



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Daramy
Respondents: London Borough of Tower Hamlets & Others
Heard at: East London Hearing Centre
On: 19 October 2023 & 15 January 2024
Before: Employment Judge B Beyzade

Representation

For the Claimant: In person
(Accompanied by Mr E Daramy, Claimant's Husband)
For the Respondents: Mr F McCombie, Counsel

JUDGMENT having been sent to the parties on 29 February 2024 and reasons having been requested in accordance with Rule 62(3) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

Introduction

Background

1. The claimant made complaints of direct sex and disability discrimination; harassment related to disability, race and sex; indirect disability discrimination; discrimination arising from disability; victimisation; failure to make reasonable adjustments; direct discrimination (dismissal because of race, sex, and disability); harassment (dismissal related to race, sex, and disability); and dismissal for the reason or principal reason that the claimant made protected disclosures. The respondents disputed the claimant's claim in its entirety.

2. At a Case Management Preliminary Hearing on 29 September 2022 before Employment Judge Jones the complaints were discussed and further specification was sought and some Case Management Orders were issued.
3. Employment Judge Barrowclough made further Case Management Orders dated 24 March 2023 (issued to parties on 27 March 2023).
4. Following a hearing before Employment Judge W A Allen KC on 16 May 2023 (and the Judgment sent to the parties on 23 May 2023), the claimant's applications dated 10 January 2023 and 27 January 2023 for strike of the Response (together with her application for an unless order dated 10 January 2023) failed and they were dismissed. The Case Management Orders made by Employment Judge Jones were varied to include new dates for the preparation of the Hearing Bundle (27 June 2023), exchange of witness statements (26 September 2023), and for parties to confirm that they are ready for the Final Hearing (24 October 2023). The respondents were ordered to provide copies of the documents listed at paragraph 3 of Employment Judge Allen KC's orders.
5. Having considered the claimant's Reconsideration Application dated 06 June 2023, Employment Judge Allen KC refused that application by a Judgment dated 23 June 2023 (sent to the parties on 26 June 2023). At paragraph 2 of the Reconsideration Judgment, Employment Judge Allen KC directed that a copy of the Final List of Issues was to be resent to the parties along with his Judgment (a copy of the Judgment with the Final List of Issues appended was on the Tribunal file).
6. In his Reconsideration Judgment, he also addressed a number of points made in correspondences received from the claimant up to 09 June 2023. It was observed that, "Ms Bello has supplied to the claimant a number of documents and explained why other documents had not been supplied. Nothing on the face of the correspondence indicates that the Respondent has failed to comply with the Tribunal's case management orders. The Claimant has not articulated why she considers that the Respondent has failed to comply with any part of the order of 16 May 2023 that it was capable of complying with."

Claimant seeks strike out

7. By an application dated 26 June 2023 sent at 11.51pm the claimant applied to strike out the respondents' Responses pursuant to Rules 37(a), (b), (c), (d), and (e) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the ET Rules").
8. The claimant states that Employment Judge Allen KC erred in law in a number of respects in terms of his Judgment refusing her unless order and strike out applications, and by not giving reasons for selecting only four documents from the claimant's specific disclosure application (and refusing to order disclosure of the remaining disclosure documents requested in her application), refusing her application to shorten the Final Hearing, and by

alleging that the respondents had complied with the Tribunal's orders despite the fact that they had not done so.

9. The claimant takes issue with Employment Judge Allen KC's agreement with the respondents' position that they sent a Bundle to her home address on 04 January 2023 that was subsequently returned to the respondents. The claimant states that this was a fabrication by the respondents' representatives. The claimant also refers to her being blamed for her alleged non compliance (which had allegedly led to the respondents' non compliance) and the fact that the Employment Judge accepted the respondents' partial response to paragraph 18 of Employment Judge Jones' order concerning her disability impact statement.
10. The claimant refers to two emails dated 23 June 2023 that she sent to the respondents' representative (copied to the Tribunal) concerning outstanding documents and information that she says the respondents repeatedly failed to provide. The claimant says the respondents did not provide the documents Employment Judge Allen KC had ordered them to provide by 30 May 2023.
11. The claimant refers to a list of documents she attached to her application. The claimant states that those documents are relevant to her claim and the respondents' defence, and that she has explained why they are relevant. The claimant explains that if the respondents cannot provide these documents, referring to Rule 37(1)(e) of the ET Rules, the claimant contends that it will no longer be possible to have a fair hearing, that it will be an abuse of process, and the Response should be struck out pursuant to Rules 37(1)(a), (b), (c), and (d) of the ET Rules.
12. The claimant also complains that the respondents' representative had failed to send her a copy of the Final Hearing Bundle by 27 June 2023.
13. The claimant avers that Employment Judge Allen KC, Acting Regional Employment Judge Russell, and Employment Judge Jones failed to treat her in accordance with the correct principles as a Litigant in Person. She states that Employment Judge Allen KC tipped the scales in favour of the respondents and he was determined to weaken her claim at all costs.
14. The claimant also sets out a complaint and a request for a transfer of the claim on the basis that she had lost confidence in East London Employment Tribunal's ability to deal with her case fairly and justly.
15. The claimant appends copy correspondences in support of her application.
16. Although the claimant had not made it clear as to why, specifically, each of the grounds relied upon were said to have justified a strike out of the claim, the Tribunal has considered the entirety of the claimant's claim and the responses and approach taken in assessing each of the grounds relied upon.

