EMPLOYMENT TRIBUNALS

Claimant Selvamani Sivalingam

First Respondent Vinci Construction UK Limited

Second Respondent Securitas Security Services Limited

HEARD AT: Cambridge Employment Tribunal **ON**: 15th June 2017

BEFORE: Employment Judge Tynan

REPRESENTATION

For the Claimant: In Person

For the First Respondent: Ms Ashuri, Counsel

For the Second Respondent Mr J Campbell, Solicitor

JUDGEMENT AND ORDERS

1. The Claimant's claim against the First and Second Respondents that he was unfairly dismissed is dismissed, alternatively it is struck out, on the basis that the Tribunal has no jurisdiction to consider the claim and/or it has no reasonable prospect of success.

2. The Claimant's remaining claims against the First Respondent are dismissed on the basis that the Tribunal has no jurisdiction to consider them or they have no reasonable prospect of success.

3. The Claimant's claim against the Second Respondent that he is owed holiday pay for September 2016 is dismissed on the basis the Tribunal has no jurisdiction to consider the claim.

4. The Claimant is ordered to pay a deposit of £50, not later than 21 days from the date this Order is sent to him, as a condition of being permitted to continue to advance the allegation against the Second Respondent that he was discriminated against because of the protected characteristic of religion or belief.
5. The Claimant is ordered to pay the First Respondent's costs in the sum of £50.

REASONS

1. The Claimant filed his claim with the Employment Tribunals on 21 February 2017. He named Vinci Facilities and Securitas Security Service as Respondents. The Claimant completed Section 8.1 of Form ET1 on the basis that he was claiming that he had been unfairly dismissed, discriminated against on the grounds of both his race and religion or belief, and that he was owed arrears of pay and other payments. In each case the Respondents had not been fully and correctly identified in Form ET1. The correct names of the Respondents are Vinci Construction UK Limited and Securitas Security Services (UK) Limited.
2. The Claimant works as security officer. The Second Respondent provides security services to customers across the UK. The First Respondent is one of its customers. The Claimant alleges that on 23 May 2016 he was assaulted by one of the First Respondent's employees, Mr John Myrtle and that after he complained about this he was excluded from the site at which he was then working. He also alleges that Mr Myrtle shouted and used abusive language against him on 8 August 2016. In his skeleton argument the Claimant states that in or around early September 2016 the First Respondent (by which I understand him to mean Mr Myrtle) was making comments to the effect that the Claimant had been "banned and sacked from Boeing".
3. The Respondents have each filed Form ET3 and Grounds of Resistance. By letter dated 30 March 2017 the First Respondent's solicitors applied on behalf of the First Respondent that the proceedings against the First Respondent be dismissed under rule 27 of the Employment Tribunal Rules of Procedure 2013, alternatively struck-out under rule 37(c). Their letter cites four grounds for the application:

i. the Claimant has no relationship with the First Respondent; he is not an employee, worker or contract worker of the First Respondent and as such the Employment Tribunal has no jurisdiction to hear his claims against the First Respondent;

ii. the claims are out of time;

iii. the claims have no reasonable prospects of success; and

iv. the claims are inadequately pleaded such that, the First Respondent contends, the Claimant has no cause of action against the First Respondent that can be heard by the Employment Tribunal.

4. Rule 27 of the Employment Tribunal Rules of Procedure empowers an Employment Judge to dismiss a claim, or part of a claim, if the Employment Judge considers either that the Tribunal has no jurisdiction to consider the claim , or part of it, or that the claim, or part of it, has no reasonable prospect of success. There is additionally a power at rule 37 of the Employment Tribunal Rules of Procedure to strike-out all or part of a claim, including on grounds that all or part of the claim has no reasonable prospect of success. Both rules envisage that a claim may be dismissed or struck out at any stage of the proceedings. Rule 39 of the Employment Tribunal Rules of Procedure empowers the Tribunal to make an order requiring a party to pay a deposit as a condition of continuing to pursue a specific allegation or argument. The threshold test for making a deposit order differs from that for strike out, in that an order may be made where an allegation or argument has little (as opposed to no) reasonable prospects of success.

