EMPLOYMENT TRIBUNALS

Claimant: **Mr L Samnick**

Respondents: **(1) Barclays Execution Services Limited**
(2) Jeong Kim
(3) Petrus Theodorus Maria Rood a.k.a Ron Rood
(4) Konstantina Armata
(5) Claire Fordham;
(6) Faye Richardson
(7) Chris Easdon
(8) Ruth Surendran
(9) Jeremy Haworth
(10) Elyze Gonzalez
(11) Melanie Philips
(12) Sarah Hollinsworth
(13) Claire Cardosi
(14) Nicola Middleton
(15) Lindsey Brown
(16) Sonia Boniface

Heard at: **East London Hearing Centre**

On: **30 October 2023**

Before: **Employment Judge Crosfill**

Representation

Claimant: **In person**

Respondents: **Ms C McCann of Counsel**

JUDGMENT

1. The Respondents' application for an order striking out the Claimants claims made pursuant to Rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is dismissed.

2. The Respondents' application for the costs of and occasioned by the Claimant's breach(es) of the orders of the Tribunal that he provide further information about his case limited to the costs of the extension to the hearing succeeds.

3. The Claimant is ordered to pay the Respondents the sum of £1500 as a

contribution to the legal costs incurred by the Respondents by his unreasonable conduct and/or his actions in failing to comply with the orders of the tribunal.

REASONS

1. The hearing was listed by me to consider an application by the Respondents that the Claimant's claims should be struck out pursuant to Rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 made on the basis that the Claimant has persistently failed to comply with tribunal orders that he properly particularised the claims that he was bringing. The Respondent made a further application that whether its primary application succeeded of not the Claimant should be ordered to make a contribution to its costs of £1500. The Claimant resisted both applications.

The hearing

2. At the Claimant's request I converted what was to be an in person hearing to a hearing by video ('CVP'). Other than some initial connection difficulties the hearing proceeded without difficulty. I record that I had previously refused a request by the Claimant to postpone the hearing made on the basis that he was anticipating receiving a judgement in respect of his earlier claim made against some of the same Respondents. I had explained that in my view the issues raised in the Respondents applications were entirely independent of the outcome of the first set of proceedings.

3. The Respondents had prepared a bundle said to contain all the relevant documents. The Claimant has set out his arguments in relation to the Respondents' applications in e-mail correspondence and most recently in his e-mail sent to the Tribunal on 25 October 2023 at 15:01. Ms McCann had prepared a skeleton argument.

4. I heard from both the Claimant and Ms McCann both of whom amplified their arguments previously set out in writing. I shall not set out the competing positions separately at any great length but deal with the salient points in my discussions and conclusions below.

The application to strike out the claims

5. The law that I needed to apply in respect of the Respondents' application is set out below.

6. Rule 37 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure)Regulations 2013 (hereafter 'the rules') provides as follows:

Striking out

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……

7. In ***Bolch v Chipman*** **[2004] IRLR 140, EAT** it was suggested that the ordinary approach to the question of whether a claim should be struck out because of the conduct of a party is to address the following questions:

   a. whether there has been scandalous, unreasonable or vexatious conduct of the proceedings: and

   b. whether a fair trial is no longer possible: and

   c. whether strike out would be a proportionate response to the conduct in question: and

   d. what further consequences might follow.

8. In ***Bennett v London Borough of Southwark*** **[2002] EWCA Civ 223** Sedley LJ has given the valuable reminders that**:**

   a. *'the courts and tribunals of this country are open to the difficult as well as the compliant, so long as they do not conduct their case unreasonably'* ***Blockbuster Entertainment Ltd v James*** **[2006] EWCA Civ 684**

   b. *'Courts and tribunals do need to have broad backs…'* ***Bennett*** [para 19]

9. Where the conduct complained of is willful or contumacious then that may entitle a tribunal to strike out a claim even if a fair trial remains possible – ***National Grid Co Limited v Virdee*** **[1992] IRLR 555 EAT**.

10. Even where one of the tests permitting a tribunal to strike out a claim is met there is a separate question to be asked as to whether the Tribunal should exercise its discretion to strike out the claim see ***Hasan v Tesco Stores Limited*** **UKEAT/0098/16** in support of those propositions.

