Case No: 2204271/2021

EMPLOYMENT TRIBUNALS

Claimant | | **Respondent**

Mr T Hussain v **Harrods Limited**

Heard at: London Central (hybrid) **On**: 25 April 2022

Before: Employment Judge E Burns

Representation

For the Claimant: In person (accompanied by Ms Zhang)
For the Respondent: Anna Greenley, Counsel

RESERVED JUDGMENT (PRIVATE HEARING)

(1) The following of the claimant's claims are struck out. This applies to his claims for:

(a) direct disability discrimination under section 13 of the Equality Act 2010 (issues 6 -10) in the attached draft list of issues);

(b) discrimination arising from disability under section 15 of the Equality Act 2010 (issues 11 – 16) in the attached list of issues);

(c) disability related harassment (issues 17 – 19 in the attached list of issues); and

(d) a failure to comply with a duty to make reasonable adjustments under sections 20 and 21 of the Equality Act 2010 (issues 19 – 23).

(2) His other claims will continue (issues 26 to 38).

REASONS

INTRODUCTION

1. This is a reserved judgment with the outcome of the hearing conducted on 25 April 2022. I apologise to the parties for the length of time it has taken to send them this judgment.

2. This was an unusual hearing and following it, the claimant sent the tribunal a large number of emails, all of which were copied to the respondent. I therefore consider it important that I record in some detail the circumstances of the hearing including what case management matters I considered and explain how I have dealt with the emails.

THE HEARING

Duration and Format of the Hearing

3. The hearing was scheduled to be an in-person preliminary hearing held in public.

4. Prior to the hearing, the claimant emailed the tribunal to request that the hearing be held by video. I granted that request and an email was sent to him and the respondent confirming the position on Thursday 21 April 2022 at 16:16. Video joining instructions were sent by email on Friday 22 April 2022 at 16:17.

5. The respondent's legal team made up of Ms Greenley (counsel and representing the respondent) Alice Hallsworth, the respondent's in-house lawyer dealing with the case and their note taker, logged on to the CVP hearing at the correct time. The claimant was not in attendance. On investigation it became apparent that the claimant was in the tribunal building.

6. The claimant said that he had not received the tribunal's emails. He was unable to explain this saying he received emails from the tribunal when these were forwarded to him by Ms Hallsworth, but not directly from the tribunal, despite the fact that the emails were being sent to him at the correct email address.

7. I have subsequently reviewed various emails that the tribunal had received from the claimant and there does appear to be a pattern of him either initiating emails to the tribunal or adding the tribunal into email exchanges between him and Ms Hallsworth. I saw no recent emails where he had responded to an email sent to him by the tribunal.

8. In order to address this issue going forwards, I will ensure that all correspondence that is sent by the tribunal to the claimant is sent by email and post. The claimant confirmed the correct postal address for him was: 73 Wellington Street, Burton on Trent, Staffordshire, DE14 2DS. The onus,

however, is on the claimant to ensure that he has provided the tribunal with a correct email address if he wishes to correspond by email.

9. I note that I also asked (but did not order) that Ms Hallsworth be kind enough to forward emails to the claimant as a courtesy.

10. In light of the fact that the claimant was in person and the respondent on video, the tribunal asked Ms Greenly if she was able to attend the tribunal building and she explained that she was more some distance away and would not be able to arrive for several hours. She agreed to the suggestion that the hearing proceed in a hybrid format, however.

11. We therefore proceeded with the claimant, Ms Zhang and me in a hearing room and Ms Greenley and her colleagues attending by video link. Ms Greenley kept her camera on throughout, but her colleagues had their cameras switched off. The claimant was able to access the bundle that had been prepared by the respondent for the purpose of the hearing.

12. The start of the hearing was delayed for over an hour while the arrangements were made.

13. The hearing also finished early. The claimant has a mental health condition and a visual impairment. He was also fasting for Ramadan and had told me he had travelled some distance to attend the hearing. I permitted the claimant to take breaks as and when he needed, but by around 3 pm he said he was too tired to continue. In addition, Ms Zhang had to leave at this point for childcare reasons. I therefore brought the hearing to an end.