5. The parties were in agreement that I should determine the First Respondent's application first on the basis that if the application was successful in whole or part this might have a material bearing upon the issues in the proceedings and accordingly the appropriate case management.

6. The Claimant was not legally represented nor did he have any other support or assistance at Tribunal. Nevertheless, he had prepared an indexed and paginated bundle for the preliminary hearing which included two skeleton arguments, the first of which addresses the relatively limited particulars regarding his claims at Section 8.2 of his Form ET1.

7. The parties had seemingly not liaised to agree a single hearing bundle, as a separate bundle had been prepared by the Second Respondent.

8. At the outset of the hearing I sought to establish whether the Claimant was still seeking to pursue his claim of unfair dismissal against the First Respondent given that he has apparently never been employed by that company, and indeed whether he was pursuing the claim at all given that the Second Respondent contends he continues to be employed by it. I explained to the Claimant that a claim of unfair dismissal can only be pursued by an employee who has been dismissed (including constructively dismissed) and that any claim is against the employee's employer.

9. I also wanted to establish whether the Claimant was pursuing his claim of discrimination on the grounds of religion or belief in circumstances where there is no further reference to his religion or belief, or to him being discriminated on this ground, in either his Form ET1 or in the skeleton arguments filed by him for the preliminary hearing.

10. Finally I wished to understand what other payments the Claimant may be claiming over and above the arrears of pay which he claims are due to him.

Unfair Dismissal

11. The Claimant acknowledges that he is not and never has been employed by the First Respondent. There has been a protracted dispute between the Claimant and the Second Respondent regarding the circumstances in which he was excluded from the site at which he previously worked (the “Boeing site) and this has seemingly resulted in the Claimant not being paid for a number of months. However, in response to my enquiries, the Claimant confirmed that whilst he had not been paid by the Second Respondent for a number of months, he had not been given notice that his employment was being terminated and had not been issued with a P45. He also confirmed that he has never resigned his employment with the Second Respondent either verbally or in writing. In the circumstances I invited the Claimant to consider over the course of the lunch break whether he intended to pursue his unfair dismissal claim.

12. In his submissions to the Tribunal during the afternoon the Claimant confirmed that he was still pursuing a claim of unfair dismissal against both

Respondents. He informed me that as a layman he considered the matter to involve a dismissal in the sense that he had been dismissed (by which I clearly understood him to mean, excluded) from the site at which he had been working. However, in the course of his submissions he also said that the Respondents, "*didn't sack me, they didn't give me any work*" and more specifically, "*I still think there is an employment relationship*". The fact that he is claiming unpaid wages, seemingly on an ongoing basis, further supports that the Claimant considers his employment with the Second Respondent is ongoing.

13. The Claimant commenced employment with the Second Respondent on 28 August 2012 and by virtue of section 94 of the Employment Rights Act 1996 has the right not to be unfairly dismissed by it. Section 95 of the 1996 Act sets out the circumstances in which an employee is dismissed. In each case the contract of employment must terminate.

14. In this case the Tribunal has no jurisdiction to consider a claim of unfair dismissal against the First Respondent. The Claimant is not and never has been employed by the First Respondent. He cannot bring a claim of unfair dismissal against other than his employer. Specifically, he cannot pursue a third party, in this case the First Respondent, if he considers that it may be responsible for his employer's actions. The claim against the First Respondent of unfair dismissal should be dismissed, alternatively struck out.