Matter to be determined at Preliminary Hearing in public

17. Regional Employment Judge Burgher directed on 07 July 2023 that there will be a Preliminary Hearing in public listed for one day in person on 19 October 2023 to consider the claimant's application dated 28 June 2023.
18. The claimant sent an email to the respondents' representative on 25 July 2023 advising that due her outstanding strike out application, she had not read any correspondences from the respondents after 28 June 2023 and she would only be responding to these if directed to do so by the Tribunal. The claimant explained that she objected to the respondents proposal to extend the deadline for Hearing Bundle preparation to 11 July 2023 and she advised that she would not be available on 07 August 2023.
19. On 24 August 2023 the claimant made an application for an extension of time to exchange her witness statements until the end of October 2023 (after the Preliminary Hearing on 19 October 2023). The claimant's application for an extension of time was granted by Acting Regional Employment Judge Russell on 14 September 2023 and parties were sent correspondence on that date confirming the same.
20. A Notice of Preliminary Hearing was issued to parties on 11 September 2023 confirming that pursuant to Regional Employment Judge Burgher's directions there will be a Preliminary Hearing on 19 October 2023 at 10.00am to consider the claimant's strike out application and any Case Management Orders.
21. The claimant sent an email to the Tribunal on 15 September 2023 advising that she will be sending a draft witness statement to the respondents by the due date of 25 September 2023. As the Hearing Bundle had not been finalised, the claimant stated that she could not cross reference her witness statement with the page references. The respondents' representative replied on the same date proposing that witness statements be exchanged on 10 October 2023 and pointing out that the final Hearing Bundle was sent to the claimant by Egress on 11 July 2023 (a further copy had been sent to the claimant that day). The respondents' representative's Trainee Solicitor had tried to contact the claimant to arrange for delivery of a hard copy of the Hearing Bundle. The claimant was invited to contact the respondents' representative if she wished to add any further documents to the Hearing Bundle.
22. The respondents' representative also sent email correspondence to the Tribunal on 15 September 2023 in which they confirmed that the Hearing Bundle was sent to the claimant via Egress on 11 July 2023 and that they would be happy to exchange witness statements on 10 October 2023 or after the Preliminary Hearing.
23. Parties were advised by letter dated 04 October 2023 from the Tribunal that parties are expected to co-operate to ensure that the matters can be properly determined and the failure to do so could result in the claim or

response (or part of it) being struck out and a party being liable to pay costs. The claimant sent detailed representations to the Tribunal by email on 09 October 2023 in response to the Tribunal's correspondence of 04 October 2023.

Documents before the Tribunal at this Hearing

24. Prior to the Preliminary Hearing I was provided with two bundles of documents by the respondents' representative (Preliminary Hearing Bundle dated 16 May 2023 containing extracts from the 1733 page bundle and a correspondence file consisting of 1324 pages, an email from the claimant dated 18 October 2023 sent at 11.59pm containing submissions comprising 44 A4 pages (a further email was sent at 4.30am attaching an index), and a copy of the Tribunal file (including correspondences between the parties and the Tribunal), to which reference was made by parties.

Parties' Submissions

25. In addition, I heard oral submissions from the claimant, who appeared in person, and Mr McCombie, Counsel, on behalf of the respondents.

Claimant's submissions

26. The claimant referred to the chronology of events and to the Preliminary Hearing before Employment Judge Allen KC on 16 May 2023.
27. The claimant had applied for an extension of time to provide her witness statement, and an extension of time was granted by Acting Employment Judge Russell until the end of October 2023. The claimant nevertheless submitted her draft witness statement on 26 September 2023.
28. The claimant submitted that the respondents were taking time to revert to the claimant. The respondents claimed she had not complied with the orders of the Tribunal. By way of example she had asked for an extension of time to provide her disability impact statement, and despite this the respondents stated that the claimant did not comply with the Tribunal's orders. The claimant advised that Employment Judge Allen KC agreed with the respondents even though there was evidence to show that an extension of time had been requested. The claimant explained that it took the respondents' representative two months to reply (and they did not respond until 06 February 2023).
29. The claimant advised that the respondents failed to provide their list of documents by 22 April 2022. Employment Judge Russell decided that there would be a 7- day extension of time. The deadline by which parties were supposed to exchange lists was on 22 April 2022 but Ms Bello said that the respondents were not ready. When she eventually exchanged documents with the respondents, the claimant noted that the respondents' disclosure was incomplete.

30. The claimant stated that the respondents had failed to provide the Hearing Bundle to the claimant pursuant to the Tribunal's directions in June 2023. She said the respondents were required to follow the Rules. The claimant pointed out that she lacked confidence that she would receive justice.
31. The claimant advised that the respondents cannot say that they delivered the Bundle to her as it had been returned. The respondents provided a photograph with an A4 envelope. The respondents' actions, it was submitted, amounted to falsification of information, and wasting the court's resources. There were serious allegations hanging over the claimant including breaching equality, putting service users' lives at risk and under performance, and the claimant was currently unable to work.
32. She stated that the respondents' evidence should not be considered by the Tribunal given the circumstances.
33. I was referred to Employment Judge Allen KC's orders in which he ordered the respondents to disclose certain documents (at paragraph 3). The respondents responded on 30 May 2023 and I was referred to pages 430 to 431 in respect thereof. The claimant explained that the following documents had not been provided in terms of paragraph 3 of Employment Judge Allen KC's orders:
 - a) 3.1: there was no letter from Claudia Brown. On 09 December 2020 Denise Radley sent an email of 09 October 2020. Apparently the letter did not exist.
 - b) 3.2: The claimant received the policy. Underperforming was not in there.
 - c) 3.3: This is outstanding. The claimant was given policies. She stated that there was nothing about whether if she was underperforming she would not be sent for training.
 - d) 3.4: This was not provided. They sent the letter Shaun wrote to payroll a year after to say that the claimant's salary should be stopped (which the claimant disclosed to them previously). This related to the reduction of salary in 2019. The document in question was from before the claimant's salary was reduced. The claimant wanted to know who gave the instructions and why it had been done.
34. The claimant advised that the letter from Freda Terrence of 10 July 2019 was not included in the Hearing Bundle.
35. Clearly, the claimant was dissatisfied with Employment Judge Allen KC's decision and in particular his failure to (according to the claimant) order the remainder of the documents the claimant requested to be disclosed and not providing any reasons in respect thereof.

