EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms O Uglor	v	**Transport for London**

PRELIMINARY HEARING

Heard at: London South **On: 8 November 2017**

Before: Employment Judge Elliott

Appearances:

For the Claimant: **Mr A McKenzie, lay representative**

For the Respondent: **Ms V Brown, counsel**

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The claim for unlawful deductions from wages is struck out as having no reasonable prospect of success.
2. The claims for direct sex and race discrimination based on the downgrading of the claimant in February 2014 are out of time and the tribunal has no jurisdiction to hear them.
3. The claims for victimisation based on being told that the claimant could not take out a grievance and failure to promote after 3 February 2017 continue to a full merits hearing.
4. The claim for victimisation for not being given an answer as to how the respondent arrived at the amount of her reduced salary, is out of time and the tribunal has no jurisdiction to hear it.
5. The equal pay claim and the claims for direct sex and race discrimination based on a failure to promote or return the claimant to a band 2 role proceed to a full merits hearing.

REASONS

1. By a claim form presented on 23 June 2017 claimant Ms Onome Uglor claims race discrimination, sex discrimination, victimisation, equal pay and unlawful deductions from wages. The respondent defended the claims. The claimant's employment is continuing.

2. The claimant works for the respondent as a project engineer and it is not in dispute that her period of continuous employment began on 14 April 2003.

The issues for this preliminary hearing

3. A telephone preliminary hearing took place on 5 September 2017 before Regional Employment Judge Hildebrand. It was ordered that within seven days of the date of the order, the respondent was to set out its application in writing for this preliminary hearing.

4. The application was made on 13 September 2017 for the following:

    a. whether to strike out the claim or any part of it on grounds that it has no reasonable prospect of success
    b. whether to order a deposit not exceeding the sum of £1000 as a condition of allowing the claimant to advance any argument or allegation within her claim
    c. whether the tribunal has jurisdiction bearing in mind the statutory time limit.

5. These are therefore the issues for this preliminary hearing.

6. The respondent accepts that the claims for unlawful deductions from wages and equal pay are within time. The respondent's case is that the discrimination claims are out of time.

7. It was identified at the last preliminary hearing that the claims are in relation to a reduction in the claimant's salary in February 2017 as a result of what she describes as a demotion with a ring-fenced salary (pay protection) in December 2013. The respondent's case is that the complaint relates to a reorganisation which resulted in the claimant's demotion in December 2013 and therefore on the respondent's case the claims are out of time.

8. The claimant's case is that she was given an opportunity between December 2013 and February 2017 to be regraded to the grade at which she had been originally placed (band two) or to move to that grade in another part of the organisation. The claimant's case is that her opportunities to move elsewhere in the organisation were frustrated with the intention of persuading her to leave employment and that projects allocated to her did not allow her to return to band two, her original grade, because support was not provided.

9. The claimant complains that when she raised a grievance in relation to the reduction in her pay she was informed that she could not take out a grievance and that this was in itself an act of victimisation.

10. It was confirmed at the last hearing that there was no claim for indirect discrimination.

11. At the last preliminary hearing it was explained that the claim for direct sex discrimination is based on the claimant's case that she was treated less favourably than male colleagues who were less well qualified than herself. Her case is that she was blocked in her application is to move to other sections and she was the only person whose salary was reduced which she says amounts to direct race discrimination. The detriment relied upon is the reduction in salary and the prevention of transfer which I have understood as the failure to move her back to a band 2. The claimant said that her comparators were in comparable circumstances because they were less well-qualified and notwithstanding this they were able to move to other departments and achieve the grade that she formally enjoyed. I understood this to be put as a claim for direct race discrimination as well as direct sex discrimination.

12. For the victimisation claim the claimant relies upon her February 2017 grievance as the protected act. The respondent disputed at the last hearing that this was a protected act. The detriment relied upon as victimisation is that the claimant could not raise a grievance regarding a reduction in her pay. She said she had asked in emails why this was and the respondent had failed to give her a reason. The detriments relied upon are therefore the reduction in salary and the failure to explain.

