allegations in a witness statement for the purposes of a preliminary hearing sent to the Tribunal at the end of September 2022. He did not indicate that this was an application to amend. The claimant completed an agenda for the purposes of the preliminary hearing and he had not included the protected characteristic of sexual orientation in the agenda for the hearing. There was no adequate explanation before the Tribunal as to why the claimant had failed to include these matters. The Tribunal did not accept the claimant 's argument that he was unable to include all details by reason of the size of the claim form; the claimant had provided a lot of detail about his claims. Further this did not explain the failure to tick the box of sexual orientation as a protected characteristic on the claim form or why he did not act more promptly following the submission of the claim in June of 2021 to add in additional details.
17. In total the claimant makes 59 allegations of direct discrimination and harassment based presently on 3 protected characteristics. The eight new factual allegations will require additional evidence from the respondent's witnesses which will increase the amount of hearing time; the hearing is already listed for 14 days. The addition of the eight allegations will mean that the hearing will be prolonged. In any event there is injustice and hardship to the respondent in allowing the amendment because of the fact that one of the witnesses mentioned in the allegation at 3.27 is no longer an employee of the respondent. The allegation dating back to 2019 made against Mr Cope is old and further Mr Cope has determined but he does not wish to give evidence by way of video link in the proceedings because he is not comfortable to do

so. The allegation at 3.67 concerning no breaks requires a forensic investigation by way of new factual allegations.

18. The claimant still has 59 allegations to put before the Tribunal relying upon three different protected characteristics. The Tribunal balanced the injustice and hardship to the respondent and claimant of allowing and refusing the amendment and find by allowing the amendment it places the respondent at significant prejudice. The respondent would be facing some old claims where witness evidence is not available and has the practical impact of increasing the Tribunal hearing time. The claimant has still 59 allegations which will be heard by the Tribunal. Taking all these matters into account the Tribunal determined that the balance of injustice and/or hardship of allowing the amendment is greater to this respondent than any injustice or hardship by refusing the amendment made by the claimant. In the circumstances the amendment application is refused.

Clarification of list of issues

19. At the commencement of the hearing on day 4 following the Tribunal reading all of the witness statements and the bundle of documents, the Tribunal informed the parties it would be recording the hearing to avoid any misunderstandings as to what was said or occurred during the Tribunal hearing.
20. The Tribunal raised with the parties that the claimant had initially pleaded in his ET1 and it was clarified by Judge Dean in her case management order that the claimant pursued indirect discrimination complaints and victimisation. The respondent had listed in its note to the Tribunal all the allegations under the head of direct discrimination and/or harassment as noted by Judge Harding at the preliminary hearing on 30 January 2023. The respondent informed the Tribunal that the claimant had indicated before Employment Judge Harding that he pursued all allegations as direct discrimination claims. The claimant informed the Tribunal that he was pursuing direct discrimination; indirect discrimination; and victimisation.
21. The Tribunal noted that before Employment Judge Dean in October 2022 the claimant had been required to provide further and better particulars of his pleaded claim of indirect discrimination but had failed to do so. Further in his claim form he had identified a protected act for the purposes of a victimisation complaint but had not clarified the resulting treatment. The respondents said that they were not in a position to defend the indirect discrimination complaint it not having been identified by any further particulars provided by the claimant. The respondent also submitted that the claimant had clarified before Judge Harding this was a case of direct discrimination/harassment.
22. The Tribunal reviewed all the case management orders. The Tribunal noted that the indirect discrimination complaint had not been particularised by the claimant in accordance with the order of Judge Dean. Before Judge Harding in January of 2023, the claimant stated he wished to bring his complaints under the heading of direct discrimination. There was no indication that the victimisation complaint had been dismissed by way of withdrawal. The Tribunal determined that the claimant had not included within his witness statement any complaint of indirect discrimination and the Tribunal was not seized to deal this complaint. However, the claimant in his ET1 and before Employment Judge Dean had confirmed the protected act for the purposes of a victimisation complaint namely an allegation he made of harassment at a

meeting in February 2020. He had not linked the treatment set out in his witness statement dated September 2022 that he suffered as a result of the alleged protected act. The claimant confirmed before the Tribunal he relied upon treatment in that statement (set out in counsel's note) following this protected act as "the unfavourable treatment". The Tribunal determined it was willing to hear the victimisation complaint with the proviso that the respondent insofar it is required (although this was unlikely it had dealt with in the witness evidence reasons for the alleged treatment) could deal with that aspect of the evidence by asking the respondent's additional questions. The Tribunal was mindful that the claimant was a litigant in person and took a practicable approach to the claimant's pleaded claims, applying the overriding objective and ensuring that both sides were placed on an equal footing.

23. The Tribunal adopted the list of matters set out in counsel's note to the Tribunal and added that the claim of victimisation based on the pleaded protected act and allegations of treatment which post -dated February 2020.
24. The claims and issues to be determined are set out below.

List of claims and Issues

Jurisdiction

25. Given the date of the claim form was presented 26 June 2021 and the dates of early conciliation 22 April 2021 and 3 June 2021 any complaint about something that happened before 23 January 2021 may not have been brought in time.
26. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide
    (a) was the claim made to the tribunal within three months plus early conciliation extension of the act or omission to which the complaint relates
    (b) if not was their conduct extending over a period?
    (c) If so was the claim made to the tribunal within three months plus early conciliation extension of the end of that period?
    (d) If not were the claims made within a further period and that the tribunal thinks is just and equitable? The tribunal will decide
        (i) why were the complaints not made to the tribunal in time
        (ii) in any event it is just and equitable to in all the circumstances to extend time.

Unfair dismissal

27. The respondent accepts the claimant was (a) an employee (b) was dismissed and (c) at the time of his dismissal had sufficient continuity of employment to present a claim for unfair dismissal
28. What was the reason or principle reason for the dismissal? The respondent asserts that it was a reason related to conduct. The tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.
29. If the reason was misconduct did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The tribunal will usually decide in particular whether (a) there were reasonable grounds for that belief; (b) at the time the belief was formed the respondent carried out a reasonable investigation; (c) the respondent otherwise acted in a procedurally fair manner; (d) dismissal was within the range of reasonable responses.

Remedy for unfair dismissal

30. Does the claimant wish to be reinstated to their previous employment
31. does the claimant wish to be reengaged to compatible employment or other suitable employment
32. should the tribunal order reinstatement? The tribunal will consider in particular whether reinstatement is practicable and if the claimant caused or contributed to dismissal whether it would be just
33. should the tribunal order re engagement? The tribunal considered in particular whether re engagement is practicable and if the claimant caused or contributed to dismissal whether it would be just.
34. What should the terms of the re engagement order be?
35. If there is a compensatory award how much should it be? The tribunal will decide
    (a) what financial losses has the dismissal cause the claimant
    (b) has the claimant taken reasonable steps to replace their lost earnings for example by looking for another job
    (c) if not for what period of loss should the claimant be compensated
    (d) is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed or for some other reason
    (e) if so should the claimants compensation be reduced by how much
    (f) did the acas code of practise on disciplinary and grievance procedures apply
    (g) did the respondent or the claimant unreasonably failed to comply with it
    (h) if so is it just an equitable to increase or decrease any award payable to the claimant? By what proportion up to 25%
    (i) if the claimant was unfairly dismissed did he cause or contribute to dismissal by blameworthy conduct
    (j) if so would it be just and equitable to reduce the claimants compensatory award by what proportion
    (k) does the statutory cap of 52 weeks pay or £88,516 apply

36. What basic award is payable to the claimant if any?
37. Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so to what extent?