36. I indicated to the claimant that I am unable to deal with her concerns in respect of alleged deficiencies with Employment Judge Allen KC's decision. The claimant confirmed that she had raised this matter in her Reconsideration Application and in her appeal to the Employment Appeal Tribunal.
37. The claimant confirmed that she attempted to access the Egress link sent to her by the respondents' representative on 11 July 2023, but she could not gain access to the documents. It was not clear why the claimant had not contacted the respondents' representative to assist her and to progress this matter.
38. The claimant explained that she did not want to deal with the respondents' trainee Solicitor as she did not want to correspond with too many people. This was in order to ensure that proper communications could take place and to avoid any miscommunications.
39. Acting Regional Employment Judge Burgher had asked parties to comment on the list of issues by 22 September 2022, but the respondents did not send their comments until 29 September 2022. The claimant raised concerns about this, but no action was taken. The claimant also raised the following concerns about the respondent's non compliance with orders:
 - a) Employment Judge Jones made orders relating to her disability discrimination claim which included requiring the respondents to write to the Tribunal by 02 December 2022 to indicate their position. Due to the claimant's ill health the information was sent to them later than the normal time. She stated that any reasonable practitioner would have asked for more time. The claimant said that they wrote to the Tribunal on 10 January 2023 asking for a strike out order, and that they knew that the claimant had disclosed her medical records.
 - b) The claimant also points out that the respondents responded conceding disability. They did not agree that they knew about it. They had sent the claimant to Occupational Health five times and they suggested reasonable adjustments (none of which were provided). They suggested reasonable adjustments. None of those were provided. They sent her back to work with the perpetrators. As she did not return to work, they reduced her salary.
 - c) In terms of Employment Judge Allen KC's orders, the claimant said that whatever the respondents said was taken into account in relation to the final List of Issues. This showed the unreasonable behaviour of the respondents. As she was a Litigant in Person, the claimant said that no one listened to her. The claimant complained that the respondents did not sit down with her and discuss the List of Issues, which may have avoided the need for Employment Judge Allen KC to have dealt with this matter.

40. The claimant relied on the following conduct by the respondents as amounting to unreasonable conduct of proceedings:
- a) The respondents stating that they sent documents which they had not sent to the claimant. They showed an A4 envelope (pages 1663 and 1654-1658) relating to the list of documents (04 January 2023).
 - b) Allegedly a letter was sent on 13 January 2023 in relation to information about the claimant's disability. The claimant stated that they lied about having sent her that letter on 13 January 2023 (the claimant only found that out in May 2023 when she was looking through their index). The claimant explained that the whole letter was made up.
 - c) The claimant said the way the Bundles were presented was inappropriate. Once the Bundle had been agreed, she was advised that no one can add anything else (Ms Bello and the respondents' counsel reiterated this on the day of the Preliminary Hearing). However the respondents' representative had attended with 3 documents including an 11-page List of Issues. This was unprofessional and it should not have happened.
 - d) On 02 May 2023/15 May 2023 there was email correspondence stating that the respondents cannot accept the claimant's documents once the Bundle was agreed. She brought them into the hearing on 16 May 2023.
 - e) The respondents' allegations are baseless. Their defence is baseless. The allegations that they brought against the claimant cannot be well founded in any way.
 - f) The vexatious and scandalous allegations they brought against the claimant are set out in the claimant's list of allegations (I was referred to the table at page 1552). The respondents had breached the Trusts' policies.
 - g) The respondents refused to give the claimant a copy of the Lone Working Policy. She questioned why they were refusing to provide this. She had requested that document previously when she received the respondents' list of documents.
 - h) In terms of the Bundle, a big Bundle was provided to her today and they expected her to go through it before the Hearing. This was unreasonable.
41. The claimant also submitted that a fair trial was not possible. This was because of the way the respondents had conducted the proceedings and the supporting evidence the claimant had referred to demonstrated this. She had lost confidence in this Tribunal to give her a fair trial as she felt that the Tribunal had been ruling in favour of the respondents and she had evidence of that (she stated that Regional Employment Judge Burgher is aware of

those concerns). The claimant stated that she knows that whenever the respondents are given an order, it is a given that they will not comply. She believed that the Tribunal would turn a blind eye. The claimant said that only one or two judges had treated her fairly.

42. The claimant advised that she is beginning to sense that there is an apparent bias and that the fact she was being ignored may be because she is a black female. The claimant feels that she is treated like she is a nobody, and further that, if she had failed to comply with orders, she stated that her claim would have been struck out.

Respondents' submissions

43. Counsel for the respondents submitted that Employment Judge Jones' orders addressed the matters that were prior to September 2022 and that the application before the Tribunal today, did not refer back to the events from April 2022 as events she was relying on.
44. It was submitted that neither Employment Judge Allen KC nor this Tribunal were in a position to deal with the factual question of whether the respondents' disclosure bundle was contained in the parcel that was sent to the claimant in January 2023. In any event there was no reason why the respondents would fail to send the disclosure bundle within the envelope sent to the claimant. Moreover, the claimant did not know what was in the envelope as she did not collect it.
45. It was submitted that Employment Judge Allen KC had dealt with the claimant's specific disclosure application at the same time as considering her strike out application, and that the notion that the matters within the specific disclosure application could be reopened at this hearing is unfathomable.
46. It was pointed out that the claimant was copied into the email dated 13 January 2023, and she could have replied in order to set out any points of dispute.
47. In relation to the allegations about documents bundles and what happened at the hearing on 16 May 2023, the respondents' representative stated that they did not say that the claimant could not add to the Hearing Bundle once it was agreed.
48. The respondents' counsel rejected the claimant's contention that anything the claimant wanted to include was not before (or considered by) Employment Judge Allen KC. The claimant was able to participate in the discussion relating to the list of issues.
49. It was submitted that the claimant's allegations within the List of Issues were fact sensitive matters that required to be determined at the Final Hearing.

