



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Otmane

**Respondent:** Crowe U.K. LLP

## JUDGMENT

The claimant's claim is struck out in its entirety.

## REASONS

1. The decision which is the subject of these reasons was whether to strike out the claim for any of the following reasons:

- a. because the manner in which the proceedings have been conducted by the claimant has been scandalous, unreasonable or vexatious for the reasons set out in the tribunal's letter of 27 April 2021.
- b. because the manner in which the proceedings have being conducted by the claimant was scandalous, unreasonable and/or vexatious, due to his communications to the respondent, its employees and its representative, as detailed in the respondent's email of 5 May 2021 and its attachments; and
- c. on the basis it is no longer possible to have a fair hearing.

2. For the reasons set out below, I decided to strike out the claim for each of these three reasons.

### **Background and facts**

3. By a claim form presented to the employment tribunal on 1 October 2019, the claimant brought various complaints, including complaints of discrimination (he ticked the box on the ET1 form for race discrimination, disability discrimination, sex discrimination, sexual orientation discrimination and discrimination on the grounds of religion or belief) and in relation to sums allegedly not paid to him. He also claimed unfair dismissal although, from the details on his own claim form, he did not have the requisite two years' continuous employment necessary to bring an unfair dismissal claim (the details he gave, and with which the respondent in its ET3 form agreed, were that his employment with the respondent started on 1 April 2019 and ended on 3 July 2019).

4. In the attachment to his claim form, the claimant made allegations, amongst others, against a member of the respondent's HR team, Ms AT, and a manager at the respondent, Ms LT. Both are female. It is also highly likely, from her name and from matters referred to in the pleadings, that Ms LT is of Chinese ethnic origin.

5. The email address given by the claimant on his claim form was karim.dakhama@gmail.com.

6. The respondent defended the complaints.

7. A preliminary hearing had been listed for 9 April 2021. The tribunal, as is often the case, had listed the preliminary hearing without first consulting the parties about the date.

8. The solicitor representing the respondent, Ms HO, by letter of 8 February 2021, promptly applied for a postponement of the preliminary hearing because she was unavailable on the date set as she was due to be in tribunal on a different case from 6-12 April 2021. She gave dates to avoid for relisting the hearing and there was plenty of scope amongst these for relisting it on a day not long after the original hearing date of 9 April 2021.

9. Ms HO copied the claimant into that letter. The letter was sent both to the tribunal and to the claimant by email. The email address used by Ms HO for the claimant was karim.dakhama2@gmail.com. Whilst that address is different to the address given by the claimant on his claim form, it appears to have been the address which the parties were using to communicate with each other at the time.

10. By email of the same date, 8 February 2021, the claimant replied to the tribunal and Ms HO, from that same email address, as follows:

"I do not accept the change of dates it violates my human right to a fair trial

No justice no peace"

11. Unfortunately, the respondent's postponement application was not referred to a judge until several weeks later, only a couple of weeks before the preliminary hearing date. It was referred to me.

12. On my instruction, the tribunal on 25 March 2021 wrote to the parties as follows (sending the communication, in the case of the claimant, to both of the email addresses referred to above, a practice which the tribunal continued to use for the most part going forwards):

"Employment judge Baty has asked me to write as follows:

The tribunal notes the respondent's postponement application of 8 February 2021 in relation to the preliminary hearing listed for 9 April 2021, and the claimant's objection to that application.

First, I apologise that it has taken so long to be put before a judge.

Secondly, as it is not about 1.5 months since it was made and the dates to avoid may now be out of date, the parties are asked to inform the tribunal of the following within 3 days of receipt of this email:

- (a) The respondent should confirm if, with the passage of time, a postponement remains necessary and, if it considers it is, provide its dates to avoid for a relisted 1 day preliminary hearing (in person);
- (b) The claimant should provide the claimant's dates to avoid for a relisted 1 day preliminary hearing (in person).

Thereafter a decision will be taken on whether to postpone and relist. By way of reassurance to the parties, given the proximity of the hearing, such a decision is likely to be made swiftly on receipt of the parties' responses."

13. By email of 25 March 2021, the claimant simply replied: "I do not agree to a postponement." He did not give any reasons why. He did not copy in Ms HO, as he should have done under Rule 92 of the Employment Tribunal Rules 2013 (the "Tribunal Rules").

14. By email of 25 March 2021, Ms HO confirmed that the respondent's application to postpone was still applicable as the other hearing she was booked for was still taking place from 6-12 April 2021. Again, she gave dates to avoid for a relisted preliminary hearing which would have enabled the preliminary hearing to be relisted not long after the original date. She copied the claimant in.

15. On 31 March 2021, Ms HO chased the tribunal for a response, again copying the claimant in. The claimant replied on the same date simply: "It cannot be postponed. I cannot make any other dates."

16. The correspondence was then referred to me and, on my instruction, the tribunal emailed the parties on 1 April 2021 as follows:

"Employment Judge Baty has asked me to write as follows:

The preliminary hearing listed for 9 April 2021 is postponed and will not take place. I have instructed my listings department to relist the preliminary hearing (for one day) as soon as possible taking into account the dates to avoid provided by the respondent. The claimant, despite being requested to do so, has not provided a list of dates to avoid and his assertion that he can do no other date than 9 April is made without giving any reason and is not plausible.

The reasons for the postponement are those set out in the original application, which was made promptly on receipt of the notice of hearing. It would be very prejudicial to the respondent to have to instruct new representatives for this preliminary hearing as its current representative is involved in a separate hearing taking place on that date which was listed before this preliminary hearing. By contrast, a short delay to relist will cause little prejudice to either party."

The preliminary hearing was in due course relisted for 30 April 2021.

17. The claimant replied to the tribunal by email on the same day, 1 April 2021, as follows (he did not copy in Ms HO):

"No. It is not acceptable for these white racist pig [c\*\*\*s] to delay this. You fuck8ng racist [c\*\*\*s]. Fuckk yoy White fucking devils. I guarantee without my justice you whote fuckers wont have peace"

This email was read by the member of the tribunal staff to whom it came and was subsequently referred to me. The email is set out above as it was originally written save that where, in the original, the C-word in full was used, I have replaced this here with "[c\*\*\*s]".

18. Upon my instruction, the tribunal on 7 April 2021 wrote to the parties as follows (attaching a copy of the email of 1 April 2021 from the claimant, as the claimant had not copied it to the respondent):

“Employment Judge Baty has asked me to write as follows:

I refer to the claimant’s email of 1 April 2021 to the tribunal (copy attached).

Using this sort of language in correspondence as part of tribunal litigation is completely unacceptable.

To be clear, the claimant is entitled to make allegations of race discrimination against the respondent; and the tribunal also understands the depth of feeling which is often part of the reason why tribunal claims are brought in the first place.

However, parties should be moderate, respectful and polite in the language they use. The extreme and highly offensive language used in the claimant’s email, which has to be read by tribunal staff and judges alike, is disgraceful; it cannot and will not be tolerated.