15. I am further satisfied that any claim against the Second Respondent has no reasonable prospect of success (indeed, no prospect of success at all) and should also be dismissed, alternatively struck out. The Claimant contends that he was excluded from the Boeing site and wishes to be reinstated at that site. He is currently working at another client site for the Second Respondent. There is very clearly an ongoing employment relationship between the Claimant and the Second Respondent. The issue which the Tribunal will have to determine is whether the Second Respondent made unlawful deductions from the Claimant's wages during the period he was excluded from the Boeing site but not working elsewhere for the Second Respondent. The Claimant may consider that he was 'dismissed' from the Boeing site but he was not dismissed from the Second Respondent's employment nor did he resign his employment in response to the Second

Respondent's alleged failure to pay him wages and holiday pay which he claims are due to him. It is the Claimant's own case that the employment relationship is still ongoing and that he was not given work to do rather than dismissed. Given that the Claimant was not dismissed, his claim of unfair dismissal must fail and should be dismissed.

Claims against the First Respondent

16. For the same reason that the Claimant cannot bring a claim of unfair dismissal against the First Respondent, he cannot pursue any claim against it for unpaid wages or for other payment due to him under his contract of employment. The First Respondent is not and was not his employer and has never engaged him to work or perform services for it. It is not liable for wages or other sums which he claims are due to him from his employer, the Second Respondent.

17. The Employment Tribunals' jurisdiction to hear complaints of discrimination is at Chapter 3 of the Equality Act 2010. Section 123 of the Act provides that proceedings on a complaint relating to work may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable. This is subject also to the extension of time limits to facilitate early conciliation. In this case the Claimant first contacted ACAS on 20 February 2017 to notify it of a potential claim against the First Respondent. The same day, ACAS certified that he had complied with the requirements of section 18A of the Employment Rights Act 1996, and the following day he filed his Claim with the Employment Tribunals.

18. I explored in detail with the parties what acts (or omissions) the Claimant makes complaint about in relation to the First Respondent. In particular I noted the reference in a letter dated 17 November 2016 from the Second Respondent to the Claimant to a request by the First Respondent that the Claimant should be excluded from the Boeing site (page 45 of the Claimant's bundle). Reference is made in that letter to an email dated 3 November 2016 from the First Respondent to the Second Respondent. A copy of the email was provided to me and lists in 15 numbered paragraphs the reasons why the First Respondent requested that the Claimant should be excluded from the Boeing site in or around August 2016. I raised with the parties

whether that email could be said to be an act on the part of the First Respondent and/or the last in a series of acts complained of. On the face of it the email seems merely to explain the reasons for the First Respondent's actions in August 2016. Having indicated the issue I was considering, I invited the Claimant to consider what complaints he makes about the First Respondent, as distinct from the Second Respondent, and to identify the date of the last matter about which complaint is made. After some reflection the Claimant informed me that the date of the last act complained of in relation to the First Respondent is 8 August 2016, namely when he was allegedly shouted at by Mr Myrtle. He did not pursue the matter of the email of 3 November further. Although he does not claim that the email of 8 November 2016 is an act about which complaint is made, I have some reservations as to whether 8 August 2016 is in fact the last of the acts complained of in relation to the First Respondent. I note that at paragraph 7 of its Grounds of Resistance the Second Respondent claims that it received a request from the First Respondent to remove the Claimant from its contract with the First Respondent in late August 2016. In her submissions Ms Ashiru proceeded on the basis that 31 August 2016 should be treated as the date of the last act complained of in relation to the First Respondent. That is also the basis upon which I have approached the matter.

19. The Claimant did not notify his potential claims against the First Respondent to ACAS within 3 months of the date of the last act complained of (assuming for these purposes that the acts complained of in relation to the First Respondent are to be regarded as constituting a single continuing act). Instead he first notified them approximately two and a half months out of time. He should have notified his potential claims to ACAS by 30 November 2016 (three months after he was excluded from the Boeing site). Instead he notified them on 20 February 2017. The question is whether it would be just and equitable to allow the claims to be brought out of time, and whether that is a question I should decide or defer to the Employment Tribunal at final hearing. Rules 27 and 37 envisage that questions of jurisdiction and prospects may be determined at a preliminary stage in any proceedings. This is not a case where the Tribunal's jurisdiction turns on whether there was a continuing act of discrimination and accordingly whether or not claims

have been brought in time. It is both the Claimant and the First Respondent's case (the Second Respondent adopting a position of neutrality) that the last act complained of occurred in August 2016.