    Direct discrimination complaints
38. the claimant relies upon the protected characteristics of race (the claimant is Bangladeshi); religion or belief (the claimant is a Muslim); and sex (the claimant is male)
39. Did the respondent do the following acts (taken from Judge Harding's consolidated list of acts)

    3.1 dismiss the claimant;

    3.2 the delay in completing the investigation and disciplinary proceedings

    3.3 amendment refused

    3.4 on 16 November 2019 Miss Liz Amos invited the claimant to attend an investigatory meeting

    3.5 the claimant was given inadequate notice of this meeting by Miss Amos; the invitation was sent on 16N for a meeting on 20 November 2019;

    3.6 on 21 November 2019 miss Liz Amos removed the claimants laptop without completing a data subject access request

3.7 on 25th November 2019 miss Helen Farley told the claimant the respondent was entitled to take the claimants laptop without following any procedure
3.8 on 25 November 2019 the claimant was repeatedly asked by Miss Amos Mr Mark Cope and Miss Farley to provide them with the pin for his phone,
3.9 the respondent was at this time late 2019 pursuing a disciplinary allegation against the claimant that was not work related the complaint from Miss. Moore
3.10 amendment not allowed
3.11 at the meeting with Miss Amos that followed the claimant was told by her that his shift was being changed to the late shift which was 11:00 AM to 7:00 PM
3.12 amendment refused
3.13 amendment refused
3,14 amendment refused
3.15 on 12 February 2020 Miss Amos and miss Glendinning interrupted the claimant whilst he was working in his office and said they wanted to have a meeting with him
3.16 during the same conversation Miss Glendenning shouted at the claimant that Miss Amos was the deputy director of it
3.17 Miss Amos and Miss Glendinning then marched the claimant out of Parkside as if he was a criminal
3.18 on the same date 12 February 2020 the claimant was given a letter inviting him to attend a formal investigatory meeting whereas the respondents should have carried out an informal investigatory stage first of all
3.19 on 18 February 2020 the respondent fabricated a message that purported to have been put on a notice board by a student complaining about the claimant
3.20 on 18 February 2020 the respondents started formal disciplinary action in respect of this complaint even though it was a message on a notice board not a formal complaint
3.21 on 18 February 2020 Miss Glendenning shouted at the claimant it's your last chance to admit these allegations
3.22 amendment refused
3.23 on 7 October 2020 Bharat Chouhan told the claimant he was to move to the City South campus
3.24 during October 2020 Mr. Chouhan said to the claimant when he phoned in sick that he the claimant had COVID
3.25 on 29 October 2020 Miss Amos forced the claimant to come back to work on site rather than allowing him to work from home
3.26 he was given no information by the respondent about his return to work
3.27 amendment refused
3.28 on 29 October 2020 Miss Amos refused to allow the claimant to book annual leave when he needed it because he had a headache and also had religious duties to perform
3.29 on 30 October 2020 Mr Colbert refused to allow the claimant to book annual leave
3.30 in October/November 2020 the claimant was required by Miss Glendenning and Mr to Bri to attend a health review meeting when this was not mandatory
3.31 in approximately November 2020 Miss Louise Glendening refused to refer the claimant to occupational health

3.32 on 10 November 2020 Miss Pauline Cunnison told the claimant that he would not be allowed back on campus unless he had a negative coronavirus test
3.33 from 16 November 2020 the claimant was excluded from the rota at Parkside
3.34 in November 2020 the feedback board was placed in room 136 the claimant believes this was done by Mr Zach Hart
3.35 on 19 November 2020 Miss Cunnison asked the claimant in an e-mail why it had taken him so long to take a test
3.36 on 24 November 2020 Miss Cunnison invited the claimant to attend a disciplinary hearing without having first sent to the claimant the relevant investigatory report
3.37 as part of the disciplinary investigations Sharon Sagoo from HR obtained witness statements all of which contained false allegations about the claimant
3.38 the disciplinary investigation was one sided and biased
3.39 there was considerable delay in sending the claimant the investigatory report; it was completed on 23 March 2020 and not sent to him until 8 December 2020
3.40 in appendix end of the report Mr Joseph Devo had reported that he had met with the claimant and made him aware of the respondents social media policy which was untrue
3.41 the claimant was falsely accused of making very disturbing tweets in the investigation report and the respondent failed to clarify what tweets this referred to;
3.42 someone the claimant does not know who described the claimant in the investigation report as a creep and a pervert
3.43 Dr. Nick Moore made false allegations in the investigation report that screen on the claimant 's phone was damaged and the claimant had provided and incorrect pin for the phone
3.44 Doctor Moore and Miss Amos falsely accused the claimant in the investigation report of providing an incorrect pin for his phone
3.45 in the latter half of 2020 the prayer room was removed from Millennium point and changed into a staff room
3.46 on 7 December 2020 Mr Coubry, Miss Amos and Mr Ian Waterhouse asked the claimant to provide IT support to the Joseph Priestley building which was not covered by Parkside
3.47 on 8 December 2020 Miss Anne Marie Lee said to the claimant during a health review meeting that he did not communicate with the respondent which was not true;
3.48 on 8 December 2020 the claimant asked Miss Glendinning if Miss Cunnison was an HR representative and Miss Glendinning did not respond
3.49 on 9 December 2020 miss Donna Harrison said to the claimant that he had a rash due to COVID whereas later Miss Hanifa Shah said to the claimant that his rash was a symptom of COVID which statements the claimant asserts are inconsistent
3.50 the claimant was required to attend a disciplinary hearing on 9 December 2020 when the respondent had not carried out an investigation and had not spoken to witnesses
3.51 on 14 December 2020 Pauline Cunnison postponed the disciplinary hearing when there had already been substantial delay and did not provide the claimant with an explanation for this

3.52 Miss Cunnison failed to give the claimant 5 days notice but the meeting was being postponed as was required under the disciplinary policy
3.53 the respondent failed to inform the claimant when he came into work on 14 December 2020 that Parkside had been shut down
3.54 on 4 January 2021 Ms. Sagu and Mr Plumbridge emailed the claimant requiring him to complete the return to campus induction module by the end of the day but the link provided did not work
3.55 on 5th January 2021 Miss Amos emailed the claimant requiring him to complete the return to campus induction module by the end of the day but the link provided did not work
3.56 on 5th January 2021 Miss Amos and Miss Emma Bridger told the claimant that he would have to return to work on site the next day
3.57 on 11 February 2021 the claimant attended a re appeal hearing with Katherine Clark from HR and Hanifa Shah from CEBE who failed to address any of the points that the claimant raised in the meeting
3.58 on 17 February 2021 Miss Katherine Clark emailed the claimant stating he would be provided with an outcome by 5:00 PM on 26 February 2021 and this did not happen
3.59 on 26 February 2021 Miss Clark told the claimant he would receive a letter by third March 2021 and this did not happen in fact the date given to the claimant actually 3rd February but it is accepted that this was a typo graphical error
3.60 in March 2021 the respondent provided the claimant with the laptop which did not have McAfee antivirus support installed
3.61 on 11 March 2021 Miss Cunnison sent the claimant the outcome of the third health sickness review meeting which had been substantially delayed
3.62 on 15 March 2021 it was said in the outcome appeal letter that Dr. Nick Moore had dedicated there was a disciplinary case for the claimant to answer whereas previously the claimant had been told the decision maker was Mr. Plumbridge
3.63 on 31st March 2021 Dr. Moore emailed the claimant his dismissal letter. One reason put forward for dismissals that the respondent had concluded the claimant had been swearing yet other members of staff who had sworn at the claimant had not been subject to disciplinary action
3.64 the letter dismissal was sent to the claimant 's personal e-mail address
3.65 the claimant was disciplined and dismissed for an incident which were not related to work and which happened outside the university campus this applies to the incidents where the complainants were Miss Moore and Mr Gabriel Stuart
3.66 the complaints of Miss Moore and Mr. Stewart were upheld despite the fact they were forced and did not occur on university premises
3.67 amendment not allowed

40. who is the appropriate hypothetical comparator
41. if so, was it because of race or religion or belief or sex.

<u>Harassment related to race religion or belief or sex</u>

42. Did the respondent engage in the conduct set out in allegations 3.1 to 3.66 (excluding matters not permitted by way of amendment)
43. if so was the conduct unwanted
44. if so was the conduct related to race, or religion or belief or sex

45. did the conduct have the purpose of a violating the claimants dignity or be creating an intimidating hostile degrading humiliating or offensive environment for the claimant
46. if not did the conduct have the effect of violating the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the claimant
47. in considering whether the conduct had that effect the tribunal will consider the claimant's perception the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation

48. Did the claimant commit a protected act during a meeting on 18 February 2020 when he complained about harassment ?
49. Did the respondent treat the claimant as set out above paragraphs 3.19 to 3.66 (allegations after 18.2.2020 except where not allowed by way of amendment)
50. Was it because the claimant committed a protected act?