13. There is an equal pay claim in respect of work of equal value to the comparators.

14. Following the hearing on 5 September 2017 the claimant did not name any of her comparators to the respondent. I asked the claimant in this preliminary hearing to identify her comparators and this is referred to below.

Witnesses and documents

15. The tribunal heard from the claimant. There was a short witness statement from the claimant which was not served on the respondent in advance of this hearing. Other than for one paragraph, it repeated matters set out in the ET1. It did not deal with the time limitation issue. The respondent objected to the claimant being given the opportunity to give evidence. I allowed the claimant to give evidence as the Order made on 5 September 2017 had not specified a date by which any statement was to be served.

16. After submissions the claimant appeared to be upset and had some more she wished to say. I allowed her a further opportunity to give evidence which focussed on the merits of her claim more than the preliminary issues. I gave Ms Brown the opportunity for further cross-examination which she declined. I confirmed that my decision would focus on the issues identified above rather than the full merits case.

17. There was a bundle of documents from the claimant of around 42 pages. There was a bundle of documents from the respondent of 57 pages. There was a written skeleton argument from the respondent to which counsel spoke. I had oral submissions only from the claimant. All submissions were fully considered together with any authorities relied upon even if not expressly referred to below.

18. References to documents below are given by page numbers prefaced by the letter C or R to indicate the bundle in which the page is found.

Findings of fact

19. The claimant joined the respondent on 14 April 2003 and remains in their employment. In June 2007 she was appointed as a project engineer.

20. In December 2013 the respondent carried out a widespread restructure of its organisation. It undertook a selection process in accordance with its Restructuring and Staff Reduction Policy. The restructure affected around a third of the respondent's workforce of 20,000, affecting around 6,500 employees. It was not limited for example to the claimant's department. As a result of the restructure the claimant was displaced from her substantive role. She applied for suitable alternative employment but was unsuccessful in securing a band 2 role and was offered a band 1 role with pay protection for three years.

21. On 13 February 2014 the respondent wrote to the claimant confirming that she had completed a six-week trial period as a project support officer on pay band one. The letter (page R52-53) said:

> ***Suitable alternative employment - Reference number 8000259963***
>
> *Following the successful completion of your six week trial period, I am pleased to confirm that you are appointed to the role of Project Support Officer, payband 1.*
> *The appointment is effective from 13 February 2014.*
> ***Protection of Earnings (POE)***
> *This position is not at your current pay band and you will be re-graded to pay band 1 and protection of earnings will be applied. As this role is in the lower pay band and your current salary is above the maximum for this pay band, your basic salary will become £38,104 which is the top of the pay band. The difference between the top of the pay band and your old salary is £1,805 per annum. The difference will be recalculated each year and will be converted into 4 weekly recurring protected payments for a three-year period……..*
> *At the end of the 3 year period, you will receive the rate for the job at that point in time. The current rate for this job is £31,350 per annum.*
> *All other terms and conditions of employment remain unchanged……*

22. The letter was signed by the claimant underneath the words "*I hereby accept the position of Project Support Officer*". The claimant accepted that the letter bore her signature although she could not remember signing it. She nevertheless accepted that she did sign it and I find that she did so on the date indicated namely on the 26 February 2014.

23. The claimant had two periods of sick leave. The first was due to surgery as a result of which she was absent from September to November 2013 and the second period was from 13 October 2014 until 9 April 2015. At paragraph 4 of her ET1 and in evidence the claimant said she did not dispute the letter of 13 February 2014 because she suffered long periods of illness between October 2014 and April 2015 and was unable to attend work and hence she could not take the matter up.

24. The claimant stated in her ET1 and in evidence that during the course of her employment she has raised a number of grievances. She says that she won these on appeal. I find that the claimant is familiar with raising grievances when she considers that she has not been fairly treated in the workplace.

25. I find that the claimant's sickness absence did not prevent her from challenging the letter of 13 February 2014 or its effect. The first period of absence in 2013 predated the signing of her acceptance of the terms of the letter (namely downgrading and pay protection) by three months. The second period of sickness absence did not commence until eight months after the date of that letter. She had access to union assistance and was familiar with and had previously used the grievance procedures.

