EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Y

Heard at: Manchester (by CVP) **On:** 18 September 2023

Before: Employment Judge McDonald
(sitting alone)

REPRESENTATION:

Claimant: In person
Respondent: Ms Fagan

JUDGMENT

1. On the assumption that the claimant's claims formed a continuing act to 26 August 2022, the claims were brought out of time but it is just and equitable to extend time, so those claims are allowed to proceed.

2. The respondent's application to strike out the claimant's claims is refused.

REASONS

Introduction

1. On 18 September 2023 I heard a preliminary hearing listed by Employment Judge Howard to consider time limit issues relating to the claimant's claim. After the hearing was listed, the respondent also applied to strike out the claimant's claim and Employment Judge Batten ordered that that application also be dealt with at the hearing.

2. I first heard the time limit application and gave judgment at the hearing. The claimant asked for my reasons in writing and they are set out below.

3. I then heard submissions from the parties in relation to the respondent's application to strike out the claimant's claim. There was not enough time for me to deliberate and give my decision on that application, so I reserved my decision.

However, I made Case Management Orders relating to the claim. I indicated to the parties that those Case Management Orders would be redundant if I did decide to strike out the claim. In the event, however, I have decided not to do so and so those Case Management Orders must now be complied with.

Reasons for my decision on the Time Limit Issue

4. This is my judgment in relation to the preliminary issue of whether the claimant's claims of discrimination are brought in time. The issue had been listed to be decided today by Employment Judge Howard at the preliminary case management hearing.

5. At the start of this hearing we discussed the decision I am making. Ms Fagan for the respondent had understood that I was deciding both whether the claimant's claims consisted of continuing acts and whether those claims were in time, including whether I should allow a just and equitable extension if they were shown to be out of time. The claimant had not understood that we were dealing with the continuing act point. That point was not entirely clear from the Case Management Order which listed this hearing.

6. In the absence of evidential documents in the bundle which would enable me to make findings about whether there were continuing acts, I decided on balance (and in particular taking into account the need to be fair to the claimant) that I would proceed on the basis that the acts were continuing acts up to the date of the dismissal on 26 August 2022 and decide issues on that basis.

7. To be clear, I have not decided the continuing act point – that will have to be decided at the final hearing having taken evidence into account. What I am deciding is whether the claim is in time <u>if</u> the date from which the time limit runs is 26 August 2022, and if not whether it is just and equitable to extend time.

<u>The time limit applying to the claimant's claim</u>

8. I heard from the claimant and the respondent, and I had the benefit of written contributions in the bundle.

9. Based on that, I find that if the time limit does begin to run on 26 August 2022 then ordinarily the time for bringing a claim would be 25 November 2022: that is because section 123 of the Equality Act 2010 states that a discrimination complaint may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates.

10. Section 140B (3) and (4) of the Equality Act 2010 extend time when the early conciliation requirements have been complied with, as they were in this case.

11. In this case early conciliation took place for a period of six weeks ending on 30 December 2022 when the early conciliation certificate was issued. That means that the clock on the time limit was stopped for a period of six weeks so that the new limitation date would be 6 January 2023. That means that the time limit for bringing a claim would expire within one month of the issuing of the early conciliation

certificate, and so the time limit is extended to that date. Putting all that together, that means the time limit for bringing a claim in this case was 30 January 2023.

12. The claimant in submissions submitted that there had been conversations with ACAS and with the respondent beyond the date when the early conciliation certificate was issued. In particular there is reference in the documents in the bundle for the hearing to her speaking to ACAS on or around 3 January 2023 to get an extension of a further week in order to respond to an offer made by the respondent. She was given until 10 January 2023 to respond. However, there is no further early conciliation certificate issued.

13. On that basis, my decision has to be based on the early conciliation certificate that was issued, which means that the claim should have been brought by 30 January 2023. The claim itself was not brought until 2 February 2023, which means it is some two days out of time. I therefore need to consider whether it is just and equitable to extend time to allow the claimant to bring her claims.