Respondent's Strike out application day 1

51. Prior to the commencement of the final hearing Employment Judge J. Jones had written to the claimant on 31 March 2023 and reminded him he was not to write to the Tribunal describing them or anyone else in offensive terms such as "retarded". Judge Jones stated that *this was not terminology which Employment Tribunal staff are expected to see and will not be tolerated.* This was in the context of the claimant's contact with Tribunal staff and correspondence to the Tribunal and respondent's legal team including an email dated 28 February 2023 stating
"Have the retarded incompetent imbecile staff such as Liz Amos and that barking dog Louise Glending of Birmingham City University got the dates correct? Let alone my description? Why were the cases not in correct order with them being delayed unreasonably by Birmingham City University and their lap dogs UCU. Did the witnesses statement contain any actual evidence or just allegations and the narrative altered? Can the retarded incompetent respondent confirm if they filed the ET3 form on time?".
52. The Tribunal determined to convert the in person hearing to a remote CVP hearing.
53. On day 1 of the hearing, the claimant attended the Tribunal building and joined the hearing via video link sat in a different hearing room to the Tribunal panel. The Tribunal had been provided with electronic copies and hard copies of the file and witness statements. The Judge asked the claimant if he had any of the relevant documentation with him to conduct the hearing. The claimant said he had not received any. This was disputed by the respondent who said that they had served the claimant periodically with electronic material so that by Wednesday 24 May 2023 he had received all items electronically. The respondent stated that the claimant had refused to confirm his home address to the respondent so he could not receive hard copies. The Tribunal panel consisting of Judge Wedderspoon and Tribunal member Mr. Palmer were sat in the Tribunal room and Tribunal member Miss. Pelter joined the hearing from home via CVP. The Judge arranged for the claimant to use Ms. Pelter's hard copies and requested that the respondent send a further hard copy for Ms. Pelter's use for the next day of the hearing.

54. At the end of the hearing the claimant handed back the paper bundles to the Tribunal clerk and the Tribunal sent the claimant an e-mail to ensure that he had all copies of materials he needed for the hearing next week. The respondent arranged for a courier to send another set of bundles to the Tribunal hearing it being envisaged that the claimant would take the paper bundles with him but he did not do so.
55. At about 10 a.m. on day 1 of the hearing the respondent's counsel outlined the various issues to be dealt with under housekeeping before the hearing of the evidence. As counsel for the respondent set out the issues to be determined, the claimant called the respondent's counsel *"a retard"*. The Employment Judge advised the claimant not to use that language in the Tribunal and the claimant asked *"why not?*" The Employment Judge informed the claimant she was not entering into a debate and warned him that this was not appropriate language and should not be used in the Tribunal hearing. The Tribunal requested the claimant to act respectfully and courteously.
56. The respondent made an application to strike out the claimants claim by e-mail dated 16 May 2023. The reasons for the application was that throughout the proceedings the claimant has acted unreasonably, vexatiously and abusively and openly referred to the respondent, its staff and the respondent's solicitor in extremely derogatory and offensive terms such as *"prick" "barking dog" "incompetent" and "retarded"*. On 31 March 2023 (as noted above) Employment Judge Jones directed the claimant not to write to the Tribunal or anyone else in offensive terms such as "retarded". The respondent relied upon a skeleton argument and bundle of material "Conduct Bundle" consisting of 220 pages.
57. The respondent submitted that on 14 April 2023 the parties attended a judicial mediation by CVP. The claimant has referred to the events of the judicial mediation in open correspondence and accordingly the respondent was taking the unusual step of also referring to the events of the mediation. During the mediation hearing, the claimant was advised by Judge Battisby that his expectations were unrealistic. The claimant left the mediation without permission and did not return. The respondent submitted it had incurred significant costs in preparing for the mediation and the claimant demonstrated that he had no intention of taking the employment litigation process seriously. On the same date after the mediation hearing the claimant emailed the Tribunal copying in the respondent and incorrectly referring to Judge Battisby as "Judge Batty" submitted to be a homophobic term (the claimant is a self-confessed homophobic) and alleged the Tribunal was discriminatory against the claimant. The e-mail further goes on to insinuate that the Tribunal is corrupt. On 18 April 2023 the claimant emailed the Tribunal without copying in the respondent in similar terms as set out above; he referred to Judge Battisby as *"an incompetent, retarded Judge"* and finished his e-mail by threatening to sue the Tribunal for £10,000.
58. The respondent referred the Tribunal to a number of emails and social media postings from the claimant in the conduct bundle. In an e-mail dated 27 April 2023 to the Tribunal and to Miss Glendenning and Nick Moore (two of the respondent's witnesses) the claimant referred to another witness for the respondent and asked whether his girlfriend still worked for the respondent and whether she was aware he was "pokeing" someone else. He referred to two other employees and asked if they were in the pub in working hours at the time the respondent sent the claimant to the university house. He further

stated " *I was watching Netflix's chimp and they understand that LGBT has no concept and I was wondering if Zac* (one of the respondent's witnesses) *will know when chimpanzees like Porky Pie will become human? or are you happy to provide a translator in order to communicate to a orangutan? Will it get through their human brain that LGBT is not scientific but perhaps they know that already?* He referenced another employee suggesting he had been sacked in previous employment for drinking.

59. One of the witnesses, Miss. Glendenning who it was submitted the claimant has already sought to intimidate by commenting on her private business Twitter page and calling her derogatory names on public social media platforms such as *"barking dog"*.

60. On 8 May 2023 the claimant emailed Miss. Glendenning and Miss. Amos the respondents witnesses threatening to pursue a claim against them directly for the sum of £10,000. The claimant's email to Louise Glendenning at the University pasted an emoji of a barking dog beside her name. The claimant referred to their families and stated "*Also please bring your families along as I'm are sure you have nothing to hide and will be happy to answer all questions and provide actual evidence"* and continues to refer to the respondent's staff as "*incompetent and retarded*." In respect of Ms. Glendenning he wrote "*please kindly confirm if you are responsible for the hiring process of incompetent retard is it OK to bark like a dog I'm sure you will have plenty of chances to do that in public life court hearing".* On the same date the claimant also emailed Dr. Moore, one of the respondent's witnesses in a similar manner and on 9 May 2023 the claimant emailed other witnesses Pauline Cunnison and Hanifa Shah, directly and on 12 May 2023 emailed Mr. Fitzgerald, a respondent's witness in much the same manner.

61. In the email to Mr. Fitzgerald on 12 May 2023 the claimant threatened to sue him personally and referring to the respondent's staff as *"retarded incompetent irrelevant employees"* and stated *"I understand that all is well and I'm writing this e-mail to let yourself your family and your colleagues know that I hereby will file my complaint against yourself individually as promised in the sum of £10,000 pounds. I will set out full details in the claim form as I have lost my pens, must have been inside the Asda bag. Please find attached complaint in this important e-mail as you are an important doctor. Can you confirm if you are a director or deputy director or what kind of director are you all opinions of retarded incompetent imbeciles opinions of facts how are they facts what did you mean by conduct if my opinion is that pigs fly in the sky is that true and factual excuses me what happened to your witness statement how come you refused to provide one to the employment tribunal is that Sharon still working at BC U2 why did you lie when you couldn't carry out the basics of attaching important PDF to a made-up investigation and during the health meetings you can across as extremely aggressive also please bring your families along as I'm sure you have nothing to hide and we'll be happy to answer all questions and provide actual evidence do you have the contact details of the world renowned Dr. Indev and the other retarded incompetent irrelevant employees that wrote witness statements? Why didn't they provide witness statements?*

62. On 16 May 2023 Louise Glendenning emailed the respondent stating; *"just to share another e-mail that I have received below (the e-mail dated 8th May from the claimant) and feeling extremely anxious and vulnerable about having to attend court in person and be faced with this person who continues to*

threaten and intimidate me and my family. I feel that this will become increasingly more frequent the closer we get to the Tribunal and I'm concerned about it escalating. I am particularly concerned for my safety being home alone with the children now that me and Adam have separated and given that he knows the area that I live in from my social media. I was not involved in any of the decision-making in either of the two disciplinary hearings appeals or his eventual dismissal and therefore I'm unsure as to what value my contribution would add. Another concern is that he is not being represented by a legal professional therefore will be questioning me directly and given the nature of his correspondence to me to date I feel this is likely to be confrontational aggressive and intimidating and do not feel comfortable putting myself in that position given the nature of involvement being minimal."