50. In terms of the Bundle for today's hearing the respondents' representative said that the claimant had not provided additional documents until shortly before the hearing, and therefore the respondents simply provided the Bundle from the last Preliminary Hearing and a file of correspondences.
51. The respondents' representative explained that the claimant had submitted her medical documents relating to her disability after the deadline for compliance.
52. In terms of the allegation of non compliance in respect of the final Hearing Bundle, the respondents' representative said that on the Friday and Monday before the 27 June 2023 deadline, the claimant had sent a total of 59 pages of narrative explanation in terms of what documents she thought were still to be disclosed. The claimant referred to documents she says still had to be disclosed and the claimant made various points about issues and information that needed to be addressed relating to the Bundle (I was referred to pages 514, 530 and 559 of the correspondence file).
53. The claimant had mentioned that there were further documents in terms of recordings and the claimant's SAR request. The claimant had not supplied the recordings to date. The claimant had indicated at the 16 May 2023 hearing that she was unable to find them.
54. The respondents' representative was out of office for a period of time until 29 June 2023. A combination of the receipt of the claimant's emails that have been referred to and Ms Bello being out of office were the reasons why the Hearing Bundle could not be prepared in advance of the deadline. On 30 June 2023 Ms Bello sent an email to the Tribunal requesting an extension of time to prepare the bundle (until 11 July 2023). The claimant replied to that application on 05 July 2023 advising that the respondents' breach of the Tribunal's orders was wilful and deliberate.
55. The respondents submit that there was no prejudice to the claimant save in respect of the 2-week delay between the original deadline and the proposed new deadline of 11 July 2023. Additionally, it is said on behalf of the respondents that this was very far from conduct which would make it proportionate to strike out the Responses.
56. It was submitted that the claimant was sent an Egress link to download the Final Hearing Bundle on 11 July 2023 and that this was resent to the claimant on 15 September 2023. The claimant was invited to contact the respondents if she required a hard copy of the Hearing Bundle. The respondents' representative said that the 15 September 2023 email had been accessed by the claimant on 13 October 2023. The claimant had not sent any correspondence to the respondents indicating she could not access any of the documents.
57. In addition the respondents' representative (Trainee Solicitor) had attempted to contact the claimant to provide her with a paper copy of the Hearing Bundle without success.

58. The respondents' representative explained that they had brought a hard copy of the Final Hearing Bundle with them to today's hearing and they would be happy to provide this to the claimant to take away with her. The respondents' representative indicated that they were prepared to include any relevant documents that the claimant wished to rely on at the Final Hearing that had not been included in the Hearing Bundle.
59. It was submitted that the Tribunal had granted an extension of time for both parties to submit their witness statements by 24 October 2023 pursuant to Acting Employment Judge Russel's directions.
60. In respect of the claimant's points in relation to paragraphs 3.2 and 3.3 of Employment Judge Allen KC's orders, the respondents' representative indicated that these were matters the claimant could put in cross examination. Any other documents issues that the claimant wished to raise could be addressed prior to exchanging witness statements. The respondents' representative proposed that the Tribunal directs that parties be granted until 27 October 2023 in order to address any outstanding issues relating to documents and 17 November 2023 for exchanging witness statements. It was submitted that the Final Hearing is listed in July 2024, and that with further Case Management Orders parties could undertake the necessary preparation and there would be no prejudice caused to the claimant's preparation as a result of the respondents' conduct.
61. The respondents' representative said that it is not generally appropriate for a Tribunal to hear evidence in strike out applications. It was acknowledged that there are exceptions but these were limited to cases where the respondents were on notice of any evidence that would be considered and that a consideration could take place proportionately. The claimant's claim involved fact-sensitive issues. It was submitted that it was not appropriate for the Tribunal to deal with this matter without the Tribunal hearing evidence at a Final Hearing.

Claimant's reply

62. The claimant replied to those submissions indicating that she had sent an email to Ms Bello on 13 October 2023 advising that she had not read any of her emails since the Tribunal had set the date for the strike out application hearing. The claimant stated that she objected to the respondents' application for an extension of time and that the Tribunal did not give her any further instructions in terms of what further steps she needed to take. The Tribunal simply stated in their last letter that the parties needed to cooperate or that there may be consequences. The claimant explained that if she had the documents within the Hearing Bundle on or before the deadline, she would have reviewed them.

Further Case Management Orders following hearing on 19 October 2023

63. There was insufficient time to determine the claimant's application on 19 October 2023. I therefore directed that the Preliminary Hearing be adjourned part heard. A Continuation Hearing was listed to take place today, 15 January 2024, to allow the Tribunal to hear further submissions that parties wished to make, to give an oral judgment together with reasons on the claimant's application dated 26 June 2023 to strike out the respondents' Responses, and to give directions in relation to any further applications and/or case management orders, if appropriate.
64. Notwithstanding the fact that I had not yet determined the claimant's application dated 26 June 2023, it was considered to be useful to discuss directions (including finalising the Hearing Bundle which had not yet taken place and exchanging witness statements which was due to take place prior to the continuation hearing).
65. The previous deadline for exchange of witness statements was on 26 September 2023. The claimant made an application dated 24 August 2023 for an extension of time. The extension of time was granted by Employment Judge Russell, and this was confirmed to parties by letter of 14 September 2023.
66. The claimant had supplied her draft Witness Statement (dated 26 September 2023) prior to the new deadline (and within the original deadline). However, there was no agreement between parties in advance in relation to exchanging witness statements prior to 23 October 2023. The respondents' representative advised that the respondents had not read the claimant's witness statement. The claimant submitted that she had not been able to include page references in her witness statement as the Hearing Bundle had not been finalised. I advised the claimant that the claimant could update her witness statement to insert page numbers into her witness statement prior to exchanging her final Witness Statement with the respondents' representative.
67. The respondents' representative referred to two emails that had been sent to the claimant containing the documents in the draft Hearing Bundle (via software called Egress) and stated that their records indicated that the claimant had not downloaded the Hearing Bundle. I was advised that there was an attempt made by the respondents to deliver the draft Hearing Bundle to the claimant, but the date proposed by the respondents for delivery by courier was not appropriate (due to bereavement of a family member of the claimant and the claimant travelling abroad). The respondents' representative brought a paper copy of the draft Hearing Bundle to the hearing, and they provided two lever arch files containing paper copy documents to the claimant. The claimant advised during the hearing that she was not able to take these documents home with her. She stated that she did not have anything to carry them with, and she already had a lot of documents she was carrying.

68. In those circumstances, the Tribunal believed it would assist the parties to discuss the current directions, including setting out clear expectations for parties between the date of 19 October 2023 hearing and the Continuation Hearing. The claimant requested written confirmation of the expectations and timeframes that were discussed during the hearing. It was agreed that it would be helpful to the parties if the directions could be recorded in writing and the respondents' representative agreed to provide a draft note of the directions. The Tribunal acknowledged receipt of the draft directions which were typed and provided by the respondents' representative by email dated 19 October 2023 at 11.15pm. I reviewed those draft directions. Thereafter, I made any required adjustments, and I recorded the Tribunal's directions in the Case Management Orders issued to parties on 23 October 2023.
69. The claimant and the respondents were directed to write to the Tribunal by 4pm on 24 November 2023 to confirm that they have complied with those directions or to explain their non-compliance. Parties were advised that I may take their written confirmations sent to the Tribunal into account when deciding the claimant's application.