The Law on Just and Equitable extension of time

14. In the case of **Robertson v Bexley Community Centre [2003] IRLR 434** Court of Appeal, the Court of Appeal stated that when considering just and equitable extensions there is no presumption that they should grant an extension – the Tribunal cannot hear a claim unless the claimant convinces it that it is just and equitable to extend time, so the exercise of the discretion is the exception rather than the rule. However, that does not mean that there have to be exceptional circumstances before the time limit can be extended.

15. In the case of **British Coal Corporation v Keeble [1997] IRLR 336** the Employment Appeal Tribunal suggested that in determining whether to exercise a discretion to allow late submission of a claim Tribunals would be assisted by considering the factors listed in section 33(3) of the Limitation Act 1980. Although subsequent cases have shown that adherence to that checklist is not required, those factors are still relevant to my decision. The factors are in particular:

- the length of and the reason for any delay;
- the extent to which the cogency of the evidence is likely to be affected by the delay;
- the extent to which the party sued has cooperated with any requests for information; and
- the promptness with which the claimant once she knew of the facts giving rise to the cause of action.

16. In the case of **Adedeji v University Hospitals Birmingham NHS Trust** it was confirmed that the Court of Appeal's approach in **Abertawe Bro Morgannwg University v Morgan** was to be followed. That stressed that the factors which are almost always relevant to consider when exercising any discretion are the length and the reasons for the delay and whether the delay has prejudiced the respondent, for

example by preventing or inhibiting it from investigating the claim while matters were fresh.

17. The Court of Appeal in **Abertawe Bro Morgannwg** also made clear that there is no justification for reading into section 123 a requirement that the Tribunal has to be satisfied that there is a good reason for the delay let alone that time could not be extended absent an explanation from the employee, however the reason for the delay is a relevant matter to which the Tribunal can have regard. That approach has been confirmed more recently in the Employment Appeal Tribunal case of **Owen v Network Rail Infrastructure Limited EAT [2022] 000609** in which the Employment Appeal Tribunal confirmed that in considering whether to grant a just and equitable extension of time it is an error for a Tribunal to consider that if there is no explanation or reason for a late submission of the Tribunal claim that necessarily means the extension of time should be refused as opposed to the absence of an explanation being a relevant but not necessarily decisive consideration to weigh in the balance. That again reflects the decision in **Abertawe Bro Morgannwg**.

<u>The Facts relevant to the exercise of the just and equitable discretion</u>

18. Applying those matters and factors to this case, first of all it is clear that the claimant was aware that there were Tribunal time limits that she needed to adhere to from at the latest November 2022 – that is apparent from the correspondence in the bundle before me. It is also clear that there were ongoing negotiations between the parties into January 2023 including (as I have said) an agreement by ACAS that there could be an extension for the claimant to respond by 10 January.

19. As I have said, there was no early conciliation certificate issued with the date of 10 January and so that does not extend the time limit, however it does seem to me that it is a relevant consideration that the parties were clearly still in negotiations and the claimant was actively pursuing that in January 2023.

20. The claimant in her documents gave various explanations as to the delay. Dealing with those briefly, when it comes to the impact of her disabilities (which are ADHD and ASD), I accept that these may have had an impact on her ability to pursue matters. However, I do not find that this was a case where there was any element of mental incapacity or that the claimant was in such a state in terms of her mental health that she was not able to pursue matters. The ongoing discussions regarding the case show that that was not the case. I do accept, however, that the claimant's ADHD and her need to process and organise matters in particular ways may have led to a delay in her being able to put together the claim form given the rigid format required by the Employment Tribunal.