63. The respondent's written application submitted that the claimant had demonstrated a consistent unreasonable pattern of behaviour throughout the proceedings. He had shown no regard for the Employment Tribunal's guidance on party co-operation and further he had shown complete disregard for the Tribunals clear order not to refer to anyone in offensive terms. The respondent submitted its belief was that the claimant had intentionally sought to intimidate the respondents witnesses in an intent to deter them from giving evidence against him in the upcoming final hearing. Further the respondent submitted that it was also clear based on the claimant's behaviour to date that he had no intention of treating the final hearing respectfully or taking the matter seriously. This will again be to the detriment of the respondent as it will incur a counsel fee for attending the final hearing. The respondent requested granting of the application to strike out in accordance with the overriding objective; the claimant's conduct is scandalous at worst and at best unreasonable. The respondent has incurred significant costs in trying to ready this case to a final hearing. The cost incurred have increased as result of the claimant's unnecessary behaviour.
64. The claimant responded to the respondent's application by email on 16 May 2023 stating *"no please don't bro row I have children to feed my hands and arms are shaking. Please don't give me give out my full name or where I live or where I work privacy private confidential "shghsohgsibakbubfaklaughingstock".*
65. Mr. Salter also took the Tribunal to a number of social media postings. At page 202 the claimant referred to the respondent as *"burning like those retarded incompetent imbecile vermin"*. The claimant attached to his posting hashtags "liars.. Harry Potter" (a referral to the respondent's solicitor) At page 117 the posted on Twitter *"Do they call you witch as well? Or is that just Liz Amos deputy director of IT at Birmingham City university"*. He made derogatory remarks about Louise Glendenning on his twitter page namely *"you sound like that vile BC you Louise Glerndding. I'm gonna put Louise down as a reference." (page 100).* He referred to Louise Glendenning in other posts in a derogatory manner including calling her a liar and barking dog; see pages 101, 103, 104, 108 105 109, 116,157,161,165,166 . The claimant had posted *"Just cant wait to start my weight plan with @one2onediet with "real people" like Luiz glerndding behind that fake smile there's a vile disgusting person"* He added a clown emoji and laughing face. that she's been added to his LinkedIn Facebook one to one business it was a form of harassment page 65 reference to a disgusting person 17th of December 2021 page 69 my best mate lies in popped over for a cuppa attacked online by the claimant

damaging the business The claimant also posted derogatory comments about Liz Amos on social media postings including page 114, 116, and 165. In respect of a posting on social media about Mr. Moore the claimant stated *"Nicholas the the prick more of Birmingham City university?... Is his daughter still at University of Birmingham?"*(page 120) The claimant made denigrating comments about a respondent's staff member at page 158, Dr. Indev.

66. The claimant had also referred to a civil court judge at page 168 is this is the *most incompetent retarded judge I've seen*. At page 114, the claimant made derogatory remarks in postings about another respondent witness Hanifa Shah and also at pages 198 and 204.
67. The claimant had also made a number of postings about other organisations where he attached the respondent's name including pages 95 and 118 pages 152; 154;160 and 159.
68. At 10.27 am whilst the claimant was accessing his telephone he referred to *"that barking dog"* when counsel referred to the witness Ms. Glendenning and when counsel mentioned his solicitor, Harry Taylor, the claimant stated *"Harry Potter.*" The Tribunal reminded the claimant that there was no need to use such language in the Tribunal and he was warned again about his behaviour.
69. In the course of the respondent counsel's submissions, the claimant made another posting on his twitter page with 56 emojis *"I am BCU expose lawyers #homophobic bunch of clowns"*. The respondent raised this with the Tribunal and the Tribunal enquired whether the claimant had done this in the course of the hearing which he said *"yes it was a public hearing so what's wrong with doing it."*
70. In the course of the respondent's submissions, the claimant constantly interrupted and the Employment Judge requested the claimant to turn off his microphone and let the respondent make his submissions; he would be given an opportunity to respond.
71. Mr. Salter on behalf of the respondent submitted that pursuant to rule 37 (1)(b) of the 2013 Rules, the Tribunal had a discretion to strike out all or part of a claim on the basis of the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent as the case may be has been scandalous unreasonable or vexatious. He referred to the test in **Bolch Chipman (2004) IRLR 140** and **Abergaze v Shrewsbury College of Arts & Technology (2009) EWCA Civ 96** the factors to be considered are :
    (a)was the conduct complained of scandalous, unreasonable or vexatiojus conduct in the proceedings;
    (b)the result of that conduct was that there could not be a fair trial;
    (c)the imposition of the strike out sanction was proportionate. If some lesser sanction is appropriate and consistent with a fair trial then the strike out should not be employed. that "scandalous" is a misuse of the process.
72. In the case of **Bennett v Southwark LBC (2002) EWCA Civ 223** Lord Justice Sedley at paragraph 26 stated *"what the rule is directed to ..is the conduct of proceedings in a way which amounts to an abuse of the tribunal's process: abuse is the genus of which the three epithets scandalous, frivolous and vexatious are species."*
73. Scandalous means "one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court in the course of such process" (see Bennett paragraph 27).
74. In the case of **Bolch** (page 12) it was stated *"For example it may well be on appropriate facts that a tribunal might find that if there were a threat that*

unless proceedings were withdrawn some course or other could be taken that that would amount to a scandalous method of conducting those proceedings."

75. The respondent also referred to **Attorney General v Barker 2000 EWHC 453** Lord Justice Bingham held (paragraph 19)
"the hallmark of a vexatious proceeding is in my judgement that it has little or no basis in law or at least no discernible basis that whatever the intention of the proceeding may be its effect is to subject the defendant to inconvenience harassment and expense out of all proportion to any gain likely to accrue to the claimant and that it involves an abuse of the process of the court meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process."
76. "Unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to vexatious; **Dyer v Secretary of State for Employment EAT 183/83**. The respondents admitted that the claimant's conduct included all of those. In **Emuemukoro v Croma Vigilant (Scotland) Limited (2022) ICR 335** President Choudhury reminded tribunals when considering a strike out application to consider all the factors relevant to a fair trial including the undue expenditure of time and money the demands of other litigants and the finite resource is of the court these are factors which are consistent with taking into account the overriding objective (paragraph 19).
77. In **Force One Utilities Limited v Hatfield (2009) IRLR 45** it was held that striking out the respondent's response had been justified in circumstances where the respondent's witness had threatened the claimant with physical violence. The threat of violence had occurred after the case had been adjourned and as the claimant left the Tribunal building. The threat to the claimant was that he should be careful *"how he slept at night"*. Further the witness had driven alongside the claimant in his car blocking the claimant stating *"Me and you – 10 minutes up the road now".* Mr. Justice Elias (as he was then) stated that *"intimidatory conduct here in the circumstances in which it allegedly arose would relate to the manner of the proceedings and therefore could in principle lead to a strike out."* In **Chidzoy v BBC (UKEAT/0097/17)** the Tribunal struck out to the claimant's claims because she discussed her evidence with the journalist whilst under oath in breach of six warnings given to her by the judge. The Tribunal concluded that she had conducted the proceedings unreasonably and that it could conclude it could no longer trust her so there was no alternative to striking out.
78. The respondent also referred the Tribunal to Article 6 (1) of the Convention of Human Rights ("ECHR") which states :
"in the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trump in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
79. The respondent referred also to Article 10 of the ECHR which states
"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article

shall not prevent states from requiring the licencing or broadcasting television or cinema enterprises.

2. The exercise of these freedoms since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary."

80. The Human Rights Act 1998 ("the HRA") incorporates the ECHR into domestic law. Under Article 2 (1) of the HRA :
"a court or tribunal determining a question which has arisen in connexion with a convention right must take into account any-(a) judgement, decision, declaration or advisory opinion of the European Court of human rights,"
81. Article 3 (1) of the HRA requires that "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the convention rights."
82. The respondent submitted that the claimant's conduct of the proceedings has been a vendetta against this respondent and the claimant has not hidden his intentions to vilify witnesses. The case was no longer about his treatment as an employee and dismissal but it was all about the respondent's business. It was submitted that the claimant has abused the Tribunal process and that a fair trial was no longer possible. The witnesses are still intimidated. and impacts on the witnesses with no justification but only a vindictive motive. The claimants has used his social media platform as a campaign to attack the witness evidence. It was submitted there cannot be a fair trial because of the claimants conduct outside of the employment Tribunal.