11. When considering whether I should strike out the claims on the basis of a failure by the Claimant to comply with the orders I need to consider whether some lesser sanction is capable of ensuring that there can be a fair trial see ***Weir Valves and Controls UK Ltd v Armitage*** **[2004] ICR 371, EAT where at paragraph 17 the EAT said:**

'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.'

The events leading to the application.

12. In order for me to determine the Respondents' application it is necessary to have regard to the entirety of the procedural history of this claim and the earlier claim brought by the Claimant. Within this section I make findings of fact in respect of the Claimant's conduct of these proceedings.

13. I shall start with the claim form in the present claims. The ET1 was presented on 10 June 2021. The presentation of that claim needs to be seen against the background of the Claimant's earlier claim. That claim had been presented in June 2020. The scope of the claims included in the ET1 was substantial numerous claims under various jurisdictions were said to arise from a large number of factual allegations. The claims were advanced against a large number of individuals. At an early stage the Respondents to those claims had asserted that there was an absence of proper particulars and suggested that the claims as set out were unclear.

14. The subsequent disputes between the parties required considerable case management. A hearing took place on 8 April 2021 at which the Claimant was represented by counsel. I made directions that the Claimant provide further information about his first claim. When the Claimant did provide further information the Respondents asserted that he had sought to introduce new claims which required permission to amend. At a further preliminary hearing on 20 and 21 May 2021 the Respondents' position was broadly vindicated when it was accepted by Counsel acting for the Claimant that permission to amend was necessary. It was shortly after this hearing that the Claimant issued this claim.

15. The ET1 prepared by the Claimant brought claims against 16 Respondents. The Claimant identified 11 causes of action at paragraph 3 of his ET1. He includes a claim of constructive unfair dismissal (also said to be an act of discrimination). The particulars of the alleged breach of contract are set out in a table (Table 2) in summary form. The Claimant sets out further acts said to be unlawful in Table 3. This table too is in summary form. It refers to events taking place on various dates as far back as 2017. In his ET1 the Claimant reserved the 'right' to add to or amend his claim in the future.

16. The Claimant has resisted a suggestion made by the Respondent that his second claim was consolidated with his first. Indeed he had suggested the Respondents solicitor had acted dishonestly when it was asserted that it was an agreed position that the actions be consolidated. I had agreed that the action should proceed separately. I had considered it important that the individual respondents who were not concerned with the earlier claims should not have matters left hanging in abeyance pending final resolution of the initial claims.

17. Whilst the Claimant's ET1 included a vast number of claims the details of what each individual respondent was said to have done that was unlawful was wholly lacking. When the Respondents presented their ET3 it included the following paragraph:

'As detailed further below, the Claimant's claim is significantly lacking in specification. The Respondents will write to the Claimant in due course (following the preparation of an initial draft list of issues in relation to this claim) to request that he provides further and better particularisation of his claim. Accordingly, these Grounds of Resistance are provided without prejudice to any response received from the Claimant to such a request, and the Respondents reserve their right to apply to amend these Grounds of Resistance following receipt of the Claimant's response.'

18. The applications to amend made by the Claimant and the other Claimants in the first claim took me some time to resolve (largely due to the scope of the exercise. In my case management order dealing with those applications I made directions for the progress of the Claimant's second claim. I made directions for there to be an open preliminary hearing for the purposes set out at paragraph 6 of my orders dated 16 February 2022 and sent to the parties on 18 February 2022. The hearing was fixed to deal with questions about whether the claims, or some of them, should be struck out because they had been presented outside any applicable statutory time limit. In addition I made directions aimed at clarifying the issues in the case.

19. The direction relevant to the present application was set out at paragraph 7.3 read with 7.2. I directed the Respondent to make a request for any further information. I directed the Claimant to respond to that request by 18 April 2022. The Respondent did comply with my case management orders sending the Claimant a request for further information on 21 March 2022.

20. The Claimant did not comply with my order that he provided further information. He did not comply with my orders in respect of the exchange of evidence in order that the question of whether his claims, and in particular his unfair dismissal claim, were presented within the statutory time limits. In fact the Claimant took no steps whatsoever in progressing his second claim. In correspondence he sought variations of my orders asserting that he did not have the capacity to deal with the steps necessary to progress both his first and second claims.