21. The claimant also suggested that a reason for delay was that she had understood initially that she needed to provide all her evidence to the Tribunal in addition to completing the claim form. The claimant said that she had contacted the Tribunal who had confirmed that that was not in fact the case. Although there was no evidence of that phone conversation in the bundle, the claimant at the start of the Annex to her claim form (which is at page 16 of the bundle) refers to the fact that she had been told to insert as much information as she could and then provide evidence at a later date. On balance it seems to me that that likely reflects the conversation that she said she had with the Tribunal.

22. It does seem to me that those explain to some extent the delay in providing and filing the claim form in this case. I do not say that it necessarily explains the whole of the delay until 2 February. However as **Abertawe Bro Morgannwg** makes clear, the decision on whether to extend time does not turn solely on the adequacy of the explanation given. The Tribunal also needs to take into account the extent of the delay and, in particular, the impact on the respondent.

23. When it comes to the extent of delay, that was a matter of two days and so relatively short. When it comes to the impact on the respondent, I have considered two aspects of prejudice. The first is the impact on the cogency of evidence. In this case it seems to me that the impact on the cogency of the evidence is likely to be extremely limited. Ms Fagan for the respondent did not strongly pursue that there would be prejudice of that nature. The claim relates to disciplinary proceedings, a grievance and then a dismissal followed by an appeal and so there will be documentary evidence of those matters. In terms of live witnesses, I understand from Ms Fagan that one witness involved may have left the respondent's employment and so there is a degree of prejudice in that. It is not clear whether the delay of two days would have made any difference.

24. Substantially, though, it seems to me that this is a case where the delay will not significantly impact on the cogency of the evidence and so will not significantly prejudice the respondent in defending the claim. Ms Fagan however referred to a broader prejudice which is the costs of defending the claim. In doing so she pointed to the fact that there have already been delays in progressing matters on the part of the respondent. She also referred to social media posts made by the respondent which she says could be seen as prejudicing the respondent's witnesses' ability to attend proceedings or to participate in the case.

25. In relation to that prejudice, it seems to me that those are matters which are more relevant and can be taken into account in my decision relating to the strike out application which the respondent is going to make if I do allow time to be extended. Those are matters which, it seems to me, go to the reasonableness of the conduct of the case rather than to the justice and equity of allowing the time extension.

<u>Conclusion on the Just and Equitable extension point</u>

26. Taking matters in the round then what I find is that there is some explanation for the delay in filing the claim in this case; there is little (if any) prejudice to the respondent in terms of the cogency of the evidence, and the broader prejudice of the costs of likely delay are matters which can be dealt with by other means, namely by a potential strike out and/or costs application if there are delays in complying with orders which then lead to further hearings. As against that I take into account that if I did decide that the claims were out of time and that time should not be extended the claimant's claim would be dismissed in its entirety, meaning that she had no opportunity for her claims of discrimination to be tested in the Tribunal.

27. On balance, therefore, I find that the prejudice to the claiming of denying the just and equitable extension outweighs the prejudice to the respondent if I do allow it. My decision therefore is that it is just and equitable to extend time to allow the claim to proceed.

28. For the sake of clarity, I confirm again that that is a decision based on the assumption that the acts complained of are continuing acts up to and including the dismissal. If the Tribunal at the final hearing decides that in fact some of the prior acts are not part of a continuing act, the Tribunal at that hearing will have to make its own decision as to whether or not it is just and equitable to extend time in relation to those earlier matters.

Respondent's application to strike out the claimant's claim

29. I now set out my reasons for my reserved decision on the respondent's strike out application. For the respondent Ms Fagan applied to strike out the claimant's claim under rule 37 of the Employment Tribunal Rules 2013 ("the ET Rules"). Specifically, she applied to strike out under rule 37(1)(b), (c) and (d). That is that the manner in which the proceedings had been conducted was unreasonable; or that there had been non-compliance with any Tribunal orders or rules and/or that the case had not been actively pursued.