To be clear, the tribunal has the power under rule 37 of the Employment Tribunal Rules 2013 to strike out a claim or a response if a party conducts the proceedings in a manner which is scandalous or unreasonable. If the claimant writes in anything like this manner again, it is very likely that a judge will choose to strike out his claim for this reason.”

19. By email of 13 April 2021 to the tribunal (again, not copied to Ms HO), the claimant wrote as follows:

“No. I will now tell you to fuck you.  
I am not getting justice so there will be no peace.

No fucking justice no fucking peace.

I will not let whites abuse me any longer. It has been two fucking years my violation.

This white bitch is delaying the case so I will not get my justice. This white bitch is abusing me to damage my reputation and to substantiate the white and banana lies of house chinese [LT] and femanazi Islamaphobe [AT].

I've done nothing wrong. Ive been a victim. Again. And you try and humiliate me and tarnish my name.

No. This ends here.

I demand justice. I will never ever be subservient. It is clear thst the courts of this country are the tool of the whiteman and so my justice will come from the bottle of petrol cans. I will burn in beautiful fire and every house [n\*\*\*\*\*], banana ans fucking white devil who violated me will be exposed.

You will be exposed. You have denied me justice. You will have no peace.

I will burn before your photos and you will all be famous for what you did. White devils.”

20. The claimant included the full names of Ms LT and Ms AT in his original email but I have replaced these by initials only here, as I have throughout these reasons and as I have also done with Ms HO, as it is not necessary for the purposes of this decision and these reasons to identify the individuals fully and, given the unpleasantness of this, I do not consider that their names should be set out in full where there is no good reason for doing so. The rest of the email is set out above as it was originally written save that I have inserted “[n\*\*\*\*\*]” where, in the original, the N-word in full was used.

21. Contained in the email above is a reference to the claimant setting himself on fire. This is obviously an incredibly disturbing thing to read in any email. However, it should be noted that the claimant has brought other proceedings in this tribunal and he has on repeated occasions over a long period of time, and from at least as early as July 2020, made threats of a similar nature to set himself on fire if he doesn't get what he sees as justice. Indeed, on the instruction of the Regional Employment Judge, the tribunal in the interests of the claimant's welfare informed the police of this.

22. The claimant's email of 13 April 2021 was seen by the member of tribunal staff who in due course referred it to me. On my instruction, the tribunal on 27 April 2021 wrote to the parties as follows (attaching a copy of the email of 13 April 2021 from the claimant, as the claimant had not copied it to the respondent):

"STRIKE OUT WARNING  
Employment Tribunals Rules of Procedure 2013  
Rule 37

On the Tribunal's own initiative, Employment Judge Baty is considering striking out the claim because the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious. Specifically:

1. In an email to the Tribunal of 1 April 2021, the claimant used extreme and highly offensive language.
2. In an email of 7 April 2021, the tribunal specifically informed the claimant that:

"Using this sort of language in correspondence as part of tribunal litigation is completely unacceptable.

To be clear, the claimant is entitled to make allegations of race discrimination against the respondent; and the tribunal also understands the depth of feeling which is often part of the reason why tribunal claims are brought in the first place.

However, parties should be moderate, respectful and polite in the language they use. The extreme and highly offensive language used in the claimant's email, which has to be read by tribunal staff and judges alike, is disgraceful; it cannot and will not be tolerated.

To be clear, the tribunal has the power under rule 37 of the Employment Tribunal Rules 2013 to strike out a claim or a response if a party conducts the proceedings in a manner which is scandalous or unreasonable. If the claimant writes in anything like this manner again, it is very likely that a judge will choose to strike out his claim for this reason."

3. Nevertheless, despite this unambiguous warning, in a further email of 13 April 2021, the claimant wrote to the tribunal in terms which were more offensive still, including language which was variously sexist, racist and threatening.

If you wish to object to this proposal, you should, by 10 May 2021, give your reasons in writing or request a hearing at which you can make them."

This email was sent to the claimant at the karim.dakhama2@gmail.com email address only.

23. The claimant then in response wrote a number of emails to the tribunal on 27 April 2021, all from the karim.dakhama2@gmail.com email address (he did not copy Ms HO in on any of them). They are as follows:

"How dare you call me racist you white pig. You whites are all the same. I am the victim and you dare say to me. I **will** be setting myself on fire before all your photos. I will never allow myself to be colonised. How fucking dare you abuse me like this you white devil. You take the side of my

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oppressor who stole £20,000 from me. ALL WHITE PEOPLE ARE RACIST and that includes bananas such as [LT] (with a white boyfriend shock horror) who sell out to live the good. life. You try and shame me. Fuck you. I will be free through glorious fire. My flesh will melt from my body. You took the side of the white [c\*\*\*s} this whole time, you pig. You dare call me racist now I've had a fucking enough. You are white you are racist by genetics. You let those white [c\*\*\*s} delay the case another year so now we are on year three. I have lost my career, family, home, future, health. You dare talk to me like I am in the wrong.

I will douse myself with petrol and self illomate. We will tell all of society everything which you whites have done to me from day one to melting day. History will remember all of you. You chose yours side, the side of the racist. Now you have determined my fate. NO JUSTICE NO PEACE.

On Tue, Apr 27, 2021 at 11:54 AM Karim Dakhama <[karim.dakhama2@gmail.com](mailto:karim.dakhama2@gmail.com)> wrote:  
You are a racist white devil. I will expose you all. I will pour petrol over myself and self immolate and explain why and everything you have done.

You denied me justice i deny you peace.

On Tue, Apr 27, 2021 at 11:53 AM Karim Dakhama <[karim.dakhama2@gmail.com](mailto:karim.dakhama2@gmail.com)> wrote:  
You fucking white devil. I will SELF IMMOLATE AND BURN TO DEATH IN FRONT OF YOUR PHOTO NO JUSTICE NO PEACE FUCK ALL WHITES WHO ARE ALL RACIST NO JUSTICE NO PEACE”

Again, these emails are set out above as they were originally written save that where, in the originals, the C-word in full was used, I have replaced this here with “[c\*\*\*s]”.

24. In a further email to the tribunal on the same day from the [karim.dakhama2@gmail.com](mailto:karim.dakhama2@gmail.com) email address (again not copied to Ms HO), the claimant wrote simply:

“This email address is closed.”

25. The claimant did not request a hearing in response to the tribunal’s letter of 27 April 2021 stating that it was considering striking out the claim. Indeed, no reply was sent by the claimant addressing the issues raised by the tribunal in its letter of 27 April 2021. The only communications from the claimant were the abusive emails set out above.

26. The preliminary hearing, which had been relisted for 30 April 2021, was postponed on my instruction and the parties were informed of this by email of 28 April 2021. This email was sent to both of the email addresses for the claimant referred to above.