83. The respondent submitted a fair trial is no longer possible for the following reasons :
(a)The respondent witnesses feel intimidated;
(b)The claimant has referred to knowing where the respondent's witnesses live and popping over to see them; the posting concerning Louise Glendenning *"My best mate Louise lives in Solihill I'm sure she wouldn't mind if I popped over for a cuppa".*
(c)Whether the respondent wins or loses the case the claimant will undoubtedly attack the respondent and seek to seriously damage or destroy its business.
(d)The claimant's conduct and declared intentions is to seek to usurp the trial and use it as a means for his personal vendetta against the respondent;
(e)If the trial proceeds the Tribunal will be giving the claimant a platform to propgate his campaign agains the respondent under a veneer of respectability of the judicial process and expose the respondent and its witnesses to further vindictive actions and a concern for the witnesses is the retribution the claimant will seek against them for his evidence.

84. The respondent submitted it would be proportionate to strike out all of the claim; the respondent had been utterly blameless and faced with a campaign against them. The respondent has legitimate concerns about their safety taking into account Article 6A. A fair trial works both ways for both parties.

Pursuant to Article 10 (2) there can be justification to strike out; there can be an interference by way of the E.T. process in circumstances where the claimant has conducted himself in the way that he has done.

Claimant's submissions on strike out

85. The claimant was defiant. He submitted some serious allegations have been made. He submitted there is no proof he had physically attacked anyone. Social media is a public platform. He stated that he was a worldwide public figure on social media. The University should be promoting free speech and expression instead he was being denied the right to a fair trial despite being subject to direct racism. Could the respondent indicate what law he was actually breaking or what policy on Twitter or TikTok he had actually broken?
86. The claimant submitted the respondent had made false allegations against him with no proof. The respondent had dismissed him in the absence of watching the video evidence. He said that the respondent was so incompetent they did not follow the ACAS procedure. The respondent was a public institution.
87. At this point the claimant raised his voice suggesting he had been bullied, harassed and vilified. He said he would upload the videos; why did a person call the police; he had been victimised; they dismissed him without following a procedure. Further the claimant submitted there was unreasonable delay in the process; *who's the liar now?* The claimant submitted it doesn't show the faces he had been subject to a physical injury before he sent the Tribunal claim in. In fact, he submitted that the ET3 should be struck out; it was late. The Tribunal was here to help; he had been subject to investigation for four years and harassed and bullied. During submissions about the strike out application the claimant said to the Judge *"now over to you, civil servant".*

Conclusions on strike out application 1

88. The Tribunal gave its determination on the respondent's strike out application on the morning of day 2 of the hearing.
89. Rule 37 (2)(b) of the Employment Tribunal Procedure Rules of 2013 provides the Tribunal with a discretion to strike out all or part of a claim or response on grounds including where the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent as the case may be has been scandalous unreasonable or vexatious.
90. There is much case law on these individual provisions but the clear import of the authorities is that rule 37 gives the Tribunal draconian powers which are exercised infrequently and only after careful consideration in the clearest cases. The Tribunal seeks where possible to determine claims fully after hearing oral evidence and submissions.
91. In respect of rule 37(1)(b) of the Rules it is "the conduct of the proceedings" which is key and not just conduct generally see **Chidzoy v BBC (UKEAT/0097/17)**. The Tribunal followed the Court of Appeal guidance in **Blockbuster Entertainment Limited v James 2006 IRLR 630** and the EAT guidance in **Bolch v Chipman 2004 IRLR 140 and Force One Utilities Limited v Hatfield 2009 IRLR 45**.
92. As well as determining first whether the claimant had conducted the proceedings scandalously unreasonably or vexatiously it expressly

considered whether a fair hearing was still possible and whether a less onerous sanction would suffice.

Conduct of the proceedings

93. The conduct of proceedings is wider than simply activity which takes place within the Tribunal hearing room; this was established in the case of **Force One Utilities Limited v Hatfield (2009) IRLR 45** when the threat of violence to the claimant from the respondent's witness had occurred after the case had been adjourned and as the claimant left the Tribunal building. The threat to the claimant was that he should be careful *"how he slept at night"*. The EAT considered that the *"intimidatory conduct in these circumstances would relate to the manner of the proceedings and therefore could in principle lead to a strike out."* Therefore, for a party's conduct to be caught under Rule 37 (1)(b) of the 2013 it must be very closely linked to "the proceedings" and whether it satisfies this test must be determined on a case by case basis.
94. The Tribunal found that the email correspondence directly sent by the claimant to the respondent's witnesses and its legal team fell within the category of "conduct of proceedings". In his submissions the claimant did not refute that the material was not part of the conduct of proceedings or unreasonable or scandalous or vexatious; his point is that he had freedom of expression. The Tribunal found directly emailing witnesses who were to give evidence in the substantive hearing and the content of those emails directly threatening to sue them individually for a sum of £10,000; subjecting the respondent's legal team and witnesses to name calling and abuse by referring to the respondent's staff and the legal team as "incompetent"; "retarded" "barking" and "imbeciles" as well as inviting witnesses to bring their families along to the hearing *"I'm sure you have nothing to hide";* the request for contact details of witnesses amounted to *"conduct of the proceedings"* and was intimidatory in nature designed to put off the respondent's witnesses and its legal team in defending the claim. The Tribunal noted there was specific reference to evidence in the case namely the ASDA bag which was alleged to have been picked up on the video of a man (alleged to be the claimant) following the female complainant and reference specifically to the changing of witness statements and lying.
95. The Tribunal determined this conduct would fall into the categories of scandalous as a misuse of the proceedings; vexatious namely to subject the respondent to harassment and unreasonable conduct.
96. The claimant informed the Tribunal he was a worldwide renowned social media figure. He has over 7500 followers on twitter. There is a right to freedom of expression and the freedom to use social media to engage that right. However, that right is not an absolute one. The Tribunal considered that this type of conduct outside of the Tribunal (similar to **Force One Utilities**) social media postings on twitter pre-trial and during a trial has the potential to be caught under the category of "conduct of proceedings" where the postings were used and intended as a means of intimidatory conduct towards the opposing side in litigation (including its witnesses and legal team). Whether that was the intended use is a matter for the Tribunal to determine.
97. The Tribunal did not find all of the postings shown to it were caught under the category of "conduct of proceedings" but determined postings with references to the witnesses and the respondent's legal team in derogatory and direct terms such as "liars" where credibility in this case was key; abusive

terminology about the witnesses and the legal team was intimidatory conduct designed to unnerve and discourage the respondent and its legal team and these postings were caught by the provisions of "conduct of proceedings" pursuant to Rule 37 (1)(b) of the 2013 Rules by reason of the close connection of the conduct to the proceedings. The Tribunal concluded that the claimant had taken the opportunity to use his social media platform to conduct the proceedings as an abuse. A party that conducts itself in that manner would be guilty of vexatious conduct by seeking to harass the opposing side and its legal team and also acts unreasonably.

Is a Fair Trial Possible ?

98. The claimant has already been warned by Judge Jones on 31 March 2023 that the claimant should not use derogatory terminology to the Tribunal staff or others because that conduct would not be tolerated. Following this, the correspondence from the claimant directly to the witnesses and the respondent's legal team indicated to date that he was unwilling to comply with this direction.
99. However, at present only one of the respondents' potential witnesses has refused to attend the video link. At present the respondent has 9 out of its 10 potential witnesses not refusing to give evidence. The Tribunal takes account that the witnesses are nervous beyond the normal response to litigation by reason of the claimant's previous conduct and in particular the witness Ms. Glendinning has expressed concerns for her safety. The Tribunal also took into account that when a tribunal is satisfied that claimant has conducted the proceedings unreasonably or scandalously or vexatiously he should not move to strike out the claim when firm case management might still afford a solution in some cases the objectionable conduct may not be irreversible **C Bennett V Southwark London Borough Council 2002 IR LR407** Court of Appeal as referred to in the case of **Chidzoy v BBC** paragraph 24. In order to determine whether irreparable damage has been done the tribunal needs to assess the nature and impact of the wrongdoing in issue to consider where there was in truth any real risk of injustice or to the fair disposal of the case following **Bailey the Whitbread hotels UK E80/0046/07**.However, in all the circumstances, the Tribunal determines that a fair trial is potentially possible but only if the parties comply with the expected standards of courtesy and respect to one another in the course of the proceedings and to refrain from name calling, derogatory references, and abuse in whatever forum and form.
100. The core principle of the Tribunal process is the overriding objective. In order to provide both sides with a fair hearing and to complete the case within the trial window (see the case of **Emuemukoro**) the Tribunal determined that it would be proportionate to hold a "grounds rules type hearing" to set the parameters of expected conduct in the course of the hearing. If the rules were complied with, it should ensure that the Tribunal will not be impeded in its role of hearing the evidence and determining the claim. Both parties are entitled to a fair hearing; a fair hearing in itself requires that the evidence be heard and not impeded. Unless these basic standards of behaviour are complied with in the course of the hearing the Tribunal concluded that a fair hearing may not be possible.
101. The Tribunal had given the claimant three warnings (on day 1 of the hearing) about his behaviour and had made it clear that no name calling, disrespect or discourtesy is permitted. The Tribunal determined at present a