14. I wish to note that the claimant's behaviour at the hearing was entirely as I would expect it. He clearly found some of the discussions difficult, but he sought to suppress his urge to interrupt and instead recognised he was becoming emotional and asked for a break. I thank him for this and Ms Greenley's assistance in making adjustments to accommodate the claimant's vulnerabilities.

Purpose of the Hearing

15. The hearing had been listed for the following purposes:

    (a) to determine the issue of disability;
    (b) to determine any applications to strike out the claimant's claims which the respondent may make
    (c) case management.

16. I record here what we were able to do in the hearing time available.

Rule 50 Application

17. I first heard and decided an application made by the claimant under Rule 50 that we hold the hearing in private. The claimant wished to rely on medical evidence that he had previously sent to the respondent on 29

March 2022 to support this application. It took a little while for the respondent to locate this information. The claimant had brought an additional copy with him which he handed to me. Having heard representations from both parties and after a short adjournment (15 minutes) I decided the hearing should be held in private because we would be discussing the claimant's medical conditions and gave oral reasons for my decision.

18. I note that the Rule 50 decision only applies for the purposes of today's hearing and this judgment. If the claimant wishes to have any further public hearings converted into private hearings, he will have to make a fresh application.

Respondent's Applications

19. The respondent had sent a written skeleton argument to the tribunal in advance of the hearing. It had been received by the claimant.

20. The respondent invited the tribunal to:

(a) strike out the Claimant's claims for disability discrimination under Rule 37(1)(b) (for non-compliance with the tribunal's orders) or (a) (on the basis he is found not to be disabled such that the claim has no reasonable prospect of success);

(b) refuse the Claimant's amendment requests;

(c) strike out the Claimant's remaining claims on the basis they have no reasonable prospect of success under Rule 37(1)(a) or make deposit orders in the sum of £1,000 for each claim that continues under Rule 39 of the 2013 Rules

(d) hear a costs application for costs to be awarded in its favour (this was not in the written skeleton argument, but was a verbal application).

21. There was only time to deal with (a) and (b). The claimant had a full opportunity to make submissions in response to these applications and I reserved my decision as there was no additional time to conduct any further tribunal business. I did not deal with (c) and (d).

22. With regard to (a), the Claimant initially said that he had continued to be uncomfortable about disclosing his medical records to the Respondent because he did not trust it to keep them confidential. I therefore explored this with him in order to decide if I should hear the strike out application or determine disability without sight of the medical records.

23. The Claimant did not ask me to make a decision on whether or not he met the definition of a disabled person under the Equality Act 2010 without sight of the medical records. He went on to tell me at the hearing, that the real reason that he had not sent the documents to the respondent was because he had been unwell and focussed on dealing with his employer's

investigation and also that Miss Hallsworth had not reminded him that he needed to send them to her. He confirmed he had the documents with him and suggested he could try and scan some in so that they could be seen by the respondent.

24. I also note that he sought and received reassurance from Ms Hallsworth about who would have access to his medical records if he sent them to the respondent. I have seen an email from the claimant to Ms Hallsworth dated 25 April 2022 in which he asked her,

    "*Alice please send over the names of the people we agreed to grant access [Ms Hoskyn] is she a 3rd party or in-house as I would ideally prefer once all court processes are complete for these to be deleted and hard copies shredded. And the only copies to be held by myself and with the [Occupational Health] team.*"

25. Ms Hallsworth replied to the claimant on the same day saying:

    "I confirm that those with Harrods Lr Legal team will be the only people with access to these documents as agreed in addition to our external Counsel (our barrister from a Chambers) who will undertake the work for the hearings.

    I confirm that documents will be destroyed within a reasonable period after any claims are concluded."