27. Ms HO then emailed the tribunal on 5 May 2021, copying in the claimant on both of the email addresses for him referred to above. Ms HO stated that the respondent firmly supported consideration of striking out the claimant’s claim on the basis of his abusive and offensive communications with the tribunal. However, she went on to state that, in addition to the matters known to the tribunal, the respondent wished to make the tribunal aware of communications with the claimant which it would have brought to the tribunal’s attention had the preliminary hearing gone ahead and which went to the claimant’s conduct of the matter. The letter went on to set out a whole string of examples (set out below) of the claimant’s behaviour in relation to the respondent, its employees and its representative, and attached a bundle of correspondence, attendance notes and other material which evidenced the examples given:

- “1. [1] Transcript of a voicemail from the Claimant left on my phone on Saturday 23 January 2021. The reference to calling the police was because the Respondent asked the police to make a welfare call to the Claimant as he had threatened to set himself on fire.
2. [2-3] Email from me to the Claimant on 25 January 2021 in response to an offensive email sent to me and [AT] (Respondent’s witness) [3], requesting that all future communications be by email given the offensive voicemail he had me left that weekend (see [2] last paragraph).
3. [4-5] Transcripts of two further offensive voicemails from the Claimant left on my phone on Thursday 28 January 2021 outside office hours.
4. [6-9] Email from me to the Claimant on Friday 29 January 2021 [6] reiterating that the Claimant should not call me; and the Claimant’s response.
5. [10] Email from [LT] (Respondent’s witness) to HR on 16 March 2021, with transcript of a threatening call made to [LT] by the Claimant on 15 March 2021.
6. [11-12] Email to me from the Claimant on 25 March 2021 [top of [11]].
7. [13-15] Transcripts of voicemails left by the Claimant on my phone on 1 April 2021 calling me among other things “English, racist bitch” “racist” [14], “fucking racist, English bitch” “white bitch” “racist” [15]. I had 8 missed calls from the Claimant that day.
8. [16] Email from me to the Claimant on 7 April 2021, advising him to desist from making threats to the Respondent, contacting the Respondent and contacting me other than in writing.
9. [17] Response from the Claimant on 7 April 2021 denying all knowledge of his behaviour.
10. [18] Threatening email sent by the Claimant to [LT] and [AT] on 27 April 2021, using a fake email address using [LT]’s name.
11. [19] Email from [JB] (Head of HR Operations) to the Claimant dated 28 April 2021 responding to [18].

The Claimant’s communications recorded in paragraphs 10-11 postdated the warning sent to the Claimant by Employment Judge Baty on 7 April 2021.

In the Respondent’s submission, the above communications between the parties demonstrate scandalous, unreasonable and vexatious conduct in communication with the Respondent, its witnesses and its legal representative, as well as his communications with the Tribunal.”

28. It is not necessary to repeat all of the evidence set out in the bundle which was attached by Ms HO to this letter and I do not do so. It is enough to say that, consistent with the communications which the claimant had sent to the tribunal, the claimant had repeatedly over a long period of time used deeply offensive language of the most appalling nature, racist and sexist terminology and threats in his communications to the respondent, including to AT, LT and Ms HO. Throughout this evidence, there were also frequent and repeated threats by the claimant to set himself on fire.

29. On 20 May 2021 an email was sent to the tribunal (this time copied to Ms HO) from the claimant’s karim.dakhama2@gmail.com email address, notwithstanding the email of 27 April 2021 from that address stating that that address was closed. The address was, therefore, still clearly in operation as at 20 May 2021 and any email sent to that address prior to that date would have been capable of being viewed by the claimant when sent to that address.

30. However, that email purported to have been sent not by the claimant but by someone who referred to himself simply as “Mehmet”. The contents of the email are as follows:

“Dear Sirs,

My name is Mehmet and I am assisting Kareem for a short period of time.

I would firstly like to state clearly that we neither confirm nor deny the malicious accusations made by [Ms HO], Respondent, on 5 May 2021. We also wish for these to be struck out as they have not properly been substantiated nor correctly served, and are malicious in nature and will prevent a fair trial from taking place.

I will start by referring the court to the following human rights, afforded to Kareem under the European Convention on Human Rights.

**Article 6: Right to a Fair Trial**

**Article 8: Privacy**

**Article 13: Effective Remedy**

**Article 14: Freedom from Discrimination**

Kareem has brought his legitimate claim to the courts as he has suffered substantial racial abuse from the Respondent which caused him a permanent personal injury and economic losses in the hundreds of thousands of pounds, including the unlawful withholding of between £10,000 and £20,000 in wages.

It is in the public interest for the case to be heard and it is the Claimant's right to have the matter heard.

The Claimant has informed the court and the Respondent on several occasions that he now suffers from severe Complex Post Traumatic Stress Disorder, and communications can be triggering for him. This has been caused by the Respondent. It is documented in the Claimant's claim and medical records. The court and the respondent have been grossly negligent and aggravating in continuing to send him communications and violations to his rights which are extremely distressing and incredibly dangerous to his mental health. The court was clearly informed that a delay to this case is unacceptable as:

1. The case is taking a serious toll on the Claimant's mental health, who has been sectioned twice because of the respondent. Any delays would be seriously detrimental to the Claimant's mental health and substantially increase his losses; and
2. The delay was unacceptable and incompatible with Article 6 of the European Convention on Human Rights in that it is unacceptably delaying the case, preventing a fair trial and having a significant detrimental impact on the Claimant's health and privacy and family life; and
3. The Claimant is unrepresented and it is grossly unfair for the Respondent to delay the case in the way they did, and on the balance of probabilities this was a strategy by the Respondent to frustrate the case so that the rulings would be in the Respondent's favour.

What the Respondent has done to the Claimant is utterly disgusting and appalling. Allowing racial bullying to the point that someone is given a nervous breakdown, and standing with the oppressor who has white privilege is unacceptable. Going on to violate the Claimant's privacy and dignity and stealing thousands of pounds from the Claimant is unacceptable. Taking advantage of the Claimant's poor state of mental health - caused by the Respondent - to get away with the transgressions they committed, is unacceptable.

The court has been told on several occasions and has been offered medical evidence that this case is having a substantial impact on the Claimant's mental health. Additionally, he is now a serious heart attack risk despite only being 30 years old due to the extreme stress he is under because of the racial abuse and injustice he has faced from white people. In the last year:

1. In Belfast he has had a firebomb thrown at him by an English man; and
2. He has been spat on on a bus in London; and
3. He was pushed in front of a train at West Ham Station; and
4. His hand was broken permanently in a hate crime in April 2020; and
5. He has had other incidents of hate crimes towards him.

These matters have been reported to the police, who have not taken sufficient action to grant Kareem justice, including for the two acts of attempted murder. With regards to point three, we



understand that the police officer was dismissed for racism and attempted to cover up the assault due to corruption and this is being investigated by the Mayor's office.

The court and respondent has been made aware on several occasions of the Claimant's vulnerable mental state, which is exacerbated by continued racial abuse and injustice he faces. The court and the Respondent have continued to attack him and show bias towards him, and showing no regard for his mental state, which violates his human right to a fair trial, effective remedy, and to not be discriminated against: be it due to his ethnoreligious groups or his disability, being CPTSD.