The Law

Strike out for non-compliance/unreasonable conduct and failing to actively pursue

30. Rule 37 of the Employment Tribunal Rules of Procedure 2013 ("the ET Rules") gives the Tribunal the power to strike out all or part of a claim:

> **"37.— Striking out**
>
> **(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds —**
>
> **(a) that it is scandalous or vexatious or has no reasonable prospect of success;**
>
> **(b) that 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;**
>
> **(c) for non-compliance with any of these Rules or with an order of the Tribunal;**
>
> **(d) that it has not been actively pursued;**
>
> **(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out)."**

31. Rule 37(2) says that a claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

32. The process for striking-out under Rule 37 involves a two stage test (**HM Prison Service v Dolby [2003] IRLR 694, EAT; Hasan v Tesco Stores Ltd**

UKEAT/0098/16). First, the Tribunal must determine whether one of the specified grounds for striking out has been established; second, if one of the grounds is made out, the tribunal must decide as a matter of discretion whether to strike out or whether some other, less draconian, sanction should be applied. That means that if any of 37(1)(a) to (e) apply, a tribunal "may" strike out, but is not obliged to do so. In deciding whether to exercise the power the tribunal must have regard to the overriding objective and what is fair and just to both sides (**T v Royal Bank of Scotland [2023] EAT 119, para 38**).

33. Even in a case where the impugned conduct consists of deliberate failures in relation, for example, to disclosure, the fundamental question for any Tribunal considering the sanction of a strike out is whether the parties' conduct has rendered a fair trial impossible: see **Bolch v Chipman [2004] IRLR 140 EAT**. In **Bolch**, Burton P set out guidance for Tribunals when determining whether or not to make a strike out order, as follows:

(i) There must be a finding that the party is in default of some kind, falling within Rule 37(1).

(ii) If so, consideration must be given to whether a fair trial is still possible and save in exceptional circumstances, if a fair trial remains possible, the case should be permitted to proceed.

(iii) Even if a fair trial is unachievable, consideration must be given to whether strike out is a proportionate sanction or whether there may be a lesser sanction that can be imposed.

(iv) If strike out is the only proportionate and fair course to take, reasons should be given why that is so.

34. In **James v Blockbuster Entertainment Ltd [2006] IRLR 630 CA** Sedley LJ recognised the draconian nature of the strike out power and said that it is not to be readily exercised.

Striking out for conducting proceedings scandalously, unreasonably or vexatiously (Employment Tribunal Rules 2013 rule 37(1)(b)

35. The approach to be taken by the Tribunal in addressing the issue of strike-out under Rule 37(1)(b) was summarised by Burton J, in **Bolch**:

a. The Tribunal must reach a conclusion whether proceedings have been conducted by, or on behalf of a party, in a scandalous, vexatious or unreasonable manner.

b. Even if there is such conduct, the Tribunal must decide whether a fair trial is still possible.

c. If a fair trial is not possible, the Tribunal must still consider whether strike-out is a proportionate remedy or whether a lesser sanction would be proportionate.

d. If strike-out is granted then the Tribunal needs to address the effect of that and exercise its case management powers appropriately.

36. In **ET Marler Ltd v Robertson 1974 ICR 72**, the court defined "vexatiousness" as the bringing of a claim for reasons of spite, to harass an employer or for some other improper motive. In **Attorney General v Barker 2000 1 FLR 759 , QBD (DivCt)** the court said that whatever the intention of proceedings may be, if the effect was to subject the (in that case) 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 court process this can amount to vexatious conduct.

Striking out for non-compliance with the Employment Tribunal Rules or an order of the Tribunal (Employment Tribunal Rules 2013 rule 37(1)(c)

37. The leading authority on striking out for non-compliance is **Weir Valves and Controls (UK) Ltd v Armitage (2004) ICR 371**. At paragraph 17 in that case the Employment Appeal Tribunal said that:

> "It does not follow that a striking-out order or other sanction should always be the result of disobedience to an order. The guiding consideration is the overriding objective. This requires justice to be done between the parties. The court should consider all the circumstances. It should consider the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is still possible. It should consider whether striking out or some lesser remedy would be an appropriate response to the disobedience.'
>
> Repeated non-compliance is to be deprecated, and it may give rise to a view that if further indulgence is granted, the same will simply happen again: see Harris at paragraph 26."