fair hearing is still potentially possible and it would be therefore disproportionate to strike out the claims. HHJ Tayler had commented at paragraph 47 in the recent case of **Smith v Tesco Stores (2023) EAT 11** that the *"Tribunals of this country are open to the difficult"*. However, the Tribunal was mindful that if the conduct continues so that witnesses feel unable to give their evidence to the Tribunal; or that the Tribunal is unable to provide within its forum a fair hearing to both sides or complete the case within the Tribunal listing **(Emuemukoro)** the Tribunal would revisit this issue. At present a fair hearing may be possible and it would therefore be disproportionate to impose the draconian sanction of strike out; the application to strike out was refused.

"Ground Rules" Hearing

102. The parties were given time to consider their proposals for the standards to be expected in the course the proceedings to ensure both parties have a fair hearing.

103. The claimant suggested that the respondent should get a barrister who was competent; the respondent should answer all the questions; it had caused him suicidal thoughts. He did not consider that the word 'retard' or 'incompetent' were offensive or a swear words. Respect should be earned and not demanded. He did not understand *"the so called barrister" "Judge Bernstein".*

104. Mr. Salter requested that the ground rules cover four separate areas :-

(a)courtesy and respect; there should be no name calling or interrupting of witnesses;

(b)In terms of asking questions of witnesses the process should be clarified to the claimant as a Litigant in Person so that he should ask questions by reference to paragraphs of the witness statement or page references in the bundle of documents;

(c)There should be no taking or posting of photographs of the proceedings;

(d)The claimant's camera should be switched off whilst cross examining the respondent's witnesses to avoid the witnesses having to see the claimant.

Strike out of ET3

105. The claimant made a strike out application on day 1 of the hearing in the course of his oral submissions in resistance to the respondent's strike out application. He submitted that the respondent had failed to submit its ET3 to the Tribunal within 28 days.

106. The respondent submitted that the claimant's strike out application was made by the claimant in the absence of the correct notice required under the 2013 Rules. Further the ET3 had been submitted on time. The Acknowledgement of Claim form dated 2 July 2021 stated that the respondent had 28 days in which to respond namely until 30 July 2021. The respondent lodged the ET3 on 30 July 2021. An extension of time to lodge grounds of resistance was granted by Judge Hughes on 24 of August 2022 who had also accepted the ET3.

107. By email on 2 June 2023 at 23.51 (the evening of the first day of the hearing) the claimant emailed the Tribunal and respondent about his application to strike out.

108. On resuming on day 2 of the hearing, the Tribunal gave the claimant further time to articulate his argument to strike out the ET3. Mr Ali submitted

that *"the tribe of the respondent kept changing its story"*. He stated the ET3 was late; he was at a bus stop one hour earlier he was there and he was shouted at; the respondent didn't provide his name.

109. The Tribunal asked whether the respondent wished to add any further submissions. Mr. Salter on behalf of the respondent did not.

110. Mr. Ali demanded that the respondent respond to the points that he made. The Employment Judge explained that the respondent did not have to answer the points if it did not wish to. The claimant stated that he wanted the Judge to explain why the respondent had not responded to his allegations. The Judge repeated the claimant that the respondent did not need to respond to the claimant's points if the respondent did not wish to. Mr. Ali asked *"Judge Bernstein"* if she was a racist and was it because he is a straight Bangladeshi Muslim male.

111. The Tribunal determined having considered the Tribunal file that the respondent had until 30 July 2023 to submit the ET3. The ET3 was actually submitted by email by the respondent on 30 July 2021 at 18.33. Time under the 2013 Rules requires an act to be done before midnight on that day. The ET3 having been submitted by email on 30 July 2021 at 18.33 had been submitted on time.

112. Further Judge Hughes had accepted the ET3 on 24 of August 2021 and granted the respondent's application to lodge the grounds of resistance by 27 August 2021. The claimant had not sought a reconsideration in time or appealed that judicial decision. The application to strike out the ET3 was refused.

Determination of Ground Rules

113. In accordance with the overriding objective the Tribunal determined that the hearing would be conducted as follows :

(a)the parties (including legal team) would conduct themselves during the hearing with courtesy and respect to one another and refrain from name calling and derogatory comments including retard and incompetent;

(b)Whilst cross examining witnesses, when questions are asked the witness should be provided with an opportunity to answer the questions; speaking clearly and slowly; witnesses should not be interrupted whilst attempting to answer questions; witnesses should be referred to paragraphs in witness statements and/or page numbers in the bundle;

(c)the Tribunal hearing process should be explained clearly namely (i)the Tribunal will take time to read the witness statements; (ii)evidence will be heard by witnesses first confirming their witness statement is true; cross examination will then take place by questioning of the other side; following this there is an opportunity for the side questioned to clarify their evidence; this is called re-examination and is limited to clarifying evidence given in cross examination. Following completion of the evidence the parties will have an opportunity to make submissions; summarising why they say their side as opposed to the other side should succeed which will be limited to 40 minutes each. The Tribunal will then deliberate and decide the case and give judgment. If the claimant is successful, it will consider remedy namely the compensation awarded to the claimant.

(d)There will be no filming or taking photographs of the Tribunal panel. It is a criminal offence to record the proceedings without the express permission of the Tribunal;
(e)The Tribunal would not be requesting the claimant to turn off his camera. If the respondent's witnesses are uncomfortable with seeing the claimant on the screen they should take steps at their end to facilitate this.

114. Following delivering the ground rules determination, the claimant was laughing uncontrollably.
115. The Tribunal concluded that the claimant did understand the meaning of acting courteously and respectfully.

Day 4-concern raised about breaches of the ground rules

116. Following its reading time, the Tribunal resumed the hearing. Mr. Salter for the respondent brought to the Tribunal's attention that the claimant had complained about Mr Salter to his chambers; referred to Mr Salter as a "so-called barrister" and alleged he wanted £10,000 compensation from Mr Salter, a claim he had made against other witnesses. In the correspondence the claimant mis-gendered Mr Salter; referred to Harry Potter (a reference to Mr Taylor the solicitor acting for the respondent) referred to Willy Wonker accessing a filing cabinet and removing personal items and alleged that Mr. Salter had been rude unprofessional and had made false allegations against the claimant. The claimant's correspondence then went on to talk about the Royal Mail being anti-religious. The claimant enquired whether Mr Salter "was salty" and had expertise in public environmental matters.
117. In the course of Mr Salter making his submissions to the Tribunal the claimant interrupted, shouting he had not committed any physical violence and that he was entitled to free speech.
118. In response the claimant said that he had looked at Mr Salter's information and that he worked at 42 Bedford row and his webpage; it was suggested he did have expertise in the environment. He alleged that Mr. Salter had made-up accusations; witnesses were verbally abusive to him and he saw this as further discrimination.

Determination : breach of grounds rules

119. The Tribunal reminded the claimant of the ground rules hearing which took place on day 2 and the need for courtesy and respect. There was nothing in the conduct of Mr Salter that was unprofessional rather Mr Salter had acted appropriately and professionally at all times before the Tribunal. The Tribunal gave the claimant a final warning about his behaviour. He had already been informed not to use name calling and to act respectfully and courteously. The Tribunal emphasised it wanted to get on with the case to hear the evidence and the allegations. Interruptions such as these because of his behaviour impacted on the Tribunal's ability to get on with the case; to hear that evidence and determine the claims. The Tribunal reminded the claimant that both sides were entitled to a fair hearing and this conduct affected the ability of the respondent to have a fair hearing. The claimant interrupted. The Employment Judge reminded the claimant not to interrupt the Judge whilst she was speaking. The claimant stated that the recording of the Tribunal might get

leaked. The Tribunal asked the claimant if he had been recording the hearing; the claimant said he had not but it was being recorded now.