Further submissions at the hearing on 15 January 2024

70. The claimant and the respondents' representative made further oral submissions during today's hearing, on 15 January 2024.
71. The claimant confirmed that she received the draft Hearing Bundle in electronic and paper form from the respondents.
72. The claimant also said that she sent copy documents to the respondents that were missing from the draft Hearing Bundle by the deadline of 02 November 2023.
73. The respondents' representative stated that they received 32 documents from the claimant and those documents had been included in the Hearing Bundle.
74. The respondents' representative confirmed that the Final Hearing Bundle was prepared and sent to the claimant pursuant to the Tribunal's directions. The claimant received a copy of the Final Hearing Bundle. It appeared that the 32 documents provided by the claimant were incorporated.
75. The claimant made an application for an extension of time to exchange witness statements. The respondents did not object. An extension of time was granted.
76. Witness statements were exchanged by parties on 07 December 2023.
77. The respondents' representative sent correspondence dated 13 December 2023 confirming that witness statements had been exchanged on 07 December 2023 and that the Hearing Bundle had been prepared. The claimant was advised that she did not comply with the order from 19

October 2023 in terms of supplying copies of documents. However the claimant was further advised that if there were copies of documents in existence relating to the time of the events and are relevant to the issues in the claim, then it was appropriate to place them within the Hearing Bundle. It was also explained that redactions had been made for confidentiality reasons.

78. The claimant sent correspondence dated 14 December 2023 attaching a document of the same date in which she confirms that the respondents provided electronic and hard copies of the Hearing Bundle to her (referring to her email to the respondents in terms of the unreasonable manner in which the final Hearing Bundle had been compiled). The claimant also confirmed that mutual exchange of witness statements took place on 07 December 2023 (which was the new deadline following the claimant's application for an extension of time).
79. The claimant referred to her detailed written submissions, references to case law and copies of email correspondences that she provided, which I read, considered carefully, and I took into account prior to reaching my decision.
80. The claimant supplemented those written submissions by providing further oral submissions today indicating that the respondents' representative had failed to include documents she had previously requested to be added to the Hearing Bundle. The claimant said that the respondents' representative had not included the Lone Working Policy and Schedule of Allegations in the Hearing Bundle.
81. The respondents' representative indicated that those documents were included within the Hearing Bundle. Having provided the relevant page references to the claimant, the claimant accepted that those documents had been inserted into the Final Hearing Bundle. The claimant said, however, that she could not confirm whether or not the correct version of the Schedule of Allegations had been included.
82. Although there were no other documents that the claimant had identified as having not been included by the respondents from those sent by the claimant to the respondents on 02 November 2023, the claimant stated that the respondents had not included other documents that were sent to the respondents previously. By way of example she referred to screenshots and telephone records she provided several months ago that were not included. The claimant stated that she did not have time to check and compile these and send them to the respondents within the deadline set by the Tribunal at the last hearing (and she was not able to undertake this task prior to today's hearing due to her personal circumstances, having suffered a bereavement and that she was seeking counselling).
83. The claimant indicated that she supplied a Supplemental Bundle Index to the respondents on 12 January 2024 and 15 January 2024 which she says

contained documents that were provided to the respondents several months ago and they did not include them in the Hearing Bundle.

84. The respondents' representative said that some of these documents may already be within the Hearing Bundle. They had not had an opportunity to fully review the claimant's requests. The respondents' representative advised that if there were documents in the claimant's index that were not included that are relevant to the issues in the claim they would be happy to add these to the Hearing Bundle.
85. The claimant also advised that there were about nine policies that were included in the Hearing Bundle, which were not placed in a readable format. Some of these were upside down. The respondents' representative advised that if this was the case there would be ample time for parties to review the Bundle documents before the Final hearing listed in July 2024 and to rectify the documents in question.
86. The claimant said that there were records held by the respondents which had not been disclosed to her including staff attendance records kept from 2018 – 2022. She stated that these were important as they will clear her name. I indicated that if the documents have been requested from the respondents voluntarily and they have not been disclosed, the claimant can make an application to the Tribunal copied to the respondents, which will be referred to an Employment Judge for directions.
87. The claimant also complained that there were documents that had been redacted by the respondents. She said that she had copies of the unredacted versions. I explained that in relation to some documents that contain references to, for example, third parties, children, family law proceedings or legally privileged documents, a party may well properly seek to redact them (although an application should be made in accordance with Rule 50 of the ET Rules). The respondents claimed that the documents contained confidential information. The claimant advised that the information did not fall into that category. I advised parties that it was not proper to deal with this dispute today. Such a dispute should be raised by way of an appropriate application to the Tribunal copied to the other party (including in respect of any application to be made pursuant to Rule 50 of the ET Rules).
88. The claimant also referred to an SAR request she made to the respondents since the last Hearing. I explained that the claimant should seek legal advice in relation to how to address any issues relating to non compliance with an SAR request. I advised that the Employment Tribunal does not have jurisdiction to deal with compliance matters in relation to SAR requests.

The Law

Overriding objective

89. A Tribunal is required when addressing matters such as the present to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (“the ET Rules”), Rule 2 of which states as follows:

“2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable— (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

Strike Out

90. Rule 37 of the ET Rules provides as follows:

“37.—(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).

(2) 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.”

91. With regard to the claim or response being scandalous or vexatious or having no reasonable prospects of success, care requires to be taken to apply the wording of the ET Rules. ‘Scandalous’ means irrelevant and abusive of the other side. It is not to be given its colloquial meaning of signifying something that is ‘shocking’. A ‘vexatious’ claim or defence has been described as one that is not pursued with the expectation of success

but to harass the other side or out of some improper motive or to include anything that is an abuse of process.

