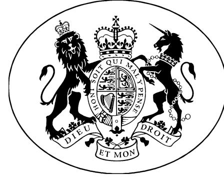

EMPLOYMENT TRIBUNALS

Claimant: Mr S Leigh
Respondent: Whitbread Group PLC

JUDGMENT OF THE TRIBUNAL AT A PRELIMINARY HEARING

Heard at: Croydon (by video) **On:** 9th April 2021

Before: Employment Judge A Richardson

Appearances
For the Claimant: In person
For the Respondent: Mr Powis, Solicitor

JUDGMENT

The Judgment of the Tribunal is that

(i) The claim form was filed out of time and it is not just and equitable to extend time for the claims sex discrimination and disability discrimination.

(ii) The tribunal has no jurisdiction to hear a claim of unfair dismissal.

(iii) The claim of disability related harassment in June 2019 under S26 Equality Act 2010 is in time but has no reasonable prospect of success and is struck out under Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

(iv) The monetary claims are the subject of further case management.

REASONS

Issue

1. The issue to be determined is whether the Claimant's application to amend his claim to include the claims of sex discrimination (direct and harassment) and disability discrimination (failure to make a reasonable adjustment and disability harassment) should be allowed. Thereafter the Tribunal is to consider whether the claims should be struck out under Rule 37 of the Employment Tribunals

(Constitution& Rules of Procedure) Regulations 2013 (Tribunal Rules) or a deposit ordered under rule 39 of the Tribunal Rules.

Proceedings and Evidence

2. The proceedings were conducted by the parties attending by video conference (CVP). It was conducted in that manner because a face-to-face hearing was not practicable in light of the restrictions imposed by the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 3) Regulations 2020 and because it is in accordance with rule 46, the *Presidential Guidance on remote hearings and open justice* and the overriding objective to do so.

3. I was provided with a bundle of documents for the purpose of the hearing. I had in addition the previous bundle prepared for the Open Preliminary Hearing conducted on 8th January 2021.

4. The claimant filed proceedings on 25th September 2019 after a period of early conciliation between 16th August and 10th September 2019. The claimant indicated on his claim form that he brought claims of sex and disability discrimination and claims of unfair dismissal, disability and sex discrimination, holiday pay and other payments.

5. The grounds of complaint did not disclose sufficient detail for the claims to be identified. The respondent made an application to strike out the unfair dismissal claim at a case management preliminary hearing listed for 27th March 2020 and applied for the claim in its entirety to be dismissed or a deposit to be ordered.

6. On 27th March 2020 the Employment Judge identified the claimant had potentially claims under S13, 15 and 20/21 Equality Act 2010, unpaid holiday and other payments yet to be identified, *subject* to the claimant providing further particulars of his claim. Directions were given. The claimant sent to the respondent some 30 separate documents, together with copies of screenshots and text message attachments, providing further details of his claim but failed to set out his claim in accordance with the written, clear instructions of the Employment Judge. The respondent legal representatives correctly took the view that it was not for the respondent to piece together the claimant's claim.

7. An Open Preliminary Hearing was listed for 8th January 2020 to determine the application of the Respondent made on 6th May 2020 for (i) the claim to be struck out for non-compliance of the Tribunal's order in accordance with rule 37(1)(c); (ii) the claim to be struck out on the grounds that it has no reasonable prospect of success, in accordance with rule 37(1)(a); or (iii) for a deposit order under rule 39 of up to £1000 in order to continue with the proceedings against the respondent because the claim has little reasonable prospect of success.

8. On 8th January 2021 the claimant's claims were discussed. It became clear that the claimant would need to amend his claim to include the claims of harassment related to sex and disability discrimination and possibly discrimination arising from disability. The claimant was directed to set out his claims in accordance with the directions of the Employment Judge on 27th March 2020. A further

Open Preliminary Hearing was listed for 9th April 2021 at which the application to amend and the application to strike out, alternatively a deposit order would be considered.