120. The claimant responded *"thanks for being impartial Judge".*

The hearing

121. Pursuant to counsel's timetabling shared with the claimant, the claimant was invited to give his evidence first. The claimant did not dispute that he should not go first. The Tribunal considered the case concerned far more than unfair dismissal or discriminatory dismissal and his main case (with 57 allegations) was based on allegations of discrimination. The claimant was asked whether he wanted to take his evidence on oath; the claimant said he was happy to take it "*on the Quaran or any religious book the Tribunal had"*.

122. The claimant did not answer questions directly put by counsel. Even in respect of non-contentious issues concerning the terms and conditions of the claimant's contract of employment. Instead, the claimant tended to respond by asking a question back. The Tribunal reminded the claimant about the information given to him on day two of the hearing namely that a witness answers questions at this stage of the process. The Tribunal suggested to the claimant that he used paper and pen to note down any questions he thought of in preparation for his cross examination of the respondent's witnesses. During the cross-examination process, he should answer the questions put.

123. Despite the Tribunal giving this guidance to the claimant, he persisted in responding to questions put by posing a question back to counsel. The Tribunal reminded the claimant on several occasions that he would have the opportunity to ask questions of witnesses but the claimant continued in this way throughout the cross examination.

Application for attendance of witnesses

124. At 11:42 a.m. on day 4, the claimant made an application in the course of his cross examination, for the attendance of a number of individuals named in the bundle of documents including Miss. Quershi, police officer; Wayne, the security guard, Mark Cope, Sam Grant, Mr. Devo and Jane Moore. He suggested that they would assist the Tribunal if they gave actual evidence because it would show their blatant discrimination and that the respondent just wanted to get rid of him. He said that all of this had given him emotional stress and he had to face false allegations along with suicidal thoughts; it was direct or indirect discrimination because he was a straight Muslim male. The claimant also complained that the prayer room had been removed by them and that no alternative arrangements had been considered to cater for his religious needs. The claimant questioned the location of his previous work place; was it Millennium point or Parkside? He said the CCTV was not on campus.

125. The respondent objected to the application by reason of its lateness. The witness statements for the trial had already been exchanged. At a case management hearing in October 2022 before Judge Dean the claimant indicated he was aware of his ability to call witnesses (see paragraph 4 of that order) and he indicated he would call 8 witnesses but he had not done so.

The respondent submitted it was unacceptable therefore to bring this application at a time when the respondent was halfway through his cross examination.

126. The claimant responded he wished to express his dissatisfaction and this was further bullying lies and direct discrimination. He wanted to register a strike out application. He also tried being to have a look at the agenda prepared for the preliminary hearing in October 2022 and it provided a list of witnesses; Jane Moore was listed as a witness. The claimant stated *"get the details correct barrister. Have you no shame."*

Determination : witness attendance application

127. The Tribunal determined to reject the claimant's application. The application had been made very late. Witness statements had already been exchanged. The Tribunal could not see at present how the attendance of these witnesses (if willing) could assist it with the issues it had to determine. The Tribunal had before it a significant number of witness statements; a significant bundle of documentation including the investigation of allegations against the claimant. The Tribunal determined matters on the balance of probabilities; the Tribunal was not a criminal court. The Tribunal took into account the overriding objective and considered it was not in the interests of justice to permit the claimant to call the witnesses. The claimant had known in October 2022 of his right to call witnesses and he had not done so.

128. The Tribunal also explained to the claimant that the respondent's barrister was acting on instructions. He was simply doing his job by putting his case. It was therefore not appropriate to accuse Mr Salter of lying. The removal of the prayer room was not a pleaded allegation before this Tribunal. The claimant's application was refused. The claimant was reminded to refrain from name calling in the Tribunal.

Resumption of the hearing

129. During cross examination of the claimant when the events of July 2019 were put to him (page 188 of the bundle) which involved the complaint by a female about alleged harassment committed by the claimant namely following her and filming her over a 5 to 6 month period, the claimant started to laugh uncontrollably and was observed pulling his top over his face. In the course of cross examination the claimant frequently stated after responding to a question *"next question Michael"* or *"were you there Michael?"* referring to counsel. The Tribunal reminded the claimant that counsel was just putting the respondent's case. The claimant responded to questions put by counsel as *"Mr. Salt-er".* The claimant was informed not to refer to counsel in that manner.

130. The Tribunal was unable to sit in the afternoon of day 4 and had to postpone the case to the next day. The Tribunal warned the claimant not to discuss his evidence whilst he remained under oath.

Strike out application – day 5

131. The claimant had emailed the Tribunal to state that his electricity was off and he would have to come in. However, the claimant was able to join the remote hearing from home.

132. At the commencement on day 5 the respondent drew to the Tribunal's attention that despite the Tribunal giving the claimant a warning about not discussing his evidence and identifying at the ground rules hearing expected

behaviour, the claimant had gone on to social media and discussed the evidence and breached the ground rules in several tweets.

133. In particular, the respondent referred to the evidence he had given about the student complaint about his harassment. The respondent referred to tweets by the claimant *"I went up to the 4th floor; on more than one occasion to stare at you"* Followed by an apple and blond woman emoji. This was a direct reference to the student complainant; she had alleged that the claimant had approached her on the fourth floor of the respondent's premises. The claimant had continued to make derogatory remarks about the respondent's legal team in particular referring to the respondent's instructing solicitor *"as Harry Potter"*.

134. The claimant had also put a photograph of himself on social media with one finger in front of his face referring to the respondent and the police posted "*pigs hiding behind sirens but unable to provide their full names and show their fugly faces or support their mates Birmingham City University at the employment tribunal case I have built against them #Harry Potter#anti LGBT#homophobic #liars#expose".* The claimant also stated (under his twitter name as Follow Poor Claimant Shamir anti.. *"BCU keep on changing their statements. First they said verbally I poked this fugly man at the front desk of Parkside 2nd floor & they wrote negative feedback on the board ~liars ~lying liars ~ Mexicans ~expose #iambcu #antilgbt #homphobic #burning #funeral#antipolic".* He further posted *"They later state it was up on the 4th floor and left this card inside the box attached to the negative feedback board which Jonathan Arnold showed me whilst we walked past. Let that sink in. I don't withhold any evidence until the last minutes @ SuitsPeacock."*

135. The claimant further posted *"I went to day 3 of the employment tribunal (funeral) against Birmingham city university. I evidenced how those fugly students harassed me and then they falsely accused me because of how @the Sun exposed randy fugly students having sex on campus."*

136. Whilst the respondent was making his submission, the claimant was laughing and also saying *"lies lies"*. The Judge requested that the claimant did not interrupt or shout to which the claimant asked *"what's your full name?".*

137. During submissions the claimant was observed by a Tribunal member rubbing his eye with his middle finger extended (like his tweet about the police and the respondent on his Twitter page).

138. The respondent applied for the claimant's claims to be struck out. Applying the **Bolch v Chipman** test it was submitted that the claimant is guilty of scandalous, vexatious and unreasonable conduct. His behaviour had escalated. He had flagrantly breached the rules put in place by the Tribunal to behave but he has disregarded warnings about his behaviour. The respondent has lost trust in the claimant that he will conduct the rest of the case in a manner within the ground rules to allow for a fair hearing. He has been on twitter having been informed not to discuss his evidence. He is acting in a wilful and deliberate contravention to the Tribunal's order.

139. The respondent said that a fair trial was not possible and it was now proportionate to strike out the claimant's claims. The claimant has displayed a fundamental disregard to the rules expected. He has been warned but disregards the warnings. The respondent's witnesses have serious concerns as how the claimant will behave whilst cross examining them. In the tweets overnight the claimant has linked tweets about paedophiles to a number of organisations and referred to Harry Potter; the name used to describe the

respondent's solicitor. Furthermore, the claimant has discussed his evidence contrary to the usual warning by posting on twitter. The respondent relied upon the case of **Chidzoy v BBC** where a claimant discussed her evidence despite a warning with a journalist. In the circumstances that the respondent has no trust that the claimant will comply with any warnings about his behaviour, a fair trial is not and never will be achievable.