92. To strike out because the Tribunal considers there to be no reasonable prospect of success' requires a Tribunal to form a view on the merits of a case, and only where it is satisfied that the claim or response has no reasonable prospect of succeeding can it exercise its power to strike out.
93. The Employment Appeal Tribunal gave guidance in *Cox v Adecco* [2021] ICR 1307, where the Employment Appeal Tribunal stated that, if the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike-out will be appropriate. The claimant's case or the respondent's Response must ordinarily be taken at its highest and the Tribunal must consider, in reasonable detail, what the claim(s) and issues are.
94. With regard to striking out because of the manner in which proceedings have been conducted, in *Bennett v London Borough of Southwark* [2002] IRLR 407 the Court of Appeal observed (at paragraph 26) that the underlying mischief to this area of the Employment Tribunal Rules is the notion of abuse – has there been conduct of proceedings which amounts to abuse of the Tribunal's process. Elias LJ summarised the approach to be taken in *Abegaze v Shrewsbury College of Arts* [2010] IRLR 236 at paragraph 15: "In the case of a strike out application it is well established that before a claim can be struck out, it is necessary to establish that the conduct complained of was scandalous, unreasonable or vexatious conduct in the proceedings; that the result of that conduct was that there could not be a fair trial; and that 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". This approach has been approved in by the Court of Appeal in *Blockbuster Entertainment Ltd v James* [2006] IRLR 630.
95. The first question is whether there has been scandalous, unreasonable, or vexatious conduct of the proceedings. If so, the second is whether a fair hearing is no longer possible. If that is fulfilled the third is whether strike out would be a proportionate response to the conduct in question.
96. With regard to whether there has been scandalous, unreasonable, or vexatious conduct, there must be a conclusion by the Tribunal not simply that a party has behaved scandalously, unreasonably, or vexatiously but that the proceedings have been conducted by or on their behalf in such a manner.
97. The conduct in question may be that of the party's representative as well as the party themselves. In *Harmony Healthcare plc v Drewery* UKEAT/866/00 a party was held to be fixed with the conduct of their representative who assaulted the other party's representative in the Tribunal waiting room. It is relevant to note that in *Harris v Academies Enterprise Trust* [2015] IRLR 208 the Employment Appeal Tribunal upheld a Tribunal's ruling that the

conduct of the representative and the party may be distinguished in an appropriate case. The Employment Judge was held entitled to conclude that the representative's actions were not a reflection of the instructions given and the prejudice of not allowing a full hearing of the discrimination claims would be significant.

98. Care should therefore be exercised when the conduct in question is that of a party's representative. As indicated, in some, but not all, cases, that conduct can be visited on the relevant party leading, potentially, to a strike out of their claim or response. In Bennett the Court of Appeal stated that what is done in a party's name is 'presumptively, but not irrebuttably' done on his behalf.
99. 'Scandalous', was considered by the Court of Appeal in Bennett. It is not a synonym for 'shocking' but embraces 'the misuse of the privilege of legal process in order to vilify others', and 'giving gratuitous insult to the court in the course of such process'. The Court of Appeal noted the claimant had been 'difficult, querulous and uncooperative in many respects' but was not prepared to assume that this met the definition.
100. 'Vexatious' can include anything that is an abuse of process.
101. One possible form of scandalous, unreasonable, or vexatious conduct is the wilful disregard of Tribunal orders. It is not any breach that will meet the threshold. The Court of Appeal in Blockbuster described the 'deliberate and persistent disregard of required procedural steps' as a cardinal example of conduct which would meet the definition
102. The second factor that must be considered if scandalous, unreasonable, or vexatious conduct of proceedings has been found, is whether a fair hearing is still possible. When striking out a party's case, the Tribunal must explain why a fair hearing is no longer possible or why the case falls within the exceptional circumstance where the fairness of the trial is not a consideration.
103. In Bolch v Chipman [2004] IRLR 140 the Employment Appeal Tribunal described the reasoning behind the 'no fair trial' factor by stating that a striking out order is not, first and foremost, a tool to punish scandalous, unreasonable, or vexatious conduct of proceedings. Rather, it is to protect the other party (and the integrity of the judicial system) from such behaviour which results in it no longer being possible to do justice. A party that acts scandalously, unreasonably, or vexatiously in the conduct of proceedings should not thereby gain an advantage of any kind in the judicial process. The court in Bolch approved the High Court decision of Logicrose Ltd v Southend United (1988) 5 March, in which Millett J had observed that the deliberate and successful suppression of a material document 'was a serious abuse of the process of the court and might well merit the exclusion of the offender from all participation in the trial' because it rendered a fair trial impossible, but that if the threat of striking out the claim or defence resulted in the production of the missing document, this might require the

lifting of that strike out threat. Once the document had been produced there should only be a strike out 'if, despite its production, there remained a real risk that justice could not be done. That might be the case if it was no longer possible to remedy the consequences of the document's suppression despite its production', adding 'It would not be right to drive a litigant from the judgment seat, without a determination of the issues, as a punishment for his conduct, however deplorable, unless there was a real risk that the conduct would render further proceedings unsatisfactory'.

104. The third factor which must be considered is that of proportionality. Simler P (as she then was) in *Arriva London North v Maseya* UKEAT/0096/16 at paragraph 27) said: 'There is nothing automatic about a decision to strike out. Rather, a tribunal is required to exercise a judicial discretion by reference to the appropriate principles.' Even if there has been scandalous, unreasonable or vexatious conduct of proceedings and a fair trial is not considered possible, the tribunal must still examine the proportionality of striking out the claim or response and must consider other, less seismic orders because, as Sedley LJ put it in *Blockbuster* the power to strike is 'a Draconic power, not to be readily exercised'.
105. In *Blockbuster* the Court of Appeal (at paragraph 21) said: "it takes something very unusual indeed to justify the striking out, on procedural grounds, of a claim which has arrived at the point of trial. The time to deal with persistent or deliberate failures to comply with rules or orders designed to secure a fair and orderly hearing is when they have reached the point of no return. It may be disproportionate to strike out a claim on an application, albeit an otherwise well-founded one, made on the eve or the morning of the hearing'.
106. In *Blockbuster* the claimant had in breach of orders failed to give adequate particulars of his claim, refused to allow the respondent to photocopy his documents, attended on the first morning of the hearing with unseen documents and made changes to his witness statement without prior notice to the respondent. The Court of Appeal upheld the Appeal Tribunal's decision that the Tribunal had been wrong to strike out the claim. While acknowledging that the claimant had been 'difficult, querulous and uncooperative', the Court of Appeal said that the courts are open to the difficult as well as the compliant.
107. The proportionality consideration requires an assessment by the Tribunal of any alternative, lesser sanctions, for the conduct in question and a balance requires to be struck.
108. Strike out can also be ordered where there has been non-compliance with the Tribunal's orders (Rule 37(1)(c) of the ET Rules). In considering failure to comply with orders, the Tribunal should ensure the decision is proportionate. Hence in *Ridsdill v D Smith and Nephew Medical* UKEAT/0704/05 it was held to be disproportionate to have struck out a claim for failure to provide witness statements and schedules of loss where a less

drastic means of dealing with the non-compliance was available, such as unless orders and costs orders.