21. The Claimant failed to attend the hearing on 29 April 2022. My findings in respect of the Claimant's conduct in failing to take any steps to prepare for that hearing and/or failing to properly evidence any reason why he could not properly prepare for that hearing are set out in my costs judgment dated 23 September 2022. In short I found that the Claimant had acted unreasonably in failing to comply with my directions or alternatively failing to make a properly evidenced application to vary the directions and/or seek a postponement. I concluded that the Claimant had made a decision to prioritise those parts of his other claims that he was actively pursuing (to the extent of appealing my decision to postpone a 6 week trial).

22. I decided not to proceed with the hearing on 29 April 2022 in the absence of the Claimant but instead fixed a further hearing to take place on 7 June 2022. At that

hearing I dealt with the issue of time limits. My decisions were set out in a judgment dated 22 March 2022 (a substantial delay but caused in very great part by the time taken to case manage the first claims). I made a further case management order dated 28 March 2023 dealing with the steps necessary to progress the claims. In particular, I required the Claimant to answer the Respondent's request for further information dated 21 March 2021 by no later than 31 July 2023. I selected a date some months after my order was made to accommodate the fact that the Claimant was attending his 30 day hearing in the summer of 2023. I had in my judgment in the strike out applications made it clear that the Claimant's failure to provide the further information that I had ordered him to give was impeding the case management of the second claim.

23. During the hearing I drew attention to the fact that on 10 July 2023 the Claimant had presented an ET1 at the London Central Employment Tribunal bringing a claim against his current employer.

24. On 24 July 2023 the Respondents sent a letter to the Claimant reminding him of my case management orders. The letter was entirely measured and reminded the claimant of his obligations. On 31 July 2023 shortly before midnight the Claimant purported to comply with my orders.

25. It is sufficient to say that the Claimant wholly failed to provide the further information that I had ordered him to give. His responses were, either to refer the Respondent back to paragraphs of his particulars of claim, or to suggest that he had not understood the request. I do not accept that the Claimant failed to understand the requests made by the Respondents. The requests were crystal clear, and I note that the Claimant, who had been in possession of the request for further information had not asked for clarification in the two year period since the request had been made.

26. The Respondents wrote to the Claimant by e-mail on 7 August 2023. That e-mail started with the following passage:

'The responses attached to your email do not comply with the terms of the Tribunal's order sent to the parties on 29 March 2023, as they do not answer all of the Respondents' questions included in their request for further information. In order to progress matters at this stage, the Respondents require (at the very minimum) confirmation of the heads of claim that you assert are applicable to each of the complaints included in your Particulars of Claim.'

27. The Respondents then went on to list the 10 statutory causes of action that the Claimant has identified in his ET1 (omitting the unfair dismissal claim which had been struck out). The e-mail included a list of the factual events summarised by the Claimant in his ET1. The e-mail warned the Claimant that if he did not comply with this request they would seek an unless order. The Respondents sought a response by 18 August 2023.

28. The Respondents e-mail suggested that the Respondent at least would be satisfied at that stage with far less information than I had ordered the Claimant to give. Whilst that may have been a pragmatic means of making progress it is not for the Respondents to vary my orders. Compliance with the Respondents reduced request would in many instances still not provide sufficient detail of who

had done what and on when necessary to properly understand the Claimant's case against each individual Respondent.

29. The Claimant responded to the Respondents on 18 August 2023. He said simply, *'All the legal claims you have listed below are relevant for each of the allegations in the table below'*. It is impossible to see how some of the factual allegations could amount to some of the causes of action the Claimant says that the claims are brought under. The Respondents' broad brush attempt to move matters on had resulted in the Claimant making the widest possible allegation that could be supported by his pleaded case with no attempt to identify the elements of each specific claim.

30. The Respondents continued to press the Claimant for information about the way he put his claims. On 1 September 2023 the Respondents sent the Claimant a draft list of issues with parts highlighted where the Respondents said that further information was required. The Respondent said that if the Claimant did not comply with their request by 15 September 2023 they would apply for an unless order.

31. The Claimant did not respond to the Respondents' e-mail of 1 September 2023 and on 21 September 2023 the Respondents sent a reminder which included a warning They said that if no response was received by 25 September 2023 they would apply for an unless order.