20. In ***Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA***, the Court of Appeal said that when employment tribunals consider exercising the discretion under what is now S.123(1)(b) of the Equality Act 2010, '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 the discretion is the exception rather than the rule.'

21. As to why it would be just and equitable to allow the claims to be brought out of time the Claimant said that it would be in the interests of justice and fairness to do so and that had the First Respondent not discriminated against him he would not have pursued a claim. That was the extent of his submissions.

22. I am mindful that if I do not allow the claim to be brought out of time then unless the Claimant is able to establish some basis upon which the Second Respondent should be liable for Mr Myrtle's actions, the Claimant may have no legal recourse in respect of the alleged events of 23 May 2016. I balance that against the cost and inconvenience to the First Respondent of having to defend a claim which is now otherwise clearly out of time.

23. On 23 May 2016 the Claimant raised a grievance with the Second Respondent regarding Mr Myrtle's conduct towards him that day. Ms Ashiru made the point that his email is the most contemporaneous record of events that day (page 20 of the Claimant's hearing bundle). The Claimant complained that he had been abused by Mr Myrtle, who then refused to allow him to leave his office. He did not say that he had been assaulted and he did not express the view that Mr Myrtle's actions were on grounds of his race or religion. Subsequently, on 14 June 2016 the Claimant attended a grievance hearing with his manager Ben Johnson. The Claimant's notes of or for that hearing (pages 23 to 29 of the Claimant's hearing bundle) document that the Claimant was then alleging he had been pushed by Mr Myrtle on 23 May 2016 and further that he considered he was being discriminated against.

However, the complaint of discrimination is somewhat tentative as the notes record that the Claimant was asking, “Is it because of my surname? Or colour of my skin?” I have noted already the Claimant’s comments at Tribunal that his treatment was “perhaps” on grounds of religion of belief. As to why the Claimant believes that Mr Myrtle’s actions on 23 May 2016 were on grounds of his race, he could not say at Tribunal. He simply relies upon Mr Myrtle’s treatment of him and the fact that he is a Malaysian Hindu. He does not identify who he compares his treatment with. I note that the First Respondent’s email of 3 November 2016, previously referred to, refers to three of the Claimant’s colleagues, Mike Wilson, Allah Ditta and Mohamed Naveed, all of whom apparently continue to work at the Boeing site. I was not told their race, religion, belief or other protected characteristics and I do not know whether the Claimant seeks to compare his treatment with them.

24. In exercising discretion in this matter I have regard to the fact that the Claimant has not put forward any clear explanation for his delay in pursuing his claims nor has he elaborated as to why it might be just and equitable to allow his claims to be brought out of time. In accordance with the overriding objective I am required to ensure, so far as practicable, that the parties are on an equal footing. However, I cannot take it upon myself to seek to identify what arguments the Claimant might have advanced had he been represented. In ***Chandhok v Tirkey [2015] IRLR 195*** Langstaff J cited the example of a time barred claim, in which no evidence has been advanced as to why it might be just and equitable to extend time, as one where strike out might be justified. In this case I not only have regard to the fact there is no explanation for the delay, but that there are difficulties in the Claimant’s case as it currently stands. His complaint that he was discriminated against on grounds of religion or belief is somewhat tentatively pursued. It was only at the hearing before me that the Claimant confirmed that he is a Hindu, something he does not refer to in any of his grievances, in Form ET1 or in his skeleton arguments for the hearing before me. Whilst he has claimed over a period of approximately one year to have been discriminated against on grounds of his race, he has never explained the basis for his belief in this regard, has failed to clearly identify the acts and omissions complained of

and has not identified a comparator in terms of his treatment. These are all matters I have regard to in the exercise of the discretion available to me.