9. The respondent conceded disability on 6th May 2020. The claimant' s disability is chronic back pain.

10. On 9th April 2021 at an Open Preliminary Hearing the claimant's claims were identified as follows:

Direct Sex discrimination and harassment

(i) From 15th November 2018 the claimant was admonished in an informal warning letter dated 3rd January 2019 for being unpunctual, when a female member of staff Alex was given Christmas off by the hotel manager and was offered promotion to assistant hotel manager despite being habitually late.

(ii) November 18 – Dec 18 the claimant was excluded from a Christmas works outing which was reserved only for female staff.

(iii) Dec 18 – Feb 2019 cakes were given to female staff by the assistant manager at the commencement of the morning shift and were refused to the claimant who was finishing his night shift staff.

(iv) November/December 2018 the manager told the claimant that being night receptionist was not a man's job.

Disability discrimination

(v) From November 2018 – January 2019 the claimant was repeatedly requested by the manager and assistant manager to undertake during his night shift, additional duties such as painting, ironing, washing, cleaning, and chambermaid duties such as making beds, with the intention of harassing the claimant to make him feel uncomfortable. When the claimant refused to undertake the tasks, he was reminded that others would be brought in to do it. As a result the claimant felt his job security threatened.

(vi) 28th June 2019 a manager from another hotel telephoned the claimant whilst he was on sick leave and during the course of the conversation implied that the claimant did not have any health issues based on evidence found on social media.

Failure to make reasonable adjustment

(vii) July 2018 – January 2019 the claimant requested a replacement chair to accommodate his back condition. The manager said that he would provide a chair and when he did, the chair was worse than the original which caused the claimant ongoing pain.

Findings of fact - chronology

11. I make relevant findings of fact on the evidence before me taking into account contemporaneous documents and the submissions of the parties. Findings of fact, where disputed, are decided on the balance of probabilities.

12. The claimant commenced work with the respondent as a hotel night receptionist on 15th July 2018.

13. In about October / November 2018 a new hotel manager and assistant manager were appointed. From this point the claimant's complaints began.

14. The claimant was signed off sick in January 2019 initially with work related stress and then back pain and did not return to work before he resigned with effect on 1st September 2019.

15. Whilst absent from work, the claimant filed a grievance against his line manager on 23rd March 2019. The grievance investigation meeting was held on 2nd April 2019. Of 8 separate complaints, on 14th May 2019 the grievance hearing officer partially upheld three complaints relating to disciplinary action in respect of lateness and rostering and pay issues relating to the Christmas period, but rejected 5 other allegations including one in respect of the claimant allegedly being instructed to perform additional duties that 'could aggravate an existing, known disability' and deliberately instructing staff to make life uncomfortable for the claimant. The claimant exercised his right of appeal. The appeal hearing process was not concluded as the claimant was unable to attend/participate in an appeal hearing before he resigned.

16. There was more than one attempt to conduct a welfare telephone call with the claimant. On 28th June 2019 during a telephone welfare meeting the claimant was asked to complete an occupational health consent form and was also asked about social media posts the respondent had received from members of staff which seemed to contradict the claimant's claimed reason for his absence – his chronic back pain. The social media posts were photographs of the claimant vacuuming and digging up his garden. It appeared to the respondent that the photographs were recent. The claimant was angered by this. He alleged there had been an intrusion into his private life and a breach of the social media policy. The claimant relies on the welfare phone calls as disability related harassment.

17. Time expired for the claimant to bring a complaint about the welfare telephone call (ie to commence ACAS early conciliation) on 27th September 2019. This claim is clearly in time as the claimant contacted ACAS on 16th August 2019.

18. Because the claimant entered into early conciliation on 16th August 2019, any complaint of discrimination prior to 17th May 2019 is therefore potentially out of time. Apart from the telephone welfare meeting on 28th June 2019, the other allegations of discrimination arose before late January 2019 when the claimant was signed off work with stress and later chronic back pain.

19. The claimant contacted ACAS states that as a consequence of information provided by ACAS he resigned on 1st September 2019.

20. I heard submissions from both parties and I have read the claimant's various emails in which he has responded to the respondent's applications to strike out the claim.