109. The guiding consideration, when deciding whether to strike out for non compliance with an order, is the overriding objective (*Weir Valves and Controls (UK) Ltd v Armitage* [2004] ICR 371) which requires the Tribunal to consider all the circumstances, including '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 possible' (see paragraph [17]). The Tribunal must consider the matter objectively and weigh the factors in the balance on an assessment of fairness. A sanction short of strike out may be appropriate.
110. In *Harris v Academies Enterprise Trust* [2015] IRLR 208, the Employment Appeal Tribunal (at [26]) referred to the fact that 'A failure to comply with orders of a tribunal over some period of time, repeatedly, may give rise to a view that if further indulgence is granted, the same will simply happen again. Tribunals must be cautious to avoid that', but the Employment Appeal Tribunal noted that if the failure was an 'aberration' and unlikely to re-occur, that would weigh against a strike out. At [33] the Employment Appeal Tribunal described another relevant principle as 'each case should be dealt with in a way that ensures that other cases are not deprived of their own fair share of the resources of the court. If a case drags on for weeks, the consequence is that other cases, which also deserve to be heard quickly and without due cost, are adjourned or simply are not allotted a date for hearing'.
111. Consideration of a striking out order under Rule 37(1)(c) of the ET Rules must include consideration of whether a fair hearing is still possible. Proportionality, and consideration of whether there are alternative orders to a strike out that would better address the breach of Rules or orders, will be a necessary consideration before the power under Rule 37(1)(c) of the ET Rules is exercised by a Tribunal.
112. It is also possible to strike out a claim where the claim or a response has not been actively pursued (Rule 37(1)(d) of the ET Rules). This can be where there has been delay that is intentional or contumelious (disrespectful or abusive to the court), or there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause serious prejudice to the claimant or the respondent (as the case may be).
113. The final situation where strike out can be ordered is where it is no longer possible to have a fair hearing (Rule 37(1)(e) of the ET Rules).
114. In general, the Employment Appeal Tribunal has held that the striking out process requires a two-stage test in *HM Prison Service v Dolby* [2003] IRLR 694, and in *Hassan v Tesco Stores Ltd* UKEAT/0098/16. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide

as a matter of discretion whether to strike out the claim. In Hassan, Lady Wise stated that the second stage is important as it is 'a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit.'

115. Striking out is not automatic and care is needed given the draconian nature. In Hassan, the Employment Appeal Tribunal held that relevant factors in the exercise of that discretion that might have weighed heavily included the early stage of the proceedings, the ability to direct that further and better particulars of each claim be specified, and the absence of any application on the part of the respondent for striking out.
116. Ultimately a Tribunal should exercise caution before striking out a claim, particularly where facts are in dispute and it is possible to hear evidence to determine the issues.

Discussion and decision

117. The Tribunal considered the claimant's application carefully in light of the authorities. While the claimant had not set out or clearly identified what the facts were that were said to have justified strike out in respect of each of the grounds listed within Rule 37 that the claimant relied upon, the Tribunal carefully considered parties' submissions and the approach taken by the respondents (and the respondents' representative) together with the pleadings and case that had been advanced and the context of this case in assessing the application under each heading. Each aspect is dealt with in turn.

Non compliance with orders

118. The claimant argues that some documents had not been included by the respondents within the Hearing Bundle. The claimant had provided a list of documents to the respondents in January 2024. The respondents' representative said they had not yet had an opportunity to review these. It was confirmed on behalf of the respondents, that if there were missing documents, these would be added to the Hearing Bundle if they were relevant to the issues in the claim. Parties must co-operate in order to ensure that the Hearing Bundle contains copies of both parties' documents which are relevant to the issues in the claim (and to which both parties will refer at the Final Hearing).
119. The claimant indicated that the respondents' disclosure was not complete. The claimant had made disclosure applications previously, which have been determined by Employment Judge Allen KC. It is not clear what documents (if any) are outstanding in terms of the respondents' disclosure that did not form part of the Tribunal's previous determination. If the claimant wishes to pursue any further specific disclosure applications (that have not been previously adjudicated upon by Employment Judge Allen KC), the claimant should request the relevant documents from the respondents in the first instance, and if they are not provided voluntarily, she may (if so

advised) make an application to the Tribunal (setting out clearly with reference to the final List of Issues how the documents requested are relevant to the issues in the claim).

120. On that basis and having considered parties' readiness for the Final Hearing, I am unable to find that there was a failure or any material failure to comply with the Tribunal's orders in relation to the matters identified by the claimant.
121. Both parties confirmed that they have provided to each other copies of any relevant documents in relation to the issues in the claim (and that their respective disclosure of documents were made in compliance with the Tribunal's orders). I am satisfied that it may be practicable to address any outstanding issues relating to the content of the Hearing Bundle or applications that the claimant wishes to make prior to the Final Hearing.
122. I have considered the circumstances in which the respondents did not meet the original deadline for preparation of the Hearing Bundle in June 2023. The claimant had provided a detailed document and information that needed to be addressed fairly close to the original deadline. The respondents' representative was out of office for a period of time. An application was made by the respondents for an extension of time on 30 June 2023. It is unclear why the claimant did not consent to the application. The link to the electronic documents in the Hearing Bundle was provided to the claimant by the respondents' representative on 11 July 2023, prior to the Tribunal's determination of the application for an extension of time. I do not agree with the claimant's position in terms that the respondents' conduct amounted to a contumelious flouting of the Tribunal's orders in the circumstances. In any event there is no evidence before me that the claimant suffered any prejudice between the original deadline in June 2023 and the date the documents were provided to her.
123. The deadline for exchange of witness statements was initially extended by Employment Judge Russell on the claimant's application, and thereafter, they were extended at the hearing before me that took place on 19 October 2023, and they were further extended on the claimant's application made after that hearing. Witness statements were not exchanged until December 2023. The claimant had sufficient time to take account of any documents within the Hearing Bundle and to incorporate those (together with any page references) in her witness statement.
124. In addition, I am unable to identify any or any material non compliance by either party between 19 October 2023 and 14 December 2023 in relation to the orders that I made at the hearing on 19 October 2023 on the basis of the documents and correspondences that I have considered and the submissions that have been made.