Striking out because a case has not been actively pursed (Employment Tribunal Rules 2013 rule 37(1)(d)

38. In **Abegaze v Shrewsbury College of Arts & Technology [2010] I.R.L.R. 238** the Court of Appeal confirmed that strike out for failing actively pursue a case raises some different considerations to a strike-out for non-compliance under 37(1)(c). It confirmed that in **Evans Executors v Metropolitan Police Authority [1993] ICR 151** the Court of Appeal held that the general approach should be akin to that which the House of Lords in **Birkett v James [1978] AC 297** considered was appropriate when looking at the question whether at common law a case should be struck out for want of prosecution. (The position in civil actions has altered since the advent of the Civil Procedure Rules). That requires that there should either be intentional or contumelious default, or inordinate and inexcusable delay such that there is a substantial risk that it would not be possible to have a fair trial of the issues, or there would be substantial prejudice to the respondents.

39. The first category is likely to include cases where the claimant has failed to adhere to an order of the tribunal. As such, it overlaps substantially with the tribunal's

power under rule 37(1)(c) to strike out for non-compliance with tribunal rules or a tribunal order. The second category requires not only that there has been a delay of an inordinate and inexcusable kind, but that the respondent can show that it will suffer some prejudice as a result. The Court of Appeal in **Evans** held that it is necessary for a Tribunal to consider that issue of prejudice separately - prejudice is not necessarily inherent in the failure to actively pursue a case.

Submissions and discussion

40. Ms Fagan relied in her submissions primarily on the claimant's failure to comply with the Case Management Orders made by Employment Judge Howard at the case management preliminary hearing on 16 May 2023 sent to the parties on 26 May 2023.

41. Employment Judge Howard had ordered that the claimant must supply a Schedule of Loss to the respondent by 6 June 2023. The claimant is bringing a claim of disability discrimination and she was also ordered to supply a disability witness statement (disability impact statement) and medical records by 6 June 2023. The parties agreed extensions of time for those steps, but it was the respondent's case that the claimant had still not complied.

42. Dealing with these matters in turn:

Schedule of Loss

43. Ms Fagan accepted that the claimant had sent a draft Schedule of Loss to the respondent. In fact she had provided two drafts. Ms Fagan said that there had been difficulties in accessing them. It is clear that the respondent had managed to access them by the date of the hearing, however, because Ms Fagan was able to tell me in what ways the schedules were deficient. She accepted that the compensatory award had been completed but there was no injury to feelings award included and no ACAS uplift (she conceded she did not know whether the claimant was applying for such an uplift). In relation to the future loss, the claimant said that she was waiting for the respondent's response to her request for information. The respondent's case is that the claimant now had her P45 and her P111D and should therefore be in a position to finish the Schedule of Loss.

44. It does seem to me that the claimant ahs at least to some extent complied with the order to provide a Schedule of Loss. To the extent that here are matters missing such as how much injury to feelings compensation and ACAS uplift is claimed, the claimant has asked for an extension of time until 27 November 2023 to provide the updated Schedule of Loss.

45. In terms of the impact on proceedings, it is not clear to what extent the absence of a Schedule of Loss or delay in providing it will have an impact on the proceedings. The claimant suggested that she had sent a further version of the Schedule of Loss on 21 August 2023. She did not suggest that she was missing any information in order to comply with the requirement to provide the Schedule of Loss. She did however say that she had had to prioritise other things, specifically her academic career, which is why there had been some delay in complying with the Tribunal's orders. She explained to me that she had been working in academic

circles and that the thesis which she handed in in March 2023 was the culmination of a ten year process. She also referred to other ongoing proceedings as a reason why there were delays in complying. In particular, she cited a cease and desist order which had been sought against her by her former partner which had involved her in attending the Royal Courts of Justice on more than one occasion to give evidence.