21. The respondent's principal submission is that the claimant has failed to particularise his complaint adequately and it was not until 9th April 2021 that it became clear what the specific allegations of discrimination were (as set out at paragraph 10 above). They submit the claims are out of time and have no reasonable prospect of success; alternative little reasonable prospect of success. The amendments are opposed.

22. The claimant explained that despite attempting to obtain legal assistance with his claim he had been unable to do so. He had attempted to resolve the issues with his employer internally by raising a grievance and when that had failed, he turned to ACAS for advice. In particular I have read and had regard to the claimant's submissions in his application dated 31st January 2021 to amend his claim.

23. During the course of discussions about his claims at the hearing on 9th April 2021 the claimant acknowledged that some of his complaints set out in his application to amend of 31st January 2021 did not appear to have any connection whatsoever with either sex discrimination or disability discrimination. Those had did, are identified at paragraph10 above.

24. The claimant conceded that he did not suffer any detriment for his refusal to carry out additional duties such as painting, ironing or chambermaid duties.

25. It is noted that the claimant removed himself from the works Whats App group because he did not like to be disturbed by it. I note also from the grievance hearing notes, that changes made by the manager at the claimant's place of work were executive decisions to improve the running of the hotel.

26. The claimant explains in his application to amend that between May – September 2019 that a manager made a welfare call to the claimant and during the course of the phone call questioned the claimant, who had been absent from work since January 2019, about social media posts which had been sent to the respondent by some of the claimant's work colleagues. The posts showed the claimant using a vacuum and there was also reference to the claimant had been digging up his garden. This seemed to the respondent to be contradictory to the claimant's claim of a disability relating to his back pain. The claimant was angry at the intrusion and believed that his privacy had been exposed and objected to the phone call which he interpreted as doubting his honesty.

27. The claimant refused or failed to complete an OH consent form requested in June 2019 or subsequently, so that the respondent could obtain advice on assisting the respondent a return to work.

28. The appeal hearing was never concluded before the claimant resigned.

The law on time limits

29. Under s.123(1) of the Equality Act 2010 ('EA 2010') a complaint for discrimination in employment 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.

30. ET therefore has a discretion to decide whether it is just and equitable to extend time. Time limits are strict however.

31. In the case of **Robertson v Bexley Community Centre t/a Leisure Link** [2003] IRLR 434, the Court of Appeal said this, at paragraph 25:

> **"***It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.*

32. The burden was therefore on the Claimant to provide an explanation as to why he did not bring his claim within time.

33. I also refer to a more recent case **Adedeji v University Hospital Birmingham NHS Foundation Trust** which says that;
"The best approach for a tribunal in considering the exercise of the discretion under section 123(1)(b) [Equality Act] is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular, "the length of, and the reasons for, the delay".

The law on amendment of a claim

34. The law on amendment of a claim has been more recently set out in **Vaughan v Modality Partnership UKEAT/0147/20/BA Vaughan v Modality Partnership UKEAT/0147/20/BA** which sets out the context and application for the factors of **Selkent Bus Company Ltd v Moore** when considering an amendment application. They are the nature of the amendment; the applicability of time limits and the timing and manner of the application. The question of delay in making an amendment application is not a determinative factor but one that is taken into consideration in the overall consideration of the balance of hardship and injustice.

The law on striking out a claim

35.With regard to the law on striking out a claim under Rule 37(1)(a) of the Tribunals Rules as having no reasonable prospect of success, The Tribunal must give careful consideration to such an application particularly where the claim is of discrimination and there are material facts which are still in issue: **Ezsias v North Glamorgan NHS Trust** [2007] ICR 1126 CA.

36.Particular caution must be exercised in the use of the power to strike out in discrimination cases (**Anyanwu & Anor v South Bank Students Union** [2001] ICR 391), although in an appropriate case, which will inevitably vary depending on the nature of the particular issues, a claim of discrimination can and should be struck out if the Tribunal can be satisfied that it has no reasonable prospect of success: **ABN Amro Management Services Ltd & RBS v Hogben** UKEAT/0266/09/DM and **Anyanwu**.