26. Having received the reassurance sought, the claimant did not write to Ms Hallsworth again or to the tribunal to say that he had changed his mind about disclosing the documents.

27. I further note that following the April hearing, he sent the original copy of his GP notes that he said he had with him during the February 2022 hearing to the tribunal and to the respondent as well as other documentary evidence he wanted the tribunal to take into account when reaching its decision on disability.

28. The conclusion I drew at the time of the hearing and that has been reinforced in my mind following the claimant actually disclosing some medical records was that it was appropriate to consider the strike out application for non-compliance and to consider whether that non-compliance justified a strike out.

Emails Sent Subsequent to the Hearing

29. During the course of the hearing, the respondent emailed the clerk provide to a pdf which contained extracts from some emails. These were copied to the claimant by email but he was not able to access them during the hearing. I therefore expected him to email with any comments on those emails after the end of the hearing which I would consider before delivering my judgment, anticipation that I may need to enter into some correspondence with the parties if he said anything unexpected.

30. The claimant has not limited his subsequent email correspondence to comments on the email extracts. Following the hearing the claimant has sent over 75 emails to the tribunal, all of which were copied to the respondent. A large number of the emails relate to the applications that are the subject of this reserved judgment

31. I have read all of the emails that are relevant to the subject of the reserved judgment. In doing so I was conscious that the Claimant has previously indicated that he believes he expresses himself better in writing than orally. I was also conscious that the claimant could raise all of the points in the email by way of a reconsideration application.

32. I have not invited comment on any of the emails from the respondent for two reasons. First, I was concerned from a practical perspective to avoid litigating the matter by email after the end of the hearing. The time for the parties to make their submissions was at the hearing and not afterwards and whilst some flexibility in our processes is often appropriate, expecting the respondent to dealing with such a large volume of emails was not, in my judgment, in accordance with the overriding objective.

33. The second reason however was related to the substance of the emails. Despite the volume of the emails, the claimant made no new points in the emails that I considered had not been already addressed by the respondent. Had he done so, I would have sought comments from the respondent and, if necessary, listed a hearing for this purpose.

RESERVED DECISIONS

AMENDMENTS

34. All that was required in relation to the amendment requests was to clarify the position. This was necessary because the case management order I made following the 17 February 2022 hearing did not specifically state the position, for which I apologise.

35. My view was that the amendment application made verbally at the last hearing had been granted on the basis that there was no objection from Ms Hoskyn (who had represented the respondent at the previous hearing) to it. This added just the additional claims that were included in the list of issues. Ms Hoskyn had confirmed that the claims were in time and that it made sense to add them by way of amendment rather than the claimant have to submit a fresh claim. To be precise and to avoid any confusion in the future this relates to paragraphs 34 - 37 in the current version of the list of issues.

RESPONDENT’S STRIKE OUT APPLICATION

The Law on Striking Out Claims

36. The Tribunal’s powers to strike out claims in connection with the conduct of proceedings are contained in Rule 37 of the Tribunal rules. I set the rule out in full:

(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.

37. The provisions that are relevant in this case are 37(1)(b) and 37(1)(c). There is a degree of overlap between them. When considering a strike out application under Rule 37(1)(c), the tribunal must identify whether there has been non-compliance with a rule or order. Where there has been a deliberate and/or persistent disregard of tribunal rules and orders, this is likely to amount to unreasonable conduct under rule 37(1)(b).

38. Striking out any claim is a draconian step. Even if there has been non-compliance and/or unreasonable conduct, strike out will not be justified in every case. I must consider whether striking out is a proportionate response to the non-compliance taking into account the nature of the non-compliance, the reasons for it and ultimately whether it is still possible for there to be a fair trial (*Blockbuster Entertainment Ltd v James* [2006] IRLR 630, CA; *De Keyser Ltd v Wilson* [*2001*] *IRLR 324, EAT*; *Bolch v Chipman* [2004] IRLR 140, EAT). Each case turns on its own particular circumstances.