25. At paragraph 51 of the Claimant's hearing bundle is an email dated 17 November 2016 in which the Claimant refers to having taken advice from ACAS. He also refers in that email to the fact that, "if there is any cover up I will not hesitate to refer the matter back to Acas and Employment tribunal." By November 2016 therefore the Claimant had had some advice regarding his situation and was aware that he could bring a claim in the Employment Tribunals. Yet, in the case of the First Respondent he delayed until 20 February 2017 to notify ACAS under the early conciliation scheme of his potential claims against the First Respondent. He provided no particular explanation for that delay. As I note below he was on notice from the First Respondent's solicitors that his claims against it were considered to be out of time and might therefore have been expected to have some explanation for his delay.

26. In the exercise of the discretion available to me I have concluded that I should not permit the Claimant to bring his claims against the First Respondent out of time and accordingly that the Tribunal has no jurisdiction to determine them and that they should therefore be dismissed.

The First Respondent's Costs

27. The First Respondent applied for a costs order against the Claimant on the basis that it considered he had acted unreasonably in bringing proceedings against the First Respondent, alternatively on the basis that his claim against it had no reasonable prospect of success. The First Respondent had prepared a costs schedule which indicated that it was seeking costs of £8,734.95. Ms Ashuri relied upon correspondence from her instructing solicitors to the Claimant dated 7 April, 19 April and 24 May 2017 in support of the costs application. This correspondence and an email from the Claimant to the First Respondent's solicitors dated 18 April 2017 are at pages 73 to 76 of the First Respondent's hearing bundle. In their letter dated 7 April 2017 the First Respondent's solicitors invited the Claimant to withdraw his claim against the First Respondent, pointing out to him that he had not been employed by the First Respondent and that his claim against them was brought out of time. They recommended that he seek legal advice and

suggested that he contact a law centre or a solicitors firm offering pro bono legal services in the event he did not wish to or was unable to pay for advice. They further informed the Claimant that a claimant who unreasonably continues a claim against a party may be the subject of an application for costs. The Claimant was informed that although the First Respondent did not propose to make such an application, it would keep the matter under review. It was a measured and appropriate letter to write to an unrepresented party.

28. In his email of 18 April 2017 the Claimant acknowledged that he had received emails and correspondence from the First Respondent's solicitors but he did not specifically respond to their letter dated 7 April 2017. In their email in response dated 19 April 2017 the First Respondent's solicitors urged the Claimant to seek legal advice in connection with his claim against the First Respondent.

29. Having not heard further from the Claimant, the First Respondent's solicitors wrote to the Claimant again on 24 May 2017. They re-iterated that the First Respondent had not employed the Claimant and that his claim against them was brought out of time. They expressed the view that the Claimant was unreasonably continuing his claim and went on to state that the First Respondent would not pursue costs against the Claimant if he withdrew his claim against the First Respondent in full by 3 June 2017. They stated that if he decided to continue with his claim against the First Respondent, they reserved the right to refer the Tribunal to the correspondence in support of any application for costs. Once again they recommended that the Claimant obtain independent legal advice. Again, it was a measured and appropriate letter. The Claimant did not respond to it.