In particular, the court's willingness to unlawfully delay the hearing further, which was also against the public interest, caused significant psychological distress to the Claimant.

Both parties are hereby advised to show respect when dealing with the Claimant and to not be manipulative or abusive towards him.

We fully expect for the case to continue to trial and for all parties involved, including the court, to protect the Claimant's right to a private life with regards to his struggle with mental health caused by the Respondent and to not discriminate against him or purposefully trigger him to meet a corrupt agenda.

We will refer the matter all the way to Brussels should we need to, however we all appreciate that the Claimant's threats are not empty threats and we are all concerned, myself included, that in the vacuum of justice, he will self immolate.

You have been advised previously to not contact the Claimant directly for the reasons above, but you both refused. Please continue to address emails to me and I will pick them up on behalf of the Claimant, until such a point that he is well enough again to continue.

Mehmet"

31. Certain things are noticeable about this letter. First, the extensive allegations about the claimant's behaviour made in Ms HO's letter of 5 May 2021 are not denied although, if they were untrue, it would be the easiest thing in the world to state in this email that they were untrue. Secondly, no remorse is shown about the offensive emails already sent to the tribunal and there is nothing in the letter which either explains why the claimant wrote those emails or gives any assurance that this sort of behaviour will not be repeated. There is a reference to an alleged disability (CPTSD), but no medical evidence is provided to evidence that disability and there is no suggestion that the claimant's behaviour in writing such offensive material was in anyway caused by or contributed to by any disability he may have. The email is essentially stressing what the author sees as the importance of the claimant's case and the importance of it being heard, without in any way addressing the way the claimant has been conducting the litigation, which is the reason why the tribunal was considering striking out his claim.

32. Finally, whilst I am not in any case aware of any previous request by the claimant that the tribunal should not contact him personally, such a request would be impossible in the context of the claimant carrying on this litigation in the absence of the claimant being represented. However, no one was on the record as representing him and it is impossible for the tribunal to treat "Mehmet" as a representative in the absence of knowing who he is or any details about him or having anything from the claimant clearly confirming that the claimant has given Mehmet authority to act on his behalf.

33. Having said that, given that the email concludes saying that emails can still be addressed to the karim.dakhama2@gmail.com email address and that

Mehmet will look at them in order to avoid exacerbating the claimant's health problems, I considered that using this address was the only practical course of action for communicating with the claimant going forwards; using post would presumably mean the communication going directly to the claimant (which Mehmet had stated was undesirable) and it is in the nature of personal email addresses that, if someone else was indeed monitoring the claimant's email address, it was more likely than not to be with the claimant's permission. In the circumstances, continuing to use this email address was the only practicable solution and the course of action which Mehmet, via the claimant's email address proposed.

34. On 2 June 2021, on my instruction, the tribunal therefore wrote to the parties as follows (using the karim.dakhama2@gmail.com email address in the case of the claimant):

"Employment Judge Baty has asked me to write as follows:

On 27 April 2021, the tribunal wrote to the parties stating that Employment Judge Baty was considering striking out the claimant's claim on the basis that the manner in which the claim was being conducted by the claimant was scandalous, unreasonable and/or vexatious. In summary, this was because of the offensive and utterly unacceptable emails sent by the claimant to the tribunal on 1 and 13 April 2021. The claimant was informed that, if he wished to object to that proposal, he should, by 10 May 2021, give his reasons why in writing or request a hearing at which he could make them.

In the meantime, the tribunal on 5 May 2021 received an email from the respondent, which was copied to the claimant. In it, the respondent set out its support for the striking out of the claim and also set out a long list of alleged written and verbal communications from the claimant to the respondent, its employees and its representatives, over the course of 2021, which are similarly offensive to the communications made by the claimant to the tribunal. It included a bundle of evidence in support of the allegation that the claimant made these communications.

No reply to the tribunal's letter of 27 April 2021 was received from the claimant by 10 May 2021.

However, on 20 May 2021, the tribunal received an email, which was copied also to the respondent's representative, from someone who referred to himself simply as "Mehmet" and who stated simply that he was "assisting [the claimant] for a short period of time". The email was, however, sent from the claimant's email address; no separate email address or other contact details were given by Mehmet.

In that email, Mehmet begins by stating "*I would firstly like to state clearly that we neither confirm nor deny the malicious accusations made by [Ms HO], Respondent, on 5 May 2021. We also wish for these to be struck out as they have not properly been substantiated nor correctly served, and are malicious in nature and will prevent a fair trial from taking place*". He then states that "*The Claimant has informed the court and the Respondent on several occasions that he now suffers from severe Complex Post Traumatic Stress Disorder, and communications can be triggering for him. This has been caused by the Respondent. It is documented in the Claimant's claim and medical records. The court and the respondent have been grossly negligent and aggravating in continuing to send him communications and violations to his rights which are extremely distressing and incredibly dangerous to his mental health.*" He then, amongst other things, goes into further details about the claimant's claim and insists that the case needs to be heard, complaining that the previous preliminary hearing was postponed at the respondent's request, and makes various criticisms of both the respondent and the tribunal. He does not address the issue of the claimant's offensive emails of 1 and 13 April 2021. Mehmet concludes the email with: "*You have been advised previously to not contact the Claimant directly for the reasons above, but you both refused. Please continue to address emails to me and I will pick them up on behalf of the Claimant, until such a point that he is well enough again to continue.*"

This puts the tribunal in a difficult position: on the one hand, Mehmet insists, as the claimant has done previously, that the litigation should continue to trial; on the other hand, he insists that the claimant should not be contacted directly. Unless the claimant has instructed others to act on his

behalf, these two demands are incompatible. **If it is proposed that Mehmet should act as the claimant's representative, he must provide his full name and contact details to the tribunal and the claimant must provide written confirmation that he wishes Mehmet to act on his behalf.** Without this, the tribunal cannot continue to correspond with a third party of which it knows nothing and without knowing whether or not that third party has authority from the claimant to act on his behalf.

However, for present purposes, this communication is sent by email to the claimant's email address on the assumption that Mehmet will be, as he puts it, picking it up on behalf of the claimant, thereby ameliorating the effect which Mehmet says that receiving certain communications may have on the claimant. I assume that this is what Mehmet intended; indeed, without doing this, the tribunal has no way of communicating with the claimant at all and could not therefore progress the litigation. I would also add that I was not aware of any previous request that the claimant not be contacted directly.

I have checked the claim form and, notwithstanding Mehmet's assertion, I cannot see a reference to the claimant suffering from "severe Complex Post Traumatic Stress Disorder", or that "communications can be triggering for him". Indeed, I have not seen any other documents referring to this or indeed the medical records which Mehmet refers to. It is possible that such things have been sent previously to the tribunal and have not been put before me; the parties may be aware that, during the pandemic, the tribunal building has been shut for long periods and our staff have not had full access to their systems; however, I have not seen anything. I have certainly not seen anything which suggests that any condition which the claimant has might be responsible for the offensive and utterly unacceptable communications which he sent to the tribunal or those the respondent maintains were made to it.