32. The Respondents made an application for an unless order by e-mail on 27 September 2023. Their application set out the history summarised above. They indicated that if I were not minded to make an unless order they reserved the right to apply for the claims to be struck out. I dealt with that application. I declined to make an unless order given the difficulties in assessing whether there is material compliance. I put the Claimant on notice that my provisional view was that his response to the request for further information dated 31 July 2023 did not comply with my order. I encouraged the Claimant to deal with any missing further information and suggested that he sought advice or looked at the Statutory Code of Practice to the Equality Act 2010. I ordered that the hearing listed for 31 October 2023 be expanded to a full day for a hearing in public to decide whether the claims should be struck out and to deal with any issues of costs providing that an application was made 7 days before the hearing.

33. The Claimant did not heed my suggestion that he revisit his efforts to provide further information in advance of the hearing listed before me. As indicated above he has taken the stance that either he had complied with my order by means of his responses on 31 July 2023 or that he had done so through the means of his witness statement and the evidence given in his first claim.

Discussions and conclusions – the strike out application.

34. I have no hesitation in holding that the Claimant was in repeated breach of my order that he provide further information. His brief responses of 31 July 2023 do not provide any further information at all. I cannot accept the Claimant's argument that the need to give further information in his second claim was discharged through providing a 200 page witness statement in his first claim. It is not incumbent on the Respondent or the Tribunal to trawl through a 200 page

document to identify elements that might support the 100+ claims that the Claimant says are included in his second claim.

35. I need to consider whether that failure was wilful of whether it was the product of any disability or a misunderstanding about what was required.

36. I have concluded that the Claimant has simply refused to take any action in his second claim because he wanted all directions in that claim to await the conclusion of his first claim. That has been his stance throughout the proceedings. I had repeatedly made it clear that the claims would be case managed separately. The Claimant is well educated and has a senior position in financial services. He is highly intelligent. Whilst the documents that he has produced do not always accurately state the law it is evident that he has undertaken a very large amount of legal research. By the time he submitted his purported further information he had represented himself at a 30-day hearing. I reach the conclusion that he knew why I had made the orders I had, and I find that he understood what was required. The fact that he had undergone an identical exercise in his first set of proceedings supports those findings.

37. The Claimant's stance has included a challenge to the necessity of providing the information I have ordered him to give. He has further suggested that he has complied with my order because his witness statement served in the first set of proceedings includes responses to many of the requests for further information. He has criticised the Respondents in robust terms for their stance in seeking what I regard as the basic information necessary to understand who is said to have done what that is said to be unlawful. In an e-mail to the tribunal sent on 27 October 2023 he said:

> *'The respondents are engaging in an abusive process and acting in bad faith by seeking further and better particulars and applying for costs. They already possess all the essential details within my case. I have submitted a comprehensive 200-page witness statement for LS1, encompassing my entire period of employment at Barclays, with the most recent event detailed in 2022. Additionally, the disclosed documents include information in the respondent's possession up to 2022. Furthermore, cross-examinations have unveiled substantial additional information. They possess an intricate understanding of this case.'*

38. The Claimant has implicitly suggested that his disability provides an explanation for his failure to comply. I do not accept that. The Claimant has provided a letter from Dr Matthew Green a consultant Psychiatrist that suggests that he has been suffering a depressive episode with significant anxiety since August 2023. The suggestion that is made is that the Claimant would be assisted by a hearing being conducted remotely. I had acceded to the Claimant's request for this hearing to be conducted over CVP. The evidence of Dr Green did not deal directly with the issue of why the Claimant was able to take steps in the first set of proceedings – including the ability to produce lengthy and argumentative documents, bring further proceedings against his new employer, represent himself through a 30 day hearing and file written submissions at the conclusion of that case but was unable to comply with my orders once that case was concluded. The Claimant told me that his witness statement in his first claim ran to 200 pages. If his disability did not prevent him from completing that document I cannot accept that

he was unable to comply with my order after the conclusion of the hearing of the first claim. If he is right and that document includes all the information requested by the Respondents then he could and should have extracted it. It was certainly not for the Respondents to do so.