46. On balance I find the claimant has complied with the case management order. Relating to a Schedule of Loss. I note the order does not specifically refer to including details of the compensation claimed for injury to feelings or for ACAS uplift. Taking into account the claimant is a litigant in person I do not find there has been non-compliance with that order. If I am wrong and the deficiencies mean there has been non-compliance, I do not find that means a fair hearing is no longer possible.

Disability Impact Statement

47. The claimant's case was that she had prepared and filed a Disability Impact Statement. Although she initially said it was not in the bundle, she then agreed it was the document at pages 168-170 of that bundle. Ms Fagan seemed to be suggesting that the impact statement was not very detailed. However, as she pointed out, that is only to the disadvantage of the claimant. It is for the claimant to prove she is a disabled person. If the impact statement is not particularly full then that is more to her disadvantage than the respondent's because there is less evidence to prove that she is a disabled person.

48. In relation to the disability impact statement, therefore, it seems to me that the claimant has complied with the order, albeit she did so late.

Medical Records

49. The claimant accepts she has not yet supplied medical records. She said that she had asked for them in May but had to chase up again for them in August. There are two sources of medical records. The first is Dr Walters, the claimant's GP. The claimant is chasing him. The second is Steve Grierson, who is at the ADHD Specialist Clinic at Manchester University Hospital. The claimant explained that she has appointments with Mr Grierson once a month. Her appointment in September is imminent. There had not been an appointment in August because Steve Grierson was on leave. She said that he was going to provide a statement but that she understood there were some delays in ensuring that it was checked.

50. When it came to the GP medical records, the claimant said that she had received her medical records in August. There were 325 pages of them and in going through them she realised that her records had got mixed up with someone else, e.g. it referred to someone having their tonsils out in Belgium which was clearly not the claimant.

51. Again, it appears to me that there has been a delay on the claimant's part in complying and although she listed a number of mitigating factors which are potentially relevant, there is certainly it seems to me an element of deciding to prioritise her academic career over the Tribunal proceedings.

Conclusion on striking out application based on non-compliance

52. I have found some non-compliance with Tribunal orders by the claimant. The disability impact statement has been provided, albeit late. The medical records have not been supplied. The claimant has provided some explanation for why the medical records have not yet been provided. In deciding whether to strike out for non-compliance I need to consider whether a fair trial is still possible. I find that it is. There is time to rectify any defaults on the claimant's part. That means that it is not appropriate to strike out the claimant's claim for non-compliance with the Tribunal's orders. I have instead made an unless order requiring the claimant to provide her medical records by 14 December 2023. The terms of that unless order are set out in my case management summary and orders of today's date.

Claimant actively pursuing her claim

53. Dealing next with whether the claimant has actively pursued her claim, Ms Fagan suggested that the delays in complying with the Case Management Orders and the claimant's evident prioritising of her academic career suggested she was not actively pursuing the claim. It seems to me that there is something in that argument. On the other hand, the claimant has (in some senses) clearly been actively pursuing her claim because she has been emailing the Tribunal and the respondent on a regular basis. One of Ms Fagan's concerns was that the costs of this case are escalating because of the claimant's habit of sending long emails. That, it seems to me, almost acknowledges that the claimant has been pursuing her claim.

54. There was a suggestion from Ms Fagan in submissions that the claimant was not genuinely actively pursuing her claim. I do not accept that. It seems to me that while the claimant has been to some extent prioritising other matters (some of which are in her control (like the academic issues) and some not (like the cease and desist proceedings brought by her former partner), she is pursuing the claim to an extent and I cannot say that she is not actively pursuing it. The application to strike out the claimant's claim on this basis is refused.