30. For the reasons already set out, the Claimant cannot pursue an unfair dismissal claim or a claim for wages against the First Respondent. I have also dismissed his discrimination complaints against the First Respondent on the basis the Tribunal has no jurisdiction to hear them. Twice the First Respondent's solicitors pointed out to the Claimant that his complaints in this regard were brought out of time. The Claimant failed to respond to their correspondence and failed to advance any particular case before me as to why it might be just and equitable to allow the claims to be brought out of

time. I consider that the Claimant has acted unreasonably either in bringing the proceedings or in the way that the proceedings have been conducted by him. Accordingly, I am required under rule 76 of the Employment Tribunal's Rules of Procedure to consider whether to make a costs order. I have decided that I should make a costs order, subject to rule 84 of the Employment Tribunal's Rules of Procedure. Rule 84 provides that in deciding whether to make a costs order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay. In this regard the Claimant told me that he is working a six hour day, five days per week. He is paid £9 per hour. His gross earnings are therefore £270 per week. The Claimant was uncertain as to his net pay each month. He told me, and I accept, that he has no savings and that he currently has an overdraft. His earnings are used to pay the mortgage and outgoings on the family home. The Claimant's wife pays for the family's other outgoings from her earnings. The Claimant owes a family friend approximately £2,300. These monies were borrowed during the period that the Claimant was not in receipt of any wages from the Second Respondent. The Claimant stated that he has no shares, savings or other liquid assets. I am satisfied that the Claimant is a man of limited means and that the entirety of his earnings are used for the benefit of the family to meet their essential outgoings. Having regard to rule 84 of the Employment Tribunal's Rules of Procedure I have considered whether to make a costs order at all. I have regard to the fact that the discrimination complaints have been dismissed because they are out of time, not because I have made any findings on the substantive allegations. In the exercise of the discretion available to me I have decided that the Claimant should be ordered to pay the sum of £50 to the First Respondent in respect of its costs.

Holiday Pay

31. The Claimant clarified that in addition to the arrears of pay he is claiming, he is also owed holiday pay for August 2016. By virtue of section 23 of the Employment Rights Act 1996 any deduction from wages claim must be brought within 3 months of the deduction complained of (subject to any extension of time to facilitate early conciliation). The Claimant was unclear as to whether his holiday pay should have been paid in August or September

2016, and as to the date of the month it should have been paid. Assuming for these purposes that any holiday pay should have been paid on or before 30 September 2016, the Claimant was required to notify his potential claim to ACAS by no later than 31 December 2016. He did not do so until 23 January 2017. Section 23(4) of the Employment Rights Act 1996 empowers a Tribunal to consider a complaint which is brought out of time where it was not reasonably practicable for the complaint to be presented within time, provided it has been presented within such further period as the Tribunal considers reasonable. Unlike out of time discrimination claims, the test is not whether it would be just and equitable to allow the claim to be brought out of time. In this case the Claimant could not say why it was not reasonably practicable for him to bring his claim in time. He was in contact with ACAS in November 2016 and seemingly aware of his ability to pursue a Tribunal claim, but delayed doing so. I conclude that it was reasonably practicable for the Claimant to present his claim on or before 31 December 2016 and accordingly the Tribunal has no jurisdiction to hear his claim, which should be dismissed.

Discrimination on grounds of religion or belief

32. When I explored his religion or belief discrimination claim with the Claimant he confirmed that he is a Malaysian Hindu. In response to my observation that I could not find any reference to the Claimant's religion or belief, or to the Claimant having been discriminated against on grounds of religion or belief elsewhere in his Form ET1 or in the other papers before me, the Claimant commented that his treatment was "perhaps" on grounds of his religion and beliefs.

33. I consider that the allegation that the Claimant has been discriminated against by the Second Respondent on grounds of his religion or belief has little reasonable prospects of success. Other than having completed section 8.1 of Form ET1 to indicate that he is pursuing such a claim, the basis for the claim is not set out in Form ET1 or in any of the other documents before me. It is not apparent whether the matters complained of are all those matters about which the Claimant makes complaint in terms of his race discrimination claim. It is also not clear whether his complaint is of direct discrimination, indirect discrimination, harassment or victimisation. If he is complaining of

direct discrimination he has not identified any comparator(s) in terms of his treatment. It is not clear that the Claimant himself believes he has been discriminated against on grounds of his religion or belief. As noted already he has expressed his belief in this regard somewhat tentatively.