39. I have considered a point implicit in the Claimant's submissions that raises the suggestion that whilst the Claimant had capacity to deal with his first claim the additional burden of dealing with his second claim made that impossible or at least very difficult. That point is perhaps stronger looking at the period before 17 June 2023 the final day of the hearing of his first claim. It is unpersuasive after that date. As I have set out above my second order of 28 March 2023 requiring the Claimant to give further information fixed the date of 31 July 2023 for its provision precisely because I wanted to ensure that the Claimant had completed his first claim and had an opportunity to focus on his second claim. Whilst the Claimant commenced a claim against his current employer during that period he did not take any steps in relation to this claim.

40. The Respondent offered the Claimant an opportunity to provide at least some of the further information I had ordered he give before it raised the matter with the Tribunal. When the matter was eventually raised with the Tribunal on 27 September 2023 I made it clear that I expected the Claimant to remedy any omissions. The Claimant did not avail himself of any of those opportunities.

41. I have come to the conclusion that the Claimant knew that his document sent to the Respondent on 31 July 2023 did not comply with my order and that he had no intention of complying with the order at the time the document was sent. In short it was an open defiance of the Tribunal resisting my efforts to case manage the second claim before the first claim had concluded as he had wanted.

42. It follows from those factual conclusions that I find that the Claimant has been and remains in breach of orders of the Tribunal. I also conclude that in the light of my finding that his conduct is both wilful and defiant he has also acted unreasonably in the manner in which he has conducted the proceedings. The lack of progress in the proceedings is self-evident. That lack of progress is a sufficient basis in my view for a conclusion that the present claim has not been actively pursued by the Claimant. Important information necessary for both the Respondent and the Tribunal to understand the case is still lacking and there is insufficient detail given by the Claimant to draw up a meaningful list of issues.

43. Having concluded that three of the conditions for striking out a claim are met I must decide whether to do so would be proportionate. It does not follow that because I have found that the Claimant's conduct of the proceedings has been in wilful defiance of the orders of the Tribunal that I should apply what is the ultimate sanction of striking out the case - ***Hasan v Tesco Stores Limited.***

44. I am guided by ***Weir Valves and Controls UK Ltd v Armitage***. Whilst in some cases of conscious disobedience of tribunal orders it might be appropriate to strike out the case I still need to consider the proportionality of such a step. A matter which I must consider is whether some lesser sanction would suffice. A lesser sanction would not suffice if the default had resulted in a fair trial being impossible in the future. A fair trial will be impossible unless the Claimant does what I have directed him to do. It is open to me to make an order under Rule 30 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure)

Regulations which would have the effect of bringing the claims to an end unless the Claimant provided the further information I have ordered him to give. I have alluded to difficulties in enforcing such orders.

45. Whilst I have listened to the careful submissions of Ms McCann, many of which are reflected in my conclusions about the Claimant's conduct I have come to the conclusion that it would not be proportionate to strike out the claims before giving the Claimant a final opportunity to comply with my orders. If he did that then despite the delay caused in part by the Claimant's failure to do what he was ordered to do there can still be a fair trial of these claims.

46. For these reasons I decline to strike out the Claimant's remaining claims. Instead I announced an unless order giving the Claimant 4 further weeks to comply with my order. He tole me that that 14 days was a sufficient period to comply. I did not consider that realistic and granted more time. I made it clear that the period of 4 weeks ran from the date I pronounced the order. It has not been suggested by the Respondent that the Claimant has failed to comply.

Costs

47. The Respondents had applied for an order that the Claimant made a contribution to their legal costs. They sought only the costs calculated by reference to half of Counsel's fee for a single day. The sum sought was £1,500. The basis for asking for half a day's fee was said to reflect the additional time that I had added to the hearing in order to deal with the Claimant's default.

The relevant law

48. Whilst I have in my previous decision in this claim set out the legal framework applicable to an application for costs I shall do again to identify the principles I had in mind in the current application.

49. The jurisdiction to make an order of costs is found in schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) 2013. The material parts of Rule 76 provide:

> "When a costs order or a preparation time order may or shall be made
>
> (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—
>
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted….
>
> (2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party."