39. The overriding objective in Rule 2 of the Tribunal Rules is also relevant at all times when considering an application of this nature.

Basis of the Application

40. The respondent’s application was that the claimant had failed to comply with two of the orders that I made at a case management hearing on 17 February 2022.

41. The orders were:

(a) The claimant is to email Ms Hallsworth by **31 March 2022** to confirm that the respondent's occupational health provider has permission to release all of the medical reports it has prepared to the respondent.

(b) By **31 March 2022**, the claimant is to send Ms Hallsworth the printout he has obtained from his GP of his interactions with the GP between 1 October 2018 and 16 December 2021 and any additional medical information he wishes to rely on. Ms Hallsworth is ordered not to share the information the claimant provides other than with her supervisor (the respondent's General Counsel) and the barrister that is instructed for the purposes of the hearing.

42. In the respondent's submission, this taken together with the claimant's earlier failures to comply with orders, amounted to unreasonable conduct which justified striking out the claimant's claims.

43. The claimant did not accept that he had failed to comply with the first of these orders concerning the occupational health reports. He did accept, however, that he had failed to comply with the second order. When I asked the claimant why he had not sent the medical reports to the respondent as ordered, he gave a number of reasons. He also made submissions as to why I should not strike the claim out.

44. Following the hearing, in the numerous emails sent to the tribunal and copied to the respondent, the Claimant expanded on those reasons and added to them, but did not introduce any new reasons. He also attached pdf files contained evidence to support his arguments. He repeated a number of the submissions several times in different emails so I have sought to capture each of them and consider each of them in a logical order below.

45. It is important to note that I did not hear any witness evidence at the hearing. I do not therefore purport to make any binding findings of fact in what I have set out below. I have had to consider a number of factual disputes. I have considered these, based on the documentary evidence I have seen and what I was told, in the knowledge that the evidence has not been tested through the normal mechanism of cross examination of witnesses. I have also borne in mind that the test for determining facts is the balance of probabilities test.

Background to the Orders

46. The claimant presented his claim on 13 July 2021 while he was still employed by the respondent. His claim form contained very little detail of his claims.

47. A case management hearing was held on 3 November 2021 at which the claimant provided further detail of the claims he wished to pursue. These included claims of disability discrimination. The claimant said he relied on three medication conditions for this purpose: (1) anxiety and depression (2) asthma and (3) keratoconus.

48. The respondent did not concede that the claimant was disabled for the purpose of the Equality Act 2010 and the claimant was ordered by Employment Judge Norris to provide his medical records and an impact statement to the respondent. He did not raise any concerns about doing this. A further case management hearing was listed for 18 January 2022.

49. The claimant applied for the case management hearing that was due to take place on 18 January 2022 to be postponed on the grounds of his health. The postponement was granted to 17 February 2022.

50. In the period prior to the hearing on 18 January 2022, the parties sent correspondence to the tribunal which made it clear that the claimant had not provided his medical evidence to the respondent.

51. The correspondence was referred to Employment Judge Norris. She converted the hearing into a preliminary hearing to be held in public on 17 February 2022 at which the issue of disability would be determined. Her letter of 23 December 2021 said:

"The Respondent's application headed "Application for Strike Out", seeking in the alternative an Unless Order, is refused. The Claimant was ordered to produce medical evidence and a statement relevant to the question of whether he is a disabled person pursuant to the Equality Act 2010. However, it is a matter for him whether to comply fully, in part, or not at all, with those orders. Although he agreed to do so at the PHCM on 3 November, it appears he may have changed his mind in relation to the production of medical evidence (but has provided a disability impact statement) and he cannot be required to produce sensitive personal data of this nature. If he does not comply, and if the Respondent does not concede disability (or disabilities), the Tribunal may have to decide the point or to make further directions, as previously envisaged, at the next hearing on 18 January 2022.