26. The claimant's evidence to the tribunal is that she is a member of the union Prospect and that she had assistance in this matter from a union representative named Mr Dave Allen. The union assisted the claimant in 2015 and up to 29 February 2016. This was the last day upon which the claimant received support from the union because she found it necessary to complain about Mr Allen.

27. The claimant said that with assistance from the union she considered bringing a claim against the respondent in 2015 in relation to her treatment at work but the union did not agree to support this. I find on a balance of probabilities that this involved a consideration in 2015 of bringing a claim in the employment tribunal.

28. The claimant began seeking support from Mr MacKenzie, who represented her at this hearing, from 2016 onwards. The organisation representing the claimant Evelyn 190 Centre, London SE8 (ET1 page R13) provides employment law advice amongst other services.

29. I find that the claimant has had access to legal advice since at least 2015 and therefore knew or ought reasonably to have known about time limits.

30. The claimant says in her claim that the support that she believed she had been offered, to get her "backup to band 2", was not provided. She says she was treated less favourably than other work colleagues.

31. On 20 January 2017 the respondent wrote to the claimant. The letter was handed to the claimant personally on 1 February 2017 (page R54 and C19). The letter said:

> *I am writing to inform you that your entitlement to 3 years of protection of earnings due to moving to a lower graded role as a result of an organisational change will cease on 12 February 2017.*
> *As outlined in your confirmation of appointment letter once your period of protection of earnings comes to an end your salary will be adjusted to the current market rate for the role. Therefore your salary with effect from 13 February 2017 is £28,000.*

32. The claimant then wished to raise a grievance about this reduction in salary. She email to Ms Webster in HR Services on 3 February 2017, which she relies upon as her protected act, (page R57) saying:

> "*On 01.02.2017 I was given a letter (dated 20.01.2017 which was signed by you) by hand by the Head of Department which detailed a reduction in my salary.*
> *I am therefore raising a grievance as I have been receiving less favourable treatment that led to my demotion.*
> *How did you reach the conclusion that the market rate is £28,000?*

> *I am asking you to retain my present salary at least until this matter has been settled as it might be seen as an unlawful deduction in salary. If TFL carry out the above reduction, I will seek to recover it at a later date.*

33. The respondent does not deny that the claimant was informed that a grievance could not be raised about this as they said that it was in respect of a decision in 2014 as it was out of time (R56 dated 9 February 2017). In reply on 9 February 2017 the claimant referred to the Employment Rights Act and said that it would be seen as an underpayment of salary. The claimant's references to unlawful deductions in salary and references to the Employment Rights Act support my finding that the claimant was in receipt of legal advice.

34. The claimant relies on the reduction in pay at the end of her pay protection as an unlawful deduction from wages.

35. The claimant also relies as an act of victimisation on the failure to give her an explanation for the reason for the amount of the reduced salary. At page R56 I saw an email from HR Business Partner Dee Panesar dated 9 February 2017 saying "*With regard to the question around market rate, we take a number of factors into account when setting salaries. One of these is market rate which is provided by external benchmarking information provided by our reward team, this is compiled by an external company who specialise in this*." The claimant replied later the same day that she was dissatisfied with the answer. Mehmet Harpal emailed the claimant on 13 February 2017 (R55) saying "*I believe Dee has responded separately to the second element of your query concerning how the £28K salary was determined".*

Comparators

36. During her evidence the claimant identified the following comparators for her discrimination claims. All are said to be Caucasian save for Mr Mahmud who is said to be Asian and all are male save for Ms Lofts and Ms Aherne. The claimant describes her own racial group as African.

> Tracey Aherne
> Dewarn Mahmud
> Daniel Nassbrook
> Ann Lofts
> Gary Ward
> Michael Cook
> Vlad Kovach
> Jack – a project manager in her department

37. The claimant also identified during the hearing her male comparators for her equal pay claim as Dewarn Mahmud, Tom Fitzpatrick and Ossie Corlis.