50. There is essentially a 2 (or perhaps 3) stage test. Other than in defined circumstances, before there is any jurisdiction to award costs at all the tribunal must be satisfied that one or more of the threshold conditions set out in Rule

76(1) or (2) has been satisfied. If, and only if, it has should the tribunal move on to consider whether, in the circumstances of the particular case, it is right to make a costs order. It does not follow that because one or more threshold conditions are met a costs order will inevitably be made. A tribunal must exercise its discretion taking into account all relevant matters - ***Abaya v Leeds Teaching Hospital NHS Trust*** **UKEAT/0258/16.** Finally, if a costs order is to be made, it is necessary to decide what amount, if any to award. See ***Monaghan v Close Thornton Solicitors*** **[2002] EAT/0003/01**

51. Notwithstanding the existence of the jurisdiction to award costs the exercise of that jurisdiction remains exceptional ***Gee v Shell Ltd*** **[2003] IRLR 82**.

52. In ***Barnsley BC v Yerrakalva*** **[2012] IRLR 78** CA Mummery LJ said:

> *"The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it, and what effects it had."*

53. There is no need for the tribunal to find a causative link between the costs incurred by the party making the application for costs and the event or events that are found to be unreasonable, see ***McPherson v BNP Paribas*** **[2004] ICR 1398 CA**

54. Rule 84 of the procedure rules provides that when deciding whether to make a costs order and if so in what amount the Tribunal may have regard to the means of the paying party. The rule is permissive rather than mandatory although it would be an unusual case where the means of the paying party were not a material factor.

Discussion and conclusions – Costs

55. I dealt with the Respondent's application for costs after I had announced my reasons for not acceding to the Respondent's application to strike out the claim. The Claimant quite rightly did not seek to address me at any length on the issue of whether the costs threshold was met. Whilst he did not accept my findings and criticism of his conduct he recognised that on the basis of those findings the threshold for making a costs order was met. I had found him to have acted unreasonably in failing to comply with the orders of the Tribunal. That was aggravated by the fact that he did no, not because he could not or did not understand what was required but because he did not want to.

56. I repeat my findings set out above. I am satisfied that the Claimant's conduct of the proceedings has been unreasonable. As such I may make a costs order. The fact that I may does not mean that I should – see ***Abaya v Leeds Teaching Hospital NHS Trust*** and ***Gee v Shell Ltd***.

57. I have had regard to the magnitude of the Claimant's default. I consider his conduct to have been seriously unreasonable. In particular in the period from 31 July 2023 the Claimant has wholly failed to engage with the Respondents who at least initially gave him further opportunities to rectify his default. I recognise that

the Claimant's focus has been on his first claim and that he has devoted his energies to that. I am sure that he would have preferred to see what the outcome of that was before doing further work on his second claim. However in taking that approach he shows no empathy for the individuals he has named in the second set of proceedings who are entitled to a fair and speedy resolution.

58. I remind myself that I should not stray into making a costs order to demonstrate my disapproval of the Claimant's conduct. A costs order is by its nature compensatory.

59. It could be said that the Respondents have failed to obtain an order striking out the Claimant's case. In that sense the Claimant is the victor in this hearing. That is in my view a narrow view of the outcome. What the Respondents have achieved is a complete vindication of their assertion that the Claimant has behaved unreasonably. The unless order I have made is very much a final warning to the Claimant.

60. I have set out a history of the efforts of the Respondents to get the Claimant to do what he had been ordered to do. Against those efforts I express some surprise at the modest sum sought by the Respondents in their application for costs. I have no doubt that the costs actually expended would far exceed what is sought. Had the Respondents sought the costs of chasing the Claimant over a two year period for the most basic details of his claims I would have been sympathetic to that application.

61. Taking all of these matters and all other circumstances into account I have concluded that it is appropriate to make an order for costs.

62. I have had regard to what I know about the Claimant's means. He holds a position in a financial institution at a greater level of remuneration than he received from Barclays. Whilst I do not know his exact income, it is in excess of £100,000 per annum before taxes. He tells me he has a mortgage and responsibilities towards his wife and children. I accept that. However I find that the Claimant would be able to afford (a further) sum of £1500 in addition to the first costs order that I made against him. If he has not got that sum immediately he will be able to afford it in a reasonable time.

63. I have set out the case management orders I made in a separate order.

Employment Judge Crosfill
Date: 9 May 2024