Conducting proceedings in an unreasonable way

55. When it comes to conducting proceedings in an unreasonable way, Ms Fagan repeated the submissions in relation to the delays on the claimant's part. It is clear that the claimant does (because of her ADHD) organise documents in her own way which can lead to documents appearing complicated to others (while they may be helpful to her). I have referred above to the delays in proceeding matters but I do not think that that is sufficient to amount to unreasonable conduct.

56. Ms Fagan did refer to another aspect, however, which was to the claimant sending social media messages or posting about the Employment Tribunal proceedings in social media posts. This matter is complicated because, as I understand it, elements of the claimant's thesis are tied in with the facts of this case. When she publishes her thesis she is therefore to some extent publishing matters about the claim.

57. However, it does seem clear to me that she has also tagged individuals (including a named comparator) and regularly tagged the respondent in her social media posts. Some of the social media posts do seem to me to be more than simply her releasing aspects of her thesis and stray into conducting the litigation online

rather than in the Tribunal. I explained to the claimant that the Tribunal will be very concerned if such steps lead to a fair hearing being prejudiced e.g. because of any adverse behaviour towards the respondent's witnesses.

58. The claimant's position is that although an anonymity order and a restricted reporting order has been made in this case, that does not apply to her posting social media matters about her thesis. Her claim is that she discussed this with Employment Judge Howard and it was made clear that social media posts would not fall foul of any restricted reporting order. It is true that the restricted reporting order is aimed primarily at publication in the press, but it does seem to me that there may well be issues with publication of matters in social media. The claimant was adamant that she would not stop disclosing aspects of her thesis even if they did refer to matters subject to the Tribunal case. She was however willing to agree not to post or tag individuals such as the named comparator. During our discussions the claimant made clear that she was willing to waive the anonymity in relation to sexual misconduct which was at the root of Employment Judge Howard's decision to make a restricted reporting order and an anonymity order.

59. As I explain below, I have decided not to strike out the claimant's case. In those circumstances the orders I made at the Tribunal hearing relating to anonymity will take effect. The claimant is going to write by 30 October 2023 to say why she feels an anonymity order and restricted reporting order should not be maintained. The respondent has until 28 November 2023 to supply its comments in response. Given the claimant's indication she will no longer engage directly with the respondent's witnesses on social media posts, and given that the status of the anonymity order and the restricted reporting order is to be decided, it does not seem to me appropriate to strike out the claimant's claim based on her conduct in relation to these matters. Even when the delay in dealing with the matters are added in, I do not find that the claimant has conducted the claim unreasonably to the extent that it justifies striking out her claim.

60. In those circumstances I have decided to refuse the respondent's application to strike out the claimant's claim.

61. In doing so, I am mindful of the valid points Ms Fagan made about the way that the claimant is conducting the claim. Potentially partly related to her ADHD, the claimant has a tendency to send long, very detailed emails but which do not necessarily address the issues the Tribunal has asked her to address. There was, for example, a misunderstanding on her part about the need to supply further details. That was based on a misreading of paragraph 18 of Employment Judge Howard's Case Management Order. I am also concerned about the claimant's decision to prioritise her academic career over the Tribunal process. I can understand from what the claimant told me how important that academic career and her thesis is to her. However, as a Tribunal we also have to have regard to the interests of the other parties to this case. The overriding objective requires the Tribunal to deal with matters proportionately and avoiding delay and costs. Ms Fagan suggested that the claimant had shown a wilful disregard of the Tribunal's orders. It does seem to me that there is an element on the claimant's part of taking the Tribunal's orders too lightly. It is now important that she focuses her efforts on complying with the orders made in this case.

62. Although I have not struck out the claim I have therefore decided to make an Unless Order which I have set out in the Case Management Order dated today's date. The reason for doing so is that it is important that the claimant works towards a fixed end point for the steps that she is now required to take.

Employment Judge McDonald

Date: 17 November 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 17 November 2023

FOR THE TRIBUNAL OFFICE

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