**I am therefore still considering whether to strike out the claim for the reasons set out in the tribunal's letter of 27 April 2021. However, I am also now considering whether to strike it out for two further reasons as well: a) on the basis that the manner in which the claim has being conducted by the claimant was scandalous, unreasonable and/or vexatious, due to his communications to the respondent, its employees and its representative, as detailed in the respondent's email of 5 May 2021 and its attachments; and (b) on the basis it is no longer possible to have a fair hearing.** In particular, in relation to the latter, even if there is medical evidence which shows that the claimant's offensive behaviour is as a consequence of any medical condition which he has, the tribunal will need to balance this against whether a fair trial is possible if communications of this nature are a realistic possibility going forwards, taking into account not just the rights of the claimant but also the rights of the respondent and its employees and representatives as well as the tribunal and its staff.

As noted, the claimant has not addressed the issue of his communications to the tribunal of 1 and 13 April 2021, nor indeed has he addressed the issue of the alleged communications referred to in the respondent's email of 5 May 2021, with Mehmet stating that the claimant neither confirms nor denies them.

**Therefore, if the claimant wishes to object to the proposal to strike the claim out on the three grounds referred to in this email above, he should, by 29 June 2021, give his reasons why in writing or request a hearing at which he could make them. If he wishes to object to the proposal, the claimant is advised as a minimum to forward medical evidence which demonstrates that the claimant has a disability; and that this disability manifests itself in his making communications of the type sent to the tribunal of 1 and 13 April 2021 and as detailed in the respondent's email of 5 May 2021; and what adjustments can be made, by the tribunal or otherwise, to enable the claimant to participate properly in the employment tribunal proceedings, including in terms of his behaving acceptably and not communicating in the offensive way he has done."**

35. The tribunal staff member who sent this email on my behalf then immediately received a bounce back email from the karim.dakhama2@gmail.com email address as follows:

**"Subject:** This email address is now closed Re: 2203747/2019 Otmane v Crowe U.K. LLP

This email address is closed."

36. However, on 24 June 2021, the claimant sent a further email to the tribunal (he in fact sent two emails but they were identical; neither was copied to Ms HO). That email came, however, from a different email address: karim.dakhama@yandex.ru. In that email, the claimant stated that certain information contained in it was provided to the tribunal in confidence and that this information should not be shared with any other party, including but not limited to any state agency or the respondent. Due to the claimant's own express request, therefore, this email was not forwarded to the respondent nor have I set out its contents here. Nor is it necessary to set out the contents of that email as they have no bearing upon my decision. All that it is necessary to do is to mention a few points which arise in relation to that email which are relevant to this decision, which I do the three paragraphs below.

37. The email does not address the offensive communications of 1 and 13 April 2021 which the claimant sent to the tribunal or the offensive communications which he allegedly made to the respondent, nor does the claimant provide any reason why he made those communications or any assurance that such communications will not occur again in the future.

38. The email contains a reference by the claimant to "the court has directed me to provide medical records". Although this statement does not entirely accurately represent what was set out in the tribunal's email of 2 June 2021, it is nonetheless evidence that, despite the bounce back from the karim.dakhama2@gmail.com email address, it is highly likely that the claimant had in fact received and seen the tribunal's email of 2 June 2021.

39. In the email, the claimant stated "I should only be contacted through this email address"; i.e. the karim.dakhama@yandex.ru email address.

40. On my instruction, the tribunal then wrote to the parties on 5 July 2021. For the claimant, the email was sent to the karim.dakhama@yandex.ru email address only (as the claimant requested in his email of 24 June 2021). Furthermore, although it was likely from the claimant's email of 24 June 2021 that he had seen the tribunal's email of 2 June 2021, a further copy of the email of 2 June 2021 was attached just in case. The tribunal's 5 July 2021 email was as follows:

"Employment Judge Baty as asked me to write as follows:

Attached is a copy of the email sent by the tribunal to the parties on 2 June 2021. The tribunal received a bounce back from the email address it used for the claimant in sending that email [karim.dakhama2@gmail.com](mailto:karim.dakhama2@gmail.com) (which was the email address previously given by the claimant and which was therefore on the tribunal's records).

However, the claimant has since sent 2 emails to the tribunal on 24 June 2021 using a different email address [karim.dakhama@yandex.ru](mailto:karim.dakhama@yandex.ru). These emails were not copied to the respondent and were stated by the claimant to be for the tribunal only; the claimant should of course be copying everything he sends to the tribunal to the respondent; however, those emails were not relevant to and did not address the issues of the tribunal's email of 2 June 2021; what is important is that they were from a different email address which the claimant stated is the only email address on which he should be contacted. We have therefore updated our records accordingly.

The claimant should read the tribunal's email of 2 June 2021 carefully and in full. However, as the claimant may not yet have seen the tribunal's email of 2 June 2021, he has a further 28 days from the date of this email to take the action set out in the last paragraph should he choose to do so (i.e. by 30 July 2021). I have therefore set out below the last paragraph of that email containing the new deadline, so that he is in no doubt:

**“Therefore, if the claimant wishes to object to the proposal to strike the claim out on the three grounds referred to in this email above, he should, by 30 July 2021, give his reasons why in writing or request a hearing at which he could make them. If he wishes to object to the proposal, the claimant is advised as a minimum to forward medical evidence which demonstrates that the claimant has a disability; and that this disability manifests itself in his making communications of the type sent to the tribunal of 1 and 13 April 2021 and as detailed in the respondent’s email of 5 May 2021; and what adjustments can be made, by the tribunal or otherwise, to enable the claimant to participate properly in the employment tribunal proceedings, including in terms of his behaving acceptably and not communicating in the offensive way he has done.”**

41. On 30 July 2021, the claimant sent the following email to the tribunal, copied to Ms HO, from the karim.dakhama@yandex.ru email address:

“Dear Sirs,

Please note that I am still formulating my response to the order by Judge Batty due today, 30/07/2021. I am trying my best to comply with the order by midnight.  
Karim”

42. On 31 July 2021, the claimant sent the following email to the tribunal, copied to Ms HO, again from the karim.dakhama@yandex.ru email address:

“Dear Sirs,

I write in respect of the order in relation to the above claim made by Judge Baty which is due today.

I neither confirm nor deny any accusation made in relation to said order.

There is so much I want to say in this matter but I simply am unable to. I cannot explain why. I should have someone advocating for me but I have no one and I am dealing with this myself when I should not be dealing with it.

I was subject to horrible racist abuse by [LT] and [AT] at Crowe. I was then fired when I reported it and my some of my last months pay, holiday pay, and notice pay was taken. [LT] has all the privileges of the world. I have none. She knowingly abused her position of privilege to oppress me and used my structural disadvantages to oppress me. No matter what I do in life I am always abused by people and always the victim but I never get justice and it is breaking me down completely. I never ever did anything in my life to hurt anyone and I have had such a terrible life. Really really terrible. Yet time and time again people with privilege keep going out of their way to hurt me and I cannot cope.