140. The Tribunal requested the respondent to forward the postings to the Tribunal and the claimant and would give the claimant time to consider his response. The claimant stated he was ready to give his response and wanted to strike out lies.

Claimant's submissions

141. After giving time to the claimant to consider the postings, the claimant submitted his response was the same last week. He submitted the respondent has accused him of physical violence and lying and he wished to express his human rights. He wanted a fair hearing and no bias and he wanted the hearing to be impartial. He wanted to express freedom of speech and have a fair trial. He submitted the respondent's barrister had not done due diligence and questioned what was wrong with his tweets. He stated the university had a public responsibility to promote free speech. He referred to the police who he alleged did not investigate him but arrested him with no reasonable grounds. The police were not doing anything about paedos or drug dealers or actual criminals and there was nothing private here. Richard Couby during the investigation wanted to keep it private and confidential. The claim of unfair dismissal the respondent did not have any legs to stand on. He submitted he would like to strike out the ET3 and he had a right to a fair trial. He referred to the case of **Werner v University of Southampton UKEAT/0038/21**.He wanted to know what lies he told. He was being entrapped again and the respondent were doing anything to wipe out his claim. He said they cannot do anything to defend the claim. He said that individuals had caused him harassment and stress and he wanted those witnesses and their families to appear in court. Any establishment has to ensure free speech that should not be denied to an individual. He again referred to the case of **Werner**. He said he was being harassed because he was a Muslim single straight male. He had provided a list of witnesses none had attended and they should be included. He alleged the trade union representative jointly with the university had tried to entrap him with emails to say he had COVID and bullied him. He submitted he will appeal this case over and over.

142. The Judge inquired whether the claimant considered he had done anything in breach of the standards of behaviour set out at the beginning of the case? The Judge asked whether the female depicted in the posting was the female who it was alleged was harassed and whether it was a reference to Parkside; a reference to his evidence which was discussed yesterday. The claimant said it had nothing to do with the witness yesterday. He said he was not like the claimant in **Chidzoy**; he hadn't spoken to a journalist; this was irrelevant to what is going on here. The respondent was a public university and he will had a public platform. He had not called anyone a rottweiler. He asked if he thought he had breached the ground rules? He said he published on Twitter; what is the difference between public and private. He disputed he discussed evidence or details.

143. Mr Salter submitted for the respondent the claimant had 7600 followers on Twitter. Whilst the Tribunal had just adjourned the claimant had said to Mr

Salter over the video link *"you have got no legs to stand on salty Mike fucking retard."* The Tribunal asked the claimant had he said that? The claimant said he did say the respondent had no legs to stand on but denied the rest. Mr. Salter for the respondent said that both he and his solicitor who were located in separate rooms had a note and the claimant did say that.

Conclusions

144. The Tribunal retired to consider the submissions.

145. The Tribunal did not consider that the **Werner** case was relevant to the matter to be considered. The **Werner** case concerned whether there was any bias during a preliminary hearing when the respondent was given time to enter a response.

146. The Tribunal reflected on the claimant's conduct and the requirements set out by the Tribunal thus far commensurate with a fair hearing.

147. The Tribunal found that the claimant was indeed guilty of unreasonable scandalous and vexatious conduct for the following reasons :-

(a) the claimant had engaged in intimidatory email correspondence directly with the witnesses and respondent's legal team with the intention to deter the respondent in the litigation;

(b) the claimant had pre-trial used social media as a means of intimidating the respondent's witnesses and legal team;

(c) the claimant had failed to comply with Judge Jones order on 29 March 2023 not to use language such as retard towards the Tribunal staff or the otherside;

(d) ground rules set out at the beginning of the hearing which the claimant understood to act respectfully and courteously during the hearing had been breached during the hearing despite the Judge requesting the claimant to do so; The Tribunal took account of the fact that the claimant had continued to be abusive and use inappropriate language to the respondent's legal team and Tribunal during the hearing and in social media postings during the hearing;

(e) the claimant failed to comply with the Tribunals instruction not to discuss his evidence. The claimant was an intelligent person and the Tribunal concluded he understood the warning of not to discuss his evidence whilst under oath. He ignored this and defends his actions as free speech; he went onto Twitter and posted that the respondent's witnesses were changing their evidence and referred to evidence concerning the complaint discussed on day 4; the complainant alleged the claimant had approached her in one of the respondent's buildings (the claimant had been asked about pages 191 and 215); The Tribunal drew no distinction between discussing evidence with a journalist at the Tribunal centre outside the hearing room and taking to Twitter to engage with over 7658 followers and mentioning evidence given in the course of the hearing;

(f) the claimant had acted dishonestly by misrepresenting the words he had actually used towards the respondent's counsel noted in today's hearing.

Is a Fair Trial still Possible?

148. In accordance with **Chidzoy v BBC** the Tribunal was best placed to make an assessment as to the significance of the claimant's conduct for the fair disposal of the case.

149. The Tribunal considered whether a fair trial remained possible. Despite a warning from the Tribunal in March 2023; the setting of ground rules of behaviour to be expected; warnings and a final warning given to the claimant about his conduct, the claimant has continued to abuse the legal team; he has acted dishonestly in informing the Tribunal about what he just said; in this case credibility was a key issue; he has failed to comply with the Tribunal's instructions not to discuss his evidence. The claimant is an intelligent person who understands instructions; he understood the ground rules and the purpose of putting them in place. However, the claimant refuses to comply and he suggests his defence is that of freedom of expression and his human rights allows him to do so. The Tribunal found the claimant to be defiant and had no confidence or trust that he will not continue in this manner in the hearing and is likely to post his evidence online and/or continue to disparage the respondent's witnesses and the legal team to intimidate. Such conduct interrupts the role of the Tribunal to hear the evidence and determine the issues in the trial window listing (see **Emmuemukoro).**
150. The Tribunal reached the conclusion that the claimant enjoyed upsetting individuals and there were no boundaries to his behaviour. The Tribunal itself has been asked by the claimant whether it is being racist when the claimant asked on a second occasion why the respondent would not comment on his submission when the claimant demanded the respondent to do so.
151. In the leading authority on case management HHJ Tayler observed in **Smith v Tesco** that the Tribunal is "open to the difficult" and the Tribunal should engage it's tools of case management to deal with such situations. At paragraph 24 of **Chidzoy** it was held that where the Tribunal finds unreasonable conduct it should not move to strike out when firm case management might still afford a solution. Despite the Tribunal's efforts to take and deploy these steps the claimant does not and will not comply.
152. In the course of the Tribunal delivering its judgement on the strike out the claimant continued to interrupt and shout at the Judge, pointing his finger at the camera. The Judge requested that the claimant did not point his finger or interrupt her or shout. To which the claimant said "*how many times have you interrupted me; what's your full name; I dismiss you civil servant".*
153. The Tribunal concluded that a fair hearing would not be possible. Despite setting out the boundaries of conduct to facilitate a fair hearing to both sides the claimant was unwilling to comply with basic standards of behaviour.

Proportionality

154. The Tribunal having considered whether a fair trial was possible went on to consider the issue of proportionality. The higher courts have indicated that the sanction of strike out is a draconian measure and a measure of last resort. The Tribunal had taken so far a measured approach taking into consideration that the claimant is a litigant in person and representing himself. The Tribunal had attempted to assist the claimant by offering guidance and setting out in clear terms by way of a grounds rule hearing the boundaries of behaviour required for a fair hearing. Despite setting those parameters the claimant has persistently breached them.
155. The Tribunal determined that the claimant will not conduct proceedings going forward within these parameters, no matter how many times the Tribunal provides guidance, he will never comply. The claimant had stated

that this is a public hearing and he has freedom of expression. However, the principle of freedom of expression is not an absolute right. There is the right for all parties under Article 6 to have a fair hearing. The Tribunal determined the manner in which the claimant conducts himself means that there can never be a fair hearing to both sides. It is therefore in the interests of justice and pursuant to the overriding objective there being no other proportionate measure to strike out all of the claimants' complaints.

156. The Employment Judge having informed the parties of the Tribunal's determination, the claimant shouted *"Fuck you Bitch"*.

Employment Judge Wedderspoon

30 June 2023

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