34. Having regard to the Claimant's financial circumstances, I consider that it would be just and proportionate to order the Claimant to pay £50 as a condition of continuing to advance the allegation that he has been discriminated against by the Second Respondent on grounds of his religion or belief.

Listing the hearing

35. Having determined these preliminary issues it was agreed that there are no further preliminary issues which should be decided before the final hearing. However, having clarified that his discrimination complaint is one of direct discrimination, the Claimant does need to identify the specific acts and omissions on the part of the Second Respondent which he says amount to less favourable treatment of him. Although I did not make a further order to this effect at the hearing, in preparing this record of the hearing I have concluded that the Claimant should additionally clarify who he compares his treatment with and I shall make an Order to that effect of my own initiative.

36. The Claimant will give evidence in support of his claims and is unlikely to call any further witnesses. Mr Campbell indicated that the Second Respondent may call up to five witnesses. In estimating that the final hearing might last three days the Claimant and the Second Respondent have assumed this will allow sufficient time for deliberation, judgment and remedy if appropriate.

37. The hearing has been listed at Cambridge Employment Tribunal, Cambridge Magistrates' Court, 12 St Andrews Street, Cambridge, CB2 3AX to start at 10am or so soon thereafter as possible on **20 to 22 November 2017** inclusive. The parties are to attend by 9.30 am on the first day. The listing is intended to allow sufficient time for the Tribunal to determine the issues which it has to decide and reach its conclusions and, if possible, for the Tribunal to give judgment with reasons.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. It is ordered that on or before **7 July 2017** the Claimant shall provide to the Respondent and to the Tribunal a list of each act or omission that he claims amounts to less favourable treatment of him by the Respondent, including the date thereof. In each case the Claimant shall state with whom he compares his treatment, namely he shall state the name of his comparator or if there is no actual comparator he shall state, as appropriate, that he relies upon a hypothetical comparator.

2. The Respondent has leave, if so advised, to serve and file an Amended Response to the Claim by **28 July 2017**.

3. **Statement of Remedy/Schedule of Loss**

   3.1 The Claimant is Ordered to provide to the Respondent and the Tribunal, so as to arrive on or before **7 July 2017**, a properly itemised statement of the remedy sought (also called a Schedule of Loss).

   3.2 The Claimant is ordered to include information relevant to the receipt of any state benefits.

4. **Disclosure of documents**

   4.1 The parties are ordered to give mutual disclosure of documents relevant to the remaining issues in the proceedings by list by **21 July 2017** and on request to provide copy documents so as to arrive on or before **11 August 2017** (any such request to be made by **4 August 2017**). This includes, from the Claimant, documents relevant to all aspects of any remedy sought.

   4.2 Documents relevant to remedy include evidence of all attempts to find alternative employment: for example a job centre record, all adverts applied to, all correspondence in writing or by e-mail with agencies or prospective employers, evidence of all attempts to set up in self-

employment, all pay slips from work secured since the dismissal, the terms and conditions of any new employment.

4.3 This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

4.4 The parties shall comply with the date for disclosure given above, but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

.5. **Bundle of documents**

5.1 The Respondent is ordered to provide to the Claimant a full, indexed, page numbered bundle to arrive on or before **15 September 2017**.

5.2 The Respondent is ordered to bring sufficient copies (at least four) to the Tribunal for use at the hearing, by 9.30 am on the morning of the hearing.

6. **Witness statements**

6.1 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

6.2 It is ordered that witness statements are exchanged so as to arrive on or before **6 October 2017**.

6.3 It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

6.4 The witness statements must be full, but not repetitive. They must set out all the facts about which a witness intends to tell the Tribunal, relevant to the issues as identified above. They must not include generalisations, argument, hypothesis or irrelevant material.

6.5 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

Employment Judge Tynan
Date: 29 June 2017

ORDER SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS

FAILURE TO COMPLY

NOTES: (1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.