No one cares. I don't have parents to call me and say how my day went. I have no one to find a lawyer for me or do one thing for me to take something off my back.

Complying with this order has caused me significant distress. I have been attempting respond to the order for a few weeks now however I have been unable to do so due to the serious distress thinking about my oppression and injustice I have faced which caused by the respondent, I haven't slept more than an hour a night for the last four days because of this and I developed a sever chest infection because of being so run down (I have sever asthma). I am writing this with extreme fatigue in addition to the lack of sleep, and a light fever.

I am constantly attacked, abused, and discriminated against without injustice and always made out to be the the oppressor, as in the case of this case. I cannot take any more. It is so distressing and I lack the ability to communicate what I am going through and it is so very horrible.

**Reasons why I object to the striking out**

My case is in the public interest. [LT] was racially abusive to me. She has all the privilege in the world. She went to private boarding school, has white privilege, is bourgeois. I spent my childhood abused, neglected, and sleeping on the streets. Indeed I was supposed to be taken into care but because of trouble they didn't want to get involved. .... I fought against every fight to get to where I am today and at every step someone is there oppressing me.

My case is in the public interest. I was a victim of racial abuse from [LT] who has structural advantages afforded by society whereas I have structural disadvantages. She used those against me. This is not the society we should live in. I reported her to HR with a bullying book. HR stole my bullying book and coerced me into dropping my complaint and promised I won't work with her

again. The following Monday I was made to work with her and she then made a fake complaint about me and I was treated differently. I was immediately sent home. It was so shameful and I was the victim, yet they used my structural disadvantages against me. That I am a scary fat hairy muslim guy who of course must oppress women.

The respondent refused my requests for a meeting by phone or on neutral grounds and ignored my doctors letter about this. They fired me despite me doing nothing wrong and inconsistencies in my treatment verses [LT] who I had complained about first. They agreed to pay me my notice pay and let me get on with my life. Whatever. I just wanted to move on with my life, but [AT], hating muslims, took it upon herself to oppress me further by refusing that payment despite it being agreed. Once again I was a victim of discrimination by people of privilege. Once again I had no recourse. The structure of society let her do this to me. And of course the default position is I am hated by society, she and [LT] is not. There is already a bias towards me by everyone no matter where I go and I am hated everywhere for who I am. That is my life. What happened was incredibly distressing and unfair. I don't know why people can be so nasty and not even feel guilty about it, It is so difficult to just be hated for who you are.

It wears me out that people do this kind of thing without even feeling some sense of guilt.

My case is in the public interest to be heard because I am every minority and have every disadvantage and I am being exploited and abused by people of privilege who have so unashamedly broken the law.

Secondly, I am suffering from a disability now caused by the respondent's actions. I am unable to work and I receive disability benefits from this (attached). I have attached a doctors letter who you can summon to give evidence on this matter. I was also hospitalised.

Crowe was the straw that broke my back and when I get triggered thinking about the injustice I either violently self harm or lash out (because there was no warning that you was sending me something distressing). I also have Dyspraxia which makes it difficult to manage emotions normally. Now while I am suffering it is even harder. I have no support network and I am venerable. I don't have a copy of my full report but it is in the bundle. I attached the pages I have.

I cannot be discriminated against because of the sever psychological distress I am under. Especially given this forum and the fact that this disability is an underlying matter in my claim.

I have asked several times to not be contacted but this has not been entertained. I have provided letters from my doctor about this. But it is not entertained. I find it distressing that the court to me at least does not seem neutral in its actions. Denying the case earlier really messed me up in the head. This has been going on for two years. I cannot cope with the injustice. It is causing me serious detriment and harm and it is dragging on forever. Two years already it is killing me. I have said this but no one cares. I do not have anyone to help me. I need this over and done with because I cannot cope with this hanging over me. All I asked for was my salary paid, as agreed. The respondent has unlimited resources. all they need to do is pay for a lawyer and forget about everything. me the victim I just have this hanging over me every day. And after waiting months and months you tell me that my hearing is cancelled because the Respondent who has violated me made other plans that day. It is consuming and extremely distressing. Especially as I have to prepare mentally for the case and I know that even though I am the victim and in the legal right, there is a high chance I will lose because of the way things work. I am also a very private person and having all my oppression aired in public is so unbearably distressing and I have no one to help me.

I honestly would not be able to cope should my salary not paid for me. I think it would be the final straw. There are many final straws and I am doing the best I can.

Article 6 of the European Convention on Human Rights grants me a fair trial. I am the victim and there is a big disparity in power and resources between the Respondent and I. Article 13 effective remedy and article 14 discrimination. It is the respondent's actions of discrimination which caused me to become messed up in the head and I cannot then be penalised for that when I attempt to address this through the proper forum, the employment tribunal. I also feel that the respondent is trying every technicality to throw out the case and deny me my right to have my case heard, and also to trigger me as a litigation technique and it is so distressing. I feel like an animal being poked in a cage.

I also find the respondent's behaviour triggering but that is an intrinsic part of this legal system, unfortunately. I just want a fair balanced trial where we each fairly present our case. That's it. Then the respondent does thing like:

1. States that they are unaware of my ethnicity/religion. Please. Show me some respect. You have to be pretty ignorant to not look at my damn face and see Islam, or to be from London and not associate my name with Islam. In the last year I've been spat on twice by English people for this and pushed in front of a train once. So is the respondent the only one in society who apparently doesn't see it?

2. They are purposefully delaying, frustrating and trying to terminate this process and I am powerless to stop these tactics which cause me to suffer so much and I feel they are being enabled by the court, despite our relative positions of power, resources, and legal knowledge.

I attempted to settle this through ACAS. The respondent refused. I kept asking again and again and they just refused. They are putting me through this and ACAS wouldn't be so unbelievably distressing to me. They stole my salary from me. Just like that. And got away with it. And caused me to suffer mentally so significantly and then tarnish my reputation because I cannot cope with that.

I am still very unwell and have no representation. There are strict time limits for things and I have already missed lots of time limits for things I need to do and this is so very distressing. I am not ready to deal with things but because of time limits I am forcing myself to and this is the situation I am in.

They can pay for lawyers with bottomless pockets and structural privilege, and get on with their lives. This consumes my life and I don't even have anyone to call me and ask me how my day went. I just so desperately want to get my salary and move on with my life. I cannot fathom why for the sake of a few thousands of pounds of notice pay are they putting me through this hell. They are choosing to do this to me. They are choosing to put me through this terrible psychological. People i have done nothing to are time and time again making conscientious decisions to cause harm to me harass me and delay my suffering. I just cant cope. And I feel so embarrassed that all my distress is being aired in public and it makes things so much worse. Everyone will know this hell I am living in the future and it is so distressing. All for the fact that the respondent stole my salary to oppress me further. A few thousands of pounds is nothing to them and they are breaking the law by withholding it from me and putting it through me. How am I supposed to deal with all of this?

Even though they caused me personal injury all I asked was for my salary so I can move on with my life but they are making things worse and worse and worse and worse and making my personal injury worse and worse.