The claimant's documents

38. The claimant's bundle of documents was produced following Subject Access Requests and Freedom of Information requests. The claimant said she was sent these documents in October 2017 although on some of the documents, she was the author and originator and I find that she did not need to make a request to be aware of these documents (examples being C1, C2 and C13-15).

39. The claimant took me to an email from her Head of Department Mr Subash Tavares dated 4 April 2017 (C13) which said:

> *Onome*
> *Apologies for the delay in responding to you. I have met with Harpal Mehet (PMA) and she has advised that, based on the information presented, you do not have grounds for a grievance.*
> *It would appear that many of the arguments that you make have either been addressed before or are time barred. It would appear that your only option now is to take your case to a tribunal but that is entirely your decision.*
> *Regards*
> *Subash*

40. The claimant also took me to an email (at page C5) dated 8 July 2015 Micallef Herbert which was less than complimentary about her when asked about her application for a secondment for Senior Technical Specialist within Highways. The email said:

> *Don't go there. Ask around not just me. Don't go there.*
> *She is the worst person anyone can work with. All her previous managers had massive grievances put against them whenever they tried to penalise her poor performance. Even grievances for racism even though her manager was from Nigeria and she is from Uganda. Also she is unwell a lot, most times pre planned as her calendar used to be set up in advance.*
> *You would be absolutely crazy to even consider Onome.*

41. I saw at page C1 a grievance email from the claimant to Mr Nick Fairholme of the respondent in which she complains about discrimination. She refers to being racially and sexually discriminated against and being discriminated against under the Disability Discrimination Act. This was not however the grievance she relies upon as her protected act, as identified at the case management hearing before Regional Judge Hildebrand on 5 September 2017. In that hearing (Reasons paragraph 4, bundle R50) the claimant clarified that the protected act was the February 2017 grievance. This was the 3 February 2017 document at page R57 which is set out above.

42. The claimant also told the tribunal that her father sadly passed away at the beginning of 2017 and she had to go to Nigeria for eight days because of this.

The law

43. For strike out and deposit orders, the relevant law is found in Rules 37 and 39 of the Employment Tribunal Rules of Procedures 2013.

> ***Rule 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;*
>
> ***Rule 39***
> *(1) Where at a preliminary hearing ….the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

44. In ***Anyanwu v South Bank Students' Union 2001 ICR 391*** the House of Lords highlighted the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact sensitive and require full examination to make a proper determination. It may be necessary to determine whether discrimination is to be inferred.

45. In ***Balls v Downham Market High School and College 2011 IRLR 217*** the EAT said that the test is not whether the claim is likely to fail; nor is it a matter of asking whether it is possible that the claim will fail. It is not a test that can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is a high test. If can be unfair to strike out if there are crucial facts in dispute and there has been no opportunity to test the evidence. Strike out is a draconian power.

46. The relevant time limit is set out in section 123 of the Equality Act 2010 which provides that:

(1) Subject to section 140A and 140B, proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

47. This is a broader test than the reasonably practicable test found in the Employment Rights Act 1996. It is for the claimant to satisfy the tribunal that it is just and equitable to extend the time limit and the tribunal has a wide discretion. There is no presumption that the Tribunal should exercise that discretion in favour of the claimant.

48. The leading case on whether an act of discrimination it to be treated as extending over a period is the decision of the Court of Appeal in ***Hendricks v Metropolitan Police Commissioner*** **2003 IRLR 96.** This makes it clear that the focus of inquiry must be not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but rather on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against (including the claimant) was treated less favourably.

49. The burden is on the claimant to prove, either by direct evidence or inference, that the alleged incidents of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs covered by the concept of an act extending over a period.