The Claimant should be aware that one outcome, if he does not provide sufficient evidence to show that he has some of the disabilities relied on (and/or, as the Respondent suggests, does not deal with them at all in his disability impact statement) so that the Respondent reasonably does not concede the point, is that the Tribunal may decide whether he has a disability on limited evidence. In turn this may mean that some parts of his claim cannot proceed if the Tribunal finds that he does not have one or more of the disabilities relied on.

Therefore, if the Claimant is indeed declining in part to produce his medical evidence (but still wishes to rely on all the disabilities discussed at the previous hearing) and the Respondent is saying that it cannot concede disability status without it, the Tribunal may convert the first part of the hearing …. to an open (public) hearing to determine the question of disability status."

52. Following receipt of further correspondence, on 10 January 2022, she said:

"The Claimant is assured that the Tribunal will consider any application he wishes to make to have any part of the hearing dealt with in private; but it will address with great seriousness the question of his disability status, whether that is done in private or public, and no person will be permitted to humiliate the Claimant. EJ Norris has already indicated that if the Claimant no longer wishes to disclose certain parts of his medical records, he will not be compelled to do so, and the Tribunal will make a decision on what it has before it."

I note that both of these letters were included in the bundle of documents prepared for the purposes of the hearing on 17 February 2022.

53. The hearing of 17 February 2022 was allocated to me. I did not determine the issue of disability for the reasons set out in the case management order I made. The issue was instead postponed to today's hearing.

54. Having read the correspondence from Employment Judge Norris, I explored the concerns the claimant had raised about disclosing his medical records with him during the hearing. I made an order, which he agreed, that was designed to address his concern about sharing his medical records with the respondent by limiting how it could be shared.

55. The only issue that the claimant raised with regard to the proposed order during out discussion was whether he would be able to comply with it in timeframe I initially proposed of three weeks. He had been invited to an investigation meeting by the respondent due to his absence at work and was concerned that he would need to focus on the investigation. I therefore agreed a more generous deadline of 6 weeks of 31 March 2022 so as to give him more time to comply.

56. In light of the claimant's previous failure to disclose his medical records, I was invited by the respondent to make an unless order. I declined to do so, but my order noted that he would be in danger of having his claim stuck out if he failed to comply and I stressed this to him. My order said:

"*The claimant is warned that if he fails to comply with [the relevant orders] it is highly likely that his disability discrimination claims will be struck out under rule 37. Alternatively, the tribunal will have to decide the issue without reference to the correct medical information.*"

57. The case management order following the hearing on 17 February 2022 was sent to the parties on 21 March 2022. I made a number of observations about the Claimant's behaviour at the hearing in my order. The Claimant says that he did not receive the order when it was sent to him and that he only saw it later when the respondent sent him the bundle for the hearing. This position is consistent with what he said about the correspondence concerning the format of the hearing.

58. The Claimant did not make any application in connection with the order, other in relation to whether the hearing on 25 April 2022 should proceed and in what format.

Non Compliance – Occupational Health Reports

59. The alleged non-compliance in relation to the order concerning the occupational health reports concerned only one missing occupational health report relating to May 2021. The claimant had provided the required consent in order to enable the other reports to be included in the bundle.

60. The claimant's explanation for absence of the May 2021 report was that, at the time it had been first sent to him, he had asked the OHP responsible for the report to make some amendments to it before it was shared with the respondent. He therefore wanted to ensure that an amended version of the report was included in the respondent's bundle and not the original.

61. During the course of the hearing, the respondent provided me with an extract of an email chain in which this matter was discussed between him and Ms Hallsworth. The relevant occupational heath adviser is also included into some emails. The claimant later provided the complete email chain which I read, although what had occurred was sufficiently clear from the extract. The email exchanges take place between 25 Feb and 4 March 2022.

62. In the emails, Ms Hallsworth says that the original May 2021 report needs to be included in the bundle and that it would not appropriate for the claimant to request amendments to it now. The claimant disagrees because he says the amendments were requested at the time the report was done. The matter is not resolved.