Also the signed contract in my house says three months notice. The respondent presented a contract saying one month. I didn't even care. I just told her to pay my month notice and I would move on. But she didn't.

They are putting me through hell and all this mental anguish just for the sake of a few thousand pounds and sticking their finger up at me because I took the brave step to report the racist abuse I faced from someone who has a significant amount of structural privilege and everything handed to them in life.

it is the simple fact that I have a right to seek effective remedy through fair trial as I am a victim of open and clear racism and violations, for example openly stealing my pay. It is in the public interest for me to hear my case. I am suffering from a disability caused from the underlying facts of the case and this is the forum to hear it. If that disability manifests itself in the forum then that is an intrinsic part of the process and it doesn't invalidate my right to a trial. If anything, it demonstrates the personal injury I have faced due to the respondent. I still have a right for my case to be heard.

### **Adjustments**

You can just act neutral and take what I am going through. I asked that when I am contacted I'm first sent a warning so I can prepare for the emotional storm I may get from any communication, but no one has done this for me.

I also want reporting restrictions because I cannot cope with the stress of people knowing this hell I am going through, you need to consider my right to a fair trial and effective remedy. The principle of open justice can still be met with a restriction.

I also want to ask the respondent once again to actually engage me through acas because this is hell and I cannot take it.

Karim”

43. The claimant attached various documents of a medical nature to his email. However, none of them are relevant to the decision as to whether to strike out. One is an historic medical report from 1991; one is a confirmation of the claimant having been discharged under the Mental Health Act 1983 with effect from 16 December 2020; and the third is a letter of 2 July 2021 from a GP which simply states that “Mr Dakhama has asked me to write to explain that he has psychological difficulties that may impede his ability to attend an employment

tribunal. I confirm that that is the case.” None of these provide any evidence of any causal link between the offensive communications and any medical condition which the claimant may have.

44. Whilst the claimant in his email of 31 July 2021 makes reference to various conditions, there is firstly no medical evidence provided which evidences that the claimant has any of these conditions (beyond a single general reference in the GP letter to “psychological difficulties that may impede his ability to attend an employment tribunal”) and, perhaps even more significantly, there is no statement in the email to the effect that any of these conditions were responsible for the emails which the claimant wrote to the tribunal and his alleged behaviour to the respondents outlined in Ms HO’s 5 May 2021 letter.

45. The closest to anything like this is the reference to: “when I get triggered thinking about the injustice I either violently self harm or lash out (because there was no warning that you was sending me something distressing). I also have Dyspraxia which makes it difficult to manage emotions normally”. However, that is a long way from suggesting that the claimant’s alleged dyspraxia or any other condition caused him to behave, beyond his own control, in the extreme and abusive way evident from his emails to the tribunal of 1 and 13 April 2021 (and indeed of 27 April 2021); furthermore, no medical evidence has been provided to the effect that the any such conditions in any way caused or even might have contributed to such behaviour.

46. Finally, once again, the claimant’s email focuses on what he sees as the importance of his case and of his case needing to be heard; it does not address the offensive communications which are the reason why striking out the claim is being considered; there is no sense of any remorse on his part for the offence that his abusive communications has and is likely to have caused or any assurance that such things will not happen in the future.

## **The Law**

47. Regulation 37 of the Tribunal 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) ...;
- (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) ...;
- (d) ...;
- (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.

## **Conclusions on the issues**

48. The claimant did not at any stage request a hearing to consider whether or not the claim should be struck out on the above grounds, despite being given the opportunity to do so in various of the emails sent by the tribunal. Nor did the



respondent request a hearing. Furthermore, during the course of the timeline outlined above, both parties have been given multiple opportunities to make representations and have done so. The conditions in Rule 37(2) have been satisfied. Furthermore, I do not consider that it is necessary to hold a hearing to determine these issues nor has either party requested one. I therefore consider it appropriate to determine these issues on the basis of the parties' written representations.

49. Furthermore, I should add that, despite the different email addresses used by the claimant and the fact that on two occasions the tribunal received a bounce back from one of these email addresses, I am for the reasons set out in the factual chronology above, satisfied that the claimant did in fact receive all of the communications from the tribunal and was given adequate time to respond to them.

50. I consider each of the three grounds for strikeout of the claim in turn.

*Because the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious for the reasons set out in the tribunal's letter of 27 April 2021*

51. There is no question that the claimant conducted the proceedings in a way that was scandalous, was vexatious and was unreasonable by sending the emails of 1 April and 13 April 2021 to the tribunal. Those documents speak for themselves.

52. There was no ground for any critical comment by the claimant at all, let alone the offensive comments which these emails contained; they were sent in response to an absolutely run-of-the-mill decision to postpone a preliminary hearing by a few weeks in circumstances that didn't prejudice anyone. As anyone can see from the contents of these emails, they contain some of the most offensive language imaginable. They contain remarks and phrases which are variously sexist, racist and threatening, which is all the more offensive in the context of a claimant who is bringing claims of discrimination, including on the grounds of race and sex. The sexist remarks are of even greater offence given that the two individuals at the respondent who are the subject of the claimant's ire are both women; furthermore, at least one of the racist remarks is directed to LT's Chinese or perceived Chinese ethnic origin. These comments are therefore particularly personal as well as offensive.

53. It is absolutely unacceptable that any individuals should have to put up with and be subjected to language of this nature. That includes tribunal staff and judges who have had to deal with this correspondence. Furthermore, whilst I appreciate that the claimant did not copy these two emails to the respondent, in breach of Rule 92 of the Tribunal Rules which requires parties to copy each other in on correspondence they send to the tribunal, the tribunal was in those circumstances bound to forward the emails to the respondent. Such remarks are likely to have been even more offensive and personal to those at the respondent, in particular Ms LT and Ms AT.

54. As the relevant scandalous, vexatious and unreasonable conduct has taken place, I therefore need to consider whether or not I should exercise my

discretion to strike out the claim on these grounds. In doing so, I take into account the following factors.

55. First, the nature of this unreasonable conduct is at the extreme end of what is unreasonable. In all my experience as an employment judge, I have never experienced anything like this.

56. Secondly, I have seen no evidence to suggest that this sort of behaviour will not happen again. If anything, the contrary is true. Despite the tribunal strikeout warning email of 27 April 2021, the response from the claimant was another series of abusive emails containing foul language and racist and sexist comments. In addition, there is the long list of similar behaviour detailed in the letter of 5 May 2021 from Ms HO, which went on over a period of months. I appreciate that there are some other emails from the claimant which do not contain such language and which are written in more moderate language, including his most recent email of 31 July 2021. However, there is no guarantee that the claimant will not descend to this abusive language in future, particularly when or if decisions, and even minor decisions at that, do not go the way that he wants.

57. Thirdly, the fact that throughout his emails to the tribunal, the claimant has displayed no sense whatsoever of the offence that these communications have and are likely to have caused and no remorse for his shocking actions is deeply concerning both in its own right and because it is a further indicator that this sort of thing is likely to happen again; there is no evidence before me that the claimant even sees what he has done as being wrong or in any way problematic, let alone that he sees it for the appalling abuse that it is.