50. In ***British Coal Corporation v Keeble 1997 IRLR 336*** the EAT said that in considering the discretion to extend time:

> *It requires the court to consider the prejudice which each party would suffer as the result of the decision to be made and also to have regard to all the circumstances of the case and in particular, inter alia, to –*
>
> *(a) the length of and reasons for the delay;*
>
> *(b) the extent to which the cogency of the evidence is likely to be affected by the delay;*
>
> *(c) the extent to which the party sued had cooperated with any requests for information;*
>
> *(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*
>
> *(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.*

51. The respondent relied upon the decision of the Court of Appeal in ***North Glamorgan NHS Trust v Ezsias 2007 IRLR 603*** on the issue of strike out. At paragraph 27 Lord Justice Maurice Kay said: "*I too accept that there may be cases which embrace disputed facts but which nevertheless may justify striking out on the basis of their having no reasonable prospect of success".* In that case there was a stark factual dispute making it unsuitable for a strike out. Lord Justice Maurice Kay said "*it seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence…….. It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success with the central facts are in dispute. An example might be where the facts sought to be established by the applicant would totally and inexplicably inconsistent with the undisputed contemporaneous documentation."*

52. Victimisation is defined in section 27 of the Equality Act 2010 as follows:

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
>
> *(a) B does a protected act, or*
>
> *(b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act—*
>
> *(a) bringing proceedings under this Act;*
>
> *(b) giving evidence or information in connection with proceedings under this Act;*
>
> *(c) doing any other thing for the purposes of or in connection with this Act;*
>
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

53. Section 13 of the Employment Rights Act 1996 sets out the right not to suffer unauthorised deductions from wages.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

54. Rejection for promotion is normally considered a single act rather than a continuing act. In ***Sougrin v Haringey Health Authority 1992 ICR 650 CA***, a decision to regrade an employee was held to be a one-off decision or act even though it resulted in the continuing consequence of lower pay for the employee who was not regraded.

55. In ***Owusu v London Fire and Civil Defence Authority 1995 IRLR 574 EAT***, a failure to promote or shortlist was considered a single act despite its continuing consequences but there is a distinction where the act, (failure to promote) took the form of a rule policy or practice with which decisions are taken from time to time.

Conclusions

56. I find that the claim for unlawful deductions from wages, based on the restructure and the claimant's downgrading and subsequent lifting of the pay protection, has no reasonable prospect of success. I find based on the claimant's signed acceptance of the terms set out in the letter of 13 February 2014 that she has previously signified in writing her agreement or consent to the making of the deduction at the end of the three year period. I have found above that it was open to the claimant to challenge 13 February 2014 letter at the time and she did not. It clearly falls within section 13(1)(b) ERA (above). I therefore strike out this claim under Rule 37.

57. For her victimisation claim, the claimant relies upon her email of 3 February 2017 as her protected act. This was identified at the hearing on 5 September 2017. The content of that email is set out above. I find that there is enough in this grievance to amount to a protected act because the claimant said: "*I am therefore raising a grievance as I have been receiving less favourable treatment that led to my demotion"* against a backdrop of previous discrimination complaints referring to less favourable treatment. This is a respondent with an HR team that will clearly recognise the terminology of less favourable treatment as being a complaint of a contravention of the Equality Act.

58. The Order of Regional Judge Hildebrand assisted me with my understanding of the acts of victimisation. The claimant relies on being told that she could not take out a grievance. She was told this by emails on 9 and 13 February 2017 pages R55 and 56 and she pursued the matter and was told again on 4 April 2017 by Mr Tavares (C13). All these acts post-date the protected act.

59. To the extent that there is any failure to promote or upgrade her which post-dates the protected act, then I find that this should be tested against the evidence. I find that the victimisation claim relating to matters which post-date

the protected act on 3 February 2017 have a reasonable prospect of success and I decline to strike them out.

60. The claimant also relies as an act of victimisation on the failure to give her an explanation for the reason for the amount of the reduced salary. Based on the email from Mehmet Harpal on 13 February 2017 (R55) I find that the claimant knew the respondent's position, that they considered that an answer had been given. To the extent that this was an act of victimisation (on which I make no finding) it is an act which took place on 13 February 2017 and in respect of which the primary time limit expired on 12 May 2017. The claimant applied for Early Conciliation on 15 May 2017 so that the EC Rules do not operate to extend time for an act taking place on 13 February 2017. It is out of time and it is not just and equitable to extend time when the claimant was in receipt of legal advice.