63. In my judgment, the claimant was entitled to withhold his consent to the release of an occupational report that did not contain amendments which he had requested at the time. He therefore had a good reason for not complying in full with the relevant order. In addition, a single missing occupational health report, would not, in isolation, have prevented the preliminary hearing to determine disability proceeding.

64. It would not therefore be proportionate to strike out the Claimant's claims in response to this minor breach of the order.

Non Compliance – Medical Reports

65. Of greater significance, the claimant had not complied with the order to provide his GP records.

66. At the hearing, the claimant said he had one copy of his entire medical records and a revised impact statement with him in hard copy. I note that there was a large pile of papers on his desk. He told me that following the hearing on 17 February 2022 he had approached his GP to obtain his entire medical history. He said the date they were printed out by his GP was 28 February 2022 and he believed he had collected them the following day.

67. As indicated above, he has provided a number of explanations and made a number of different submissions as to why he did not provide any

medical records to the respondent. I deal with each of them below. They fall to be considered under two themes:

- Reasons related to the respondent's conduct
- Reasons which the claimant says excuse his non-compliance.

Respondent's Conduct

Background

68. One of the claimant's persistent submissions is that the respondent has deliberately manipulated the tribunal process in order to engineer a strike out of his claims and therefore I should not strike his claim out for failure to comply.

69. As I understand it, his position is that the respondent should have conceded that he was disabled at the relevant times based on the fit notes he provided to them and the contents of its own occupational health reports. In his submission, it hasn't done so because it has been "*using the hearings as a smoke screen to avoid the real issues*". He has also said "*the respondent had all the knowledge and it was just a game to try and strike me out*".

70. He has developed this theme in subsequent emails saying that the respondent deliberately manipulated the February 2022 hearing as part of its plan to engineer a strike out and has sought to have the original orders set aside. He expressed this as follows:

"The respondent were well aware how unfit I was medically including the visual psychosis I was having, they were also aware of my long covid and the distress they were causing through their conduct including causing financial instability leading to daily worries

Notwithstanding the one day notice of change from telephone hearing to video hearing, with no response to my email stating that I do not have the tech to do this. The tribunal service did not understand the concern I had.

Employment Judge Burns please I ask you to not to underestimate how much stress this put me under and the difficulty I have asking my daughters mum for support at that time and it being half term and my daughter being at home. Mixed with no sleep, double medication and the psychosis and the money worries."

71. In later emails he has accused the respondent of deliberately failing to properly reference the letter from Employment Judge Norris dated 10 January 2022 in the bundles for the preliminary hearing in order to get him to agree to the disclosure of his medical records when it was not necessary for him to do so.

72. The respondent carefully explained its reason for not conceding that the claimant was disabled at the relevant times in its written skeleton argument. The points it makes are entirely reasonable, particular when the

claimant's claims date back to events that are said to have occurred in October 2018.

73. In essence the respondent explained that the only medical evidence it had seen were fit notes submitted by the claimant from 22 October 2018 onwards saying anxiety with depression. Although it had occupational reports, these contained self-reported information with the earliest also being 31 October 2018. It had seen no evidence from a treating physician confirming the claimant had asthma or keratoconus and insufficient evidence to enable it to assess the nature and extent of the impact of the claimant's anxiety and depression on his ability to carry out day to day activities.

74. The respondent was aware that the Claimant had long Covid symptoms and that his most recent pay had been reduced prior to the February 2022 hearing. I do not consider the respondent could have been aware that he believed he was suffering from visual psychosis. I say this because the basis for the claimant's allegation that it knew this is a small reference in an occupational health report dated 3 February 2022. The report records:

"As you are aware he tested positive for Covid 19 on 26th December and was seen twice in the hospital for his symptoms post infection. He remains with some residual symptoms of insomnia and some visual disturbance. His General Practitioner has referred him to the long Covid clinic for an assessment/treatment plan."