58. Fourthly, there is no evidence before me that, for some reason, the claimant could not control himself when it came to writing abusive communications of this nature. Despite the multiple opportunities which the letters from the tribunal sent under my instruction gave him in terms of asking whether there was a reason for this language, including potentially a medical reason, there has not been a direct assertion that the claimant could not for whatever reason help himself from writing these things. As already noted above, the highest that it gets is his suggestion that “when I get triggered thinking about the injustice I either violently self harm or lash out (because there was no warning that you was sending me something distressing). I also have Dyspraxia which makes it difficult to manage emotions normally”; however, he does not state that his dyspraxia or any other condition causes him in certain circumstances to write abusive emails of this shockingly extreme nature or that he himself can’t control his doing so in such circumstances; nor does he provide any medical evidence to this effect. I cannot therefore conclude that his carrying out these actions was beyond his control or that he could not help himself from doing this. He remains responsible for his own actions in this respect.

59. Finally, I do not consider that the threats by the claimant to set himself on fire if he did not get justice as he saw it are a reason not to strike out the claim. It cannot be the case that any litigant can divert judicial decisions in the direction that that litigant wants simply by making serious threats to the tribunal of actions which he says he will take if he does not get his way. Notwithstanding the fact that this particular threat has been made repeatedly by the claimant on a multiplicity of occasions over the course of at least a year (and not just in this

tribunal litigation), both the respondent and the tribunal took that threat seriously enough to inform the police. However, changing judicial decisions because of such threats is an entirely different matter and cannot be acceptable.

60. For all these reasons I have little hesitation in concluding that I should exercise my discretion and strike out the claim in its entirety on these grounds. It is of particular concern that the respondent and its witnesses should have been subjected to the claimant's extremely offensive behaviour up to now and that there is no guarantee that this will not continue going forwards.

*Because the manner in which the proceedings have being conducted by the claimant was scandalous, unreasonable and/or vexatious, due to his communications to the respondent, its employees and its representative, as detailed in the respondent's email of 5 May 2021 and its attachments*

61. I first need to make a finding of fact as to whether the behaviour of the claimant alleged in Ms HO's email of 5 May 2021 took place or not.

62. First of all, the sheer volume of evidence that this behaviour took place is overwhelming. Not only are there the 11 sections in the letter itself but these are backed up by contemporaneous evidence in the bundle provided with that letter. In addition, the type of behaviour and the sort of language used by the claimant to the respondent and its witnesses and to Ms HO herself is entirely consistent with the type of language which I have personally seen in his communications to the tribunal. Finally, on two occasions, firstly through Mehmet in the email of 20 May 2021 and secondly himself in his email of 31 July 2021, the claimant simply said that he neither confirmed nor denied the accusations. He could quite easily have said that none of the things set out in the 5 May 2021 letter happened, but he did not. The inference I draw from those guarded remarks is that the matters alleged did in fact happen.

63. For all of these reasons, therefore, I find that all of the allegations as set out by Ms HO in the email of 5 May 2021 happened.

64. Again, for the reasons set out in the section above, the claimant's conduct of the litigation in this way is quite clearly scandalous, vexatious and unreasonable, and it is at the most extreme end of that scale. The only difference is that this conduct is even worse in the sense that there is even more of it, it took place over a longer period and it is directed directly at the respondent's witnesses and indeed its representative. As that conduct is proven, I then need to go on to consider whether to exercise my discretion to strike out the claim on this ground.

65. My reasoning for doing so is the same as my reasoning for doing so in relation to the first ground for strike out set out above. I do not repeat that reasoning here but it applies equally to this ground for strike out as well. I therefore strike out the claim in its entirety on this ground as well.

*On the basis it is no longer possible to have a fair hearing*

66. In relation to the final ground for striking out the claim, I note that the respondent and its witnesses have already suffered a considerable amount of abuse from the claimant, much of it of a racist and sexist nature. Proceedings

cannot be conducted fairly if it is permitted for one party to be subjected to this type of abuse. There has, therefore, already been great unfairness in these proceedings due to the behaviour of the claimant to the respondent, its witnesses and its representative, albeit this was unknown to the tribunal until it received the email of 5 May 2021 from Ms HO.

67. Future conduct of the proceedings and any trial conducted under these conditions would clearly be unfair and, as I have already indicated, for the reasons set out above, there is no guarantee that the claimant would desist from this type of behaviour in future; indeed, the sheer volume of abusive material indicates that the contrary is more likely. I do not, therefore, consider that it is possible to have a fair hearing. I appreciate that the claimant is prejudiced in no longer being able to pursue a claim about which he feels very strongly; however, the prejudice to the respondent of having to defend the claim in circumstances where the claimant subjects it, its witnesses and its representative to such shocking tirades of abuse, including of a racist and sexist nature, is far greater. I therefore have no hesitation in exercising my discretion and striking out the claim on this ground as well.

68. I would add that the fact that tribunal judges and administrative staff also have to put up with reading such material is a further reason as to why a fair hearing is not possible; this sort of behaviour is not fair on them either. That is a further reason why a fair hearing is not possible and why I consider the claim should be struck out on this ground.

#### Further finding

69. Finally, I have made findings already that the claimant was responsible for his actions in conducting these abusive communications, as there was no evidence before me to prove that making them was beyond his control such that he could not be held responsible for his actions. If that had not been the case and conducting these communications was indeed beyond his control for medical reasons, I would not have struck out the claim on the first two grounds. However, I would still have struck it out on the third ground, that it was no longer possible to have a fair hearing. Indeed, in such circumstances, the grounds for striking out for this reason would be even stronger as, if the claimant was unable to control this behaviour, a repeat of it would be almost inevitable, with the result that a continuation of the litigation would be tantamount to guaranteeing that the respondent, its witnesses, its representative and the tribunal would be subjected to unacceptable abuse in preparation for and at any hearing of the claim; in those circumstances a fair trial would be utterly impossible.

#### Other Matters

70. I thought a great deal about whether or not I should include in full in these reasons the abusive comments made by the claimant which are the basis for the decisions which I have made to strike out the claim. I am deeply conscious that the language used is incredibly offensive and that anyone else who reads these reasons will also be reading that language. However, I am equally conscious that the higher courts for good reasons scrutinise employment tribunals particularly thoroughly when they choose to exercise their powers of strike out. On balance, I felt that it was more important that the comments should remain in full so that anyone reviewing these decisions feels the full impact of the offence

of this behaviour and understands completely why I have in this instance exercised my discretion to strike out the claim. I have therefore left them in full, with the exception (as explained next to the relevant emails above) of replacing two of the most offensive words used with a letter plus a series of asterisks so that readers know what the words used were but without having to read them themselves.

71. Finally, I apologise to the parties for the delay in producing this decision and the written reasons for it.

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7 December 2021

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Employment Judge Baty

JUDGMENT SENT TO THE PARTIES ON

.08/12/2021.

FOR THE TRIBUNAL OFFICE