Is a fair trial possible?

125. Even if I had accepted that the respondents had been in contumelious breach in respect of any of the Tribunal's orders as set out in the claimant's application, I would not have been satisfied that it was no longer possible for a fair hearing to take place. With additional Case Management Orders, parties are now in a position in which they have confirmed their readiness for the Final Hearing (subject to any matters identified above).
126. The authorities emphasise that a Tribunal may only strike out a case in terms of procedural non compliance, if it is satisfied that a fair trial is no longer possible.
127. Parties have now exchanged documents. A Final hearing Bundle has been prepared.
128. If there are issues relating to documents such as any redactions, documents being formatted incorrectly or any outstanding requests for specific disclosure, those issues may be dealt with by way of a written application copied to the other party (in the event that parties are unable to co-operate and resolve any outstanding issues between themselves).
129. Witness Statements were exchanged in December 2023.
130. The claimant has sent an index of missing documents from the Hearing Bundle in January 2024. The respondents' representative indicated they will require time to go through these. If the respondents' representative does not include those documents in the joint file, the claimant may request permission from the Tribunal to prepare a Supplemental Bundle (if this is required).
131. The Final Hearing is listed for 10 days in July 2024. Taking account of all the above circumstances, I am unable to conclude that a fair trial is not possible within the existing Hearing dates.

Manner proceedings conducted

132. It also cannot be said that the manner in which the proceedings have been conducted by the respondents has been scandalous, unreasonable, or vexatious. The claimant has set out what the acts are that are said to be unlawful. The respondents dispute the acts and the disputes can be resolved by hearing evidence. The respondents' representative has sought to engage with the Tribunal process. There is no reasonable basis upon which it can be said that the proceedings have not been conducted reasonably.

No reasonable prospects of success

133. Employment Judge Allen KC determined the List of Issues in respect of the claimant's claim, a copy of which were sent to the parties with his Judgment (and resent with the Reconsideration Judgment).
134. The claimant invited me to strike out the respondents' Responses on the basis that they have no reasonable prospects of success. I took into account that I must not be willing to reach such a determination too readily on a strike out application, except in the clearest of cases. In certain cases, it may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based.
135. The claimant's submissions consisted of a number of matters which she says show that she was wrongly accused or victimised by the respondents. She says the documents make clear that there were no basis for these allegations. The respondents' representative said that it is not generally appropriate for a Tribunal to hear evidence in strike out applications. It was acknowledged that there are exceptions but these were limited to cases where the respondents were on notice of any evidence that would be considered and that a consideration could take place proportionately. It was submitted that it was not appropriate for the Tribunal to deal with this matter without the Tribunal hearing evidence.
136. In the circumstances of this case, it is not appropriate, to strike out the respondents' Responses without hearing evidence in relation to the disputed matters. This is not a case where I can say on the basis of the documents I have read or the submissions that I have heard that the Responses have no reasonable prospects of success.
137. Taking the respondents' case at its highest, it cannot be said there are no reasonable prospects of success. Evidence is required to determine the issues arising.
138. It cannot therefore be said that the claim is scandalous or vexatious or that it has no reasonable prospects of success. The respondents have presented Responses which I am unable to determine have no reasonable prospects of success and accordingly the claim requires to be determined having heard evidence.

Response not actively pursued

139. No basis has been set out by the claimant as to in which way the Responses were not being actively pursued. The respondents' representative has been engaging with the process and a Final Hearing has been fixed. The Responses are being actively pursued.

Fair hearing not possible

140. It is possible to have a fair hearing. There is no basis for the claimant suggesting a fair hearing cannot proceed or that there is any bias against her (in terms of the claimant as a litigant in person, a black female or otherwise). The claimant understands the basis for the respondents' Responses. The respondents' representative has explained that the matters require oral evidence prior to determination. The disputes in this case are clear and can be determined by evidence. The claim should accordingly proceed to the Final Hearing.

Taking a step back

141. The Tribunal took a step back to consider the claimant's application in light of the full factual matrix and how the respondents and the respondents' representative have acted. The Tribunal did not accept the claimant's bald assertion that it is in the interests of justice to strike out the Responses. It would not be proportionate to strike out the Responses. None of the grounds that allow strike out to be granted have been satisfied in the circumstances of this case and it is not proportionate or just to strike out the Responses.

142. It is in the interests of justice to progress this case to the Final Hearing that has been fixed. That was a decision reached having taken a step back to assess the approach the respondents and the respondents' representative have taken in defending this case, in terms of the case that has been advanced in their Responses and in terms of their approach to this litigation generally.

Moving forward

143. The parties should work on preparing a short and concise agreed Chronology, Cast List, Reading List, and a draft timetable (including witness evidence) and work together to ensure the Final Hearing can proceed expeditiously.

144. Both parties are reminded of the overriding objective and of the need to work together to ensure the Final Hearing can be proceed in a proportionate and fair way.

145. The Responses are not struck out and the Final Hearing shall proceed with the parties working together to achieve the overring objective.

Conclusion

146. The claimants' application to strike out the respondents' Responses is dismissed.

147. Further Case Management Orders have been issued to parties under separate cover.

Postscript

148. I am advised by the Clerk to the Tribunal that the claimant has lodged an appeal with the Employment Appeal Tribunal (appeal reference EA-2024-000153-AS). In view of the claimant's EAT appeal and the dates of the Final Hearing, I direct the Clerk to the Tribunal to copy the Judgment, the written reasons and the Case Management Orders made in this case to the Employment Appeal Tribunal for information.

**Employment Judge B Beyzade
Dated: 15 April 2024**