37.More recently in **Cox v Addecco UKEAT/0339/19/AT** the Tribunal was given further guidance in striking out a claim. Essentially a Tribunal cannot decide whether a claim has reasonable prospects of success if the Tribunal does not know what the claim is. Before considering a strike out, or making a deposit order, reasonable steps should be taken to identify the claims and the issues in the claims. With a litigant in person, this involves more than just requiring the claimant at a preliminary hearing to say what the claims and issues are; but requires reading the pleadings and any core documents that set out the claimant's case.

38.Rules 37 and 39 of the Tribunal Rules are as follows:

Rule 37: Striking out

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

(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.

Rule 39 – Deposit orders
(1) Where a preliminary hearing (under rule 53) 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 £1000 as a condition of continuing to advance that allegation or argument.

39. With regard to the making of a deposit order, although that is a less rigorous test than striking out a claim for having no reasonable prospect of success, the Tribunal must still have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim. There is little guidance in the authorities as to what is meant by little reasonable prospect of success, although it was doubted in **Community Law Clinic Solicitors & Ors v Methuen** UKEAT/0024/11/LA, whether there was any real difference between little reasonable prospect of success and little prospect of success.

40. When determining whether to make a deposit order an Employment Tribunal is given a broad discretion. It is not restricted to considering purely legal questions. It is entitled to have regard to the likelihood of the party *being able to establish the facts essential to their case* (my emphasis).

41. Time for filing a complaint is set out at section 123 EqA 2010.

> "(1) 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.
>
> (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
>
> (a) the period of 6 months starting with the date of the act to which the proceedings relate, 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.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) when P does an act inconsistent with doing it, or
>
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

42. The authorities on extending time on a just and equitable basis give the Tribunal a wide discretion in deciding whether, in all the circumstances of the case, it considers that it is just and equitable to extend time. Factors to be

taken into account are whether the Claimant was professionally advised; the balance of hardship caused to the parties and whether a fair trial of the issues is still possible; the merits of the proposed claim; and the length of the extension sought.

Conclusions

43. I take into consideration the guidance given in the authorities above and I apply them to the claims, now established, following lengthy discussions at this third preliminary hearing and set out at paragraph 10 above. No one gains by a truly hopeless case being pursued to a final hearing and I note that strike out is not prohibited in a discrimination case but I note that especial care must be taken in such cases as it is very rarely appropriate.

44. In the ET1 grounds of complaint, the claimant made generalised complaints that a new manager became his line manager in about October/November 2018 and that from that point things changed. In the further information and amendment application, the claimant complained that for the next few months or so after the new manager's arrival (which could only be the months of October/November, December 2018 and up to the date in January 2019 when he went off sick), the new manager had made life difficult for existing staff, including the claimant who had been told that it was "*out with the old and in with the new*". The claimant believed the new manager wanted to be rid of the claimant and made life difficult for him with that aim. The claimant had put in a grievance on about 23rd March 2019 but considered that it had been "side stepped" and nothing done about it despite a grievance meeting on 2nd April 2019 and an outcome on 14th May 2019. In fact the grievance hearing manager partially upheld three claims relating to rostering and pay over Christmas, and dismissed the remaining five claims including the complaint about the claimant being asked to do tasks which would aggravate his back condition. One of the grievances rejected was the claimant's complaint that he had been asked to sit in the dark.

45. The respondent disputes the claimant's interpretation of events such as not being offered a cake at the end of his shift; of being excluded from a works party; of not being promoted. They say that the claimant didn't apply for promotion. He deleted himself from the works Whats app group and therefore excluded himself. That cakes were bought by the assistant manager for the day shift at the commencement of their shift. The claimant was never punished for refusing to undertake additional duties – this the claimant conceded.

46. The first issue to be determined is whether and to what extent the original claim is out of time and the effect of that on the amendment application. There are in effect two applications to extend time within the claimant's application to amend his claim. The first relates to the date the ET1 was filed. The second to the lateness of the amendment application.