61. In addition I find that this claim has no reasonable prospect of success. The claimant had been given an answer by Dee Panesar on 9 February 2017 as to how the respondent arrived at its market rates of pay. A claim for failure to give her an answer has no reasonable prospect of success when an answer was given, even if it was not the answer the clamant wanted or one with which she agreed. Had it not been out of time, it would have been struck out in any event.

62. The equal pay claim is at a very early stage. The claimant only identified her comparators at this hearing. There was nothing before me to identify their job roles or their pay. On the information currently before the tribunal it is impossible to say that this equal pay claim has no reasonable prospect of success and I decline to strike it out. The respondent accepts that the claim is within time. As indicated by Regional Judge Hildebrand if it is an equal value claim, it will require a Stage 1 Equal Value Hearing.

63. This leaves the remaining claims for direct sex and race discrimination. I am mindful of the decision in ***Anyanwu*** (above) which underlines the importance of not striking out discrimination claims except in the most obvious cases. They are generally fact sensitive and require full examination to make a proper determination. It may be necessary to determine whether discrimination is to be inferred.

64. So far as the decision to downgrade is concerned, I find that this was a single act which took place in February 2014. It arose out of the restructure which affected around 6,500 employees of the respondent.

65. I find that in relation to that decision, the claim is just over three years out of time. I do not find it just and equitable to extend time in circumstances where the claimant had access to advice from her union and is familiar with challenging decisions in the workplace. She has also had advice from her current representative since at least 2016. These proceedings were not issued until 23 June 2017. I find that in relation to the downgrading, that claim is out of time so that the tribunal does not have jurisdiction to consider it.

66. The decision not to promote the claimant is a matter which requires a consideration against the evidence. The claimant has applied for roles and has

been unsuccessful. This is likely to be a fact sensitive issue as to the reasons why the claimant was not successful on each and every application. She has today named her comparators and it will be necessary to consider who was the successful candidate, their race and gender, and why they were successful when the claimant was not. She maintains she was better qualified than her comparators.

67. The email disclosed by the claimant at page C5 from Micallef Herbert gives rise to questions that require testing in evidence, saying that the claimant is the "*worst person anyone can work with*", making reference to her racial group and saying that the recipients would be "*crazy to even consider*" the claimant. The reasons for those comments need to be explored and a full tribunal needs to consider what, if any, inferences may need to be drawn. The tribunal will need to consider who, if anyone, who was responsible for the treatment of the claimant, shared the views held by Micallef Herbert and the reason(s) for those views.

68. I therefore decline to strike out the claims for direct sex and race discrimination relating to the failure to return the claimant to a band 2 role. I find following ***Owusu*** that this claim is a continuing state of affairs and therefore a continuing act and within time.

69. The claimant relies upon the refusal to allow her to bring a grievance as an act of direct sex and race discrimination. Based on a refusal on 4 April 2017 this is within time. These are discrimination claims which require the testing before a full tribunal and I decline to strike this out.

70. Any claim for loss of salary based solely on the 2014 decision to regrade has, for the reasons I have set out above, no reasonable prospect of success. It flows from the reorganisation and is a one-off decision made in February 2014 and is also out of time in any event. This does not however prevent the claimant from claiming any arrears of salary if she is successful her claim for the failure to return her to a band 2 position.

CASE MANAGEMENT SUMMARY

Listing a telephone preliminary hearing

1. As it was necessary to reserve the decision today, a telephone preliminary hearing was listed for **Friday 1 December 2017 at 11am.** Both parties had the opportunity to check their availability prior to listing.
2. The parties are to work together to produce a draft list of issues which is to be sent to the tribunal in a word format by midday on 30 November 2017 for use at that hearing.
3. They are to give consideration to the time estimate for the hearing to include tribunal reading time, evidence, submissions and tribunal deliberation time.

4. The claimant is reminded that it is sensible to particularise the remaining claims voluntarily before the next telephone hearing and they do not need to wait for an Order to be made.

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

_____

Employment Judge Elliott

8 November 2017