47. It is now clear that the ET1 filed on 25th September 2019 was filed out of time in respect of all of the claims in the grounds of complaint up to late January 2019, such as they are, apart from the complaint that the claimant was harassed by welfare calls in June 2019 with particular reference to the call on

28th June 2019. There is a discretion to extend time for the ET1 claims on a just and equitable basis, but time limits are strict and it is the exception not the rule that time is extended on a just and equitable basis. It is for the claimant to persuade the tribunal to extend time: **Robertson v Bexley Community Centre t/a Leisure Link**.

48. The consideration of an extension of time for the original claim requires an assessment of what is just and equitable. There are two phases of delay. The first being late January 2019 to the grievance outcome on 14th May 2019. During that period of time, the claimant filed a grievance and received the grievance outcome rejecting his claims of disability discrimination relating to being asked to undertake tasks which aggravated his back condition.

49. The second phase is from the date of the grievance outcome, the date of the claimant's knowledge that his employer did not agree with him and did not uphold the majority of his complaints, and his first contact with ACAS on 16th August 2019.

50. The claimant explained that he had not acted immediately on the outcome of his grievance on 14th May 2019 because he was trying to deal with his complaints internally. The claimant's appeal hearing was delayed for several months because he was unable to attend an appeal meeting despite the respondent's attempts to arrange a meeting. Even taking the outcome of the grievance meeting as the date at which, the claimant knew that his complaints about his line manager's conduct towards him had largely been rejected, he did nothing to establish what his employment rights were. After the welfare phone call in late June 2019 the claimant's relationship with the respondent clearly broke down, as ascertained by his angry and indignant reaction to that phone call and the failure to return the OH consent form. He alleged there had been an intrusion into his private life and a breach of the social media policy. It took another two weeks before the claimant contacted ACAS.

51. The claimant said that he had attempted to obtain legal advice, but he could not afford it. In this day and age of readily accessible information on the internet, it was unreasonable that the claimant did not attempt to inquire or research his employment rights. Googling employment tribunals, unfair dismissal or disability discrimination brings up immediate access to a wealth of information on employee rights. The Citizens Advice Bureau website gives step by step guidance on bringing a tribunal claim including time limits; ACAS is also readily available by phone or through their web pages which are a source of information to the litigant in person, together with the back up of a help line. The claimant could and should have contacted ACAS or CAB earlier; he could and should have done some research on the internet much, much earlier than the date on which he first contacted ACAS. It should have occurred immediately after the outcome of his grievance *at the latest*. When asked, the claimant said he did not know why he had waited until mid August 2019 to contact ACAS.

52. The claimant was able to participate in a video hearing and therefore I have no doubt that he would have been able to do on-line research into his employment rights. This lack of promptness in pursing his employment rights and the failure to take professional advice from free sources once he became aware

that his grievances had been rejected, are a contributory factor to refusing an extension time, together with the length of delay In the circumstances the reasons for the delay as set out in paragraphs 50 and 51 above and the length of the delay – 7 months (from late January to contact with ACAS mid August 2019) render it not just and equitable to extend time.

53. This excludes the allegation of disability related harassment by the welfare telephone call on 28th June 2019 which is clearly within time.

54. I then consider the amendment application. The claims in the original ET1 grounds of complaint were inadequately pleaded and had little meaning until the further information was provided and the amendment application made.

55. The amendment application of 23rd February 2021 expanded the claims. The claim is now pleaded that the claimant was repeatedly asked by the manager and assistant manager to undertake, and he repeatedly refused to undertake, additional tasks such as painting and cleaning during his night shift. This is an illustration of his original pleading that the new manager and assistant manager deliberately made life difficult for the claimant. These repeated requests and the threat that other persons could be brought in to do them, essentially caused a hostile environment for the claimant. Further examples of this were the claimant's claims that he was admonished for being unpunctual, when a female member of staff, Alex, was not, despite her being allegedly habitually late. The evidence shows that the hotel manager was unaware of this and asked the claimant to provide the information. Alex was, to the claimant's chagrin, offered promotion to assistant hotel manager and the claimant was not. He considered that to be direct sex discrimination despite not applying for the role of assistant manager. There was no evidence whatosever, oral or documentary, that the claimant wished to be promoted out of his night reception role. Nevertheless, the claimant considered this preferential treatment for a female member of staff without any analysis or knowledge of the merits of the appointment. Furthermore, the claimant alleges that his exclusion from the Christmas works outing and being refused a cake at the commencement of the day shift, when he was concluding his night shift were examples of his exclusion because of his sex. These are also examples of unwanted conduct – they are illustrations of what the claimant describes as sexual harassment.

56. With regard to the disability issues, the claimant claims that the failure to provide a suitable chair was a failure to make reasonable adjustment. The alleged repeated requests to undertake physical work (painting, cleaning etc.) which was not in his employment contract, and which he was physically unable to do because of his disability of chronic back pain, is also potentially disability related harassment. These allegations were not in the original ET1 grounds of complaint.

57. The complaint about the chair was not raised with the respondent until the claimant provided further and better particulars on 16th/17th April 2020. The information could have been included in his original ET1. The complaint about being asked to undertake physical work (painting, ironing etc.) was raised in the grievance in March 2019 and rejected in the grievance outcome in May 2019. Again, these allegations could have been included in the original ET1.

58. When considering the balance of injustice and hardship, the delay in bringing an amendment application is not necessarily fatal to granting an amendment. It is necessary to take into account what the claimant would have pleaded had he been professionally advised at the time he filed his ET1. Had the claimant been professionally advised at the time he filed the ET1 he would have included these proposed amendments. It is also a factor whether, if the proposed amendments had been pleaded within the ET1, would they have been in time? Clearly, they would not. They would have been 7 months late. If the grievance outcome was taken as the point at which time starts to run, they would have been three months late.

59. I find that the amendments have little merit. They are more complaints about the lack of a good working relationship with his line manager and work colleagues. The claimant was a night reception working three nights a week. He cannot seriously suggest that he was overlooked for appointment to an assistant manager role in the respondent's hotel group when he had not made an application for the role.

60. Together with the failure to exhibit any diligence in researching his employment rights and the fact that the ET1 was filed significantly out of time, I am not persuaded that the balance of injustice and hardship falls in the claimant's favour to allow the amendments. To allow the amendments would subject the respondent to further cost and expense for claims that prima facie lack merit and are significantly late without an acceptable reason and are likely to be four years old and stale by the time the case gets to a final hearing.

61. In the circumstances with the exception of the allegation of disability related harassment caused to the claimant by the welfare phone calls in June 2019 and money claims which have still yet to be quantified, the claimant's claims in his ET1 are struck out for being out of time and the amendment application is refused.

62. I then consider the strike out of the remaining claim of disability related harassment. When considering striking out, I must consider whether the claim has any reasonable prospect of success based on the disputed factual issues, and therefore I must decide, having undertaken a fair assessment of the claim and documents (if any), what are the disputed factual issues, taking the claimant's claims at their highest. I also consider whether the claim would have a reasonable prospect of success if it had been properly pleaded originally and in the amendment application.

63. With regard to the allegation of disability related harassment in June 2019, it is clearly normal procedure for a respondent employer to request a medical assessment to update the position where an employee has been of work, as in this case, for five months. The welfare meeting was adjusted to a telephone call to accommodate the claimant's condition and his reluctance to attend an in-person meeting.

64. Furthermore, it is not unreasonable for the respondent, having received social media posts from members of staff about what appeared to be recent activity by

the claimant which contradicted his claimed reason for being absent from work, to raise these with the claimant and to ask for an explanation. In the circumstances this claim, which survives in the ET1 because it was made in time, has no reasonable prospect of success and I strike it out under Rule 37.

65. The monetary claims remain undetermined. The claimant appears to have difficulty in substantiating what his outstanding claims are. A case management order will be made separately in this regard.

Employment Judge A Richardson
Signed on 21 May 2021