75. I was satisfied that the claimant had capacity and, to the extent that I am able to tell, was not displaying symptoms of psychosis at the February 2022 hearing, albeit that his behaviour was erratic at times and deteriorated significantly towards the end of the hearing as recorded in the case management order I made.

76. The respondent included the letter written by Employment Judge Norris dated 10 January 2022 in the bundle for the February 2022 preliminary hearing and correctly referenced it in the index for the bundle. I read the letter prior to the hearing and explored the issues it addresses with the claimant. This included with the option of having the tribunal decide the issue of his disability without reference to medical evidence if he wished. I am satisfied that the order I made for disclosure of his medical records was fair, took into account his concerns and more importantly that he understood it and agreed to it.

Decision

77. I do not consider there to be any basis to the submissions made by the claimant along this theme. My conclusion is that his arguments do not justify his non-compliance. I do not consider the respondent has ought to manipulate the process to the claimant's disadvantage. Not do I consider that he should not have been ordered to provide his medical evidence in the first place. He agreed on two occasions to provide the medical evidence, but failed to do so.

Excusable Non-Compliance

Background

78. A further submission made by the claimant is that he should be excused from his failure to comply with the order because at the relevant time he was engaged in a disciplinary process which led to him becoming unwell and experiencing psychosis. In his own words, he described this as:

    "Trying to save my livelihood and the access this allows me to my daughter was of far greater importance and the distress caused by the behaviour of the Respondent caused further mental stress leading to my psychosis."

79. He said that he had not received the case management order by email from the tribunal and blamed Ms Hallsworth for failing to remind him of the deadline. He said that she had previously sent him reminders about things he had to do, but the last email he received from her was 4 March 2022. I have not seen any evidence which contradicts this.

80. Although it does appear likely that the did not receive the case management order from the February hearing when it was promulgated, the email correspondence between him and Ms Hallsworth up to 4 March 2022 demonstrates that the Claimant was aware he needed to provide the medical evidence to the respondent. He also told me that he took active steps towards complying, but his progress was hindered when he was suspended.

81. It is not disputed that this occurred on 7 March 2022. The Claimant was subsequently invited to attend a disciplinary hearing on or around 21 March 2022, which he did not attend. I understand that he was dismissed for gross misconduct shortly afterwards on 25 March 2022.

82. The claimant told me at the hearing that he 'forgot' about the need to comply with the tribunal orders because he was so focussed on dealing with the investigation that led to his dismissal and trying to save his job. He said he had sent the respondent 24 emails in connection with the investigation. He subsequently sent the tribunal a pdf bundle containing 88 pages which he said were copies of those emails.

83. In addition, the claimant said following his suspension, he began to experience severe psychosis in the form of visual and later auditory hallucinations. He effectively invited me to find that he became too unwell to deal with the proceedings and excuse his non-compliance on that basis.

84. The claimant did not provide a medical report from a health professional confirming that he was too unwell to comply with the tribunal orders.

85. At the hearing, the Claimant produced a GP's medical certificate signing him off work for 13 weeks from 19 April 2022 due to anxiety and depression. He told me by way of background that he had been diagnosed with mixed anxiety and depression disorder from October 2018 onwards.

He said he had been taking diazepam for nine months, as needed, and took 200 mg of sertraline. He did not provide me with any evidence of having been prescribed this medication at the hearing.

86. Some information the claimant told me is confirmed in the GP medical notes that he sent to the tribunal after the hearing on 28 April 2022. These were printed off on 16 December 2021 and so only cover the period up to that date. I believe these are the same notes that he had in his possession during the February gearing The GP notes run to just 6 pages of A4.

87. I note that the GP notes appear to confirm a diagnosis of anxiety with depression on 22 October 2018. The diagnosis changes, presumably due to its persistence, on 6 July 2020 to mixed anxiety and depressive disorder. The notes refer to the claimant being prescribed a dose of 150g of sertraline in September 2021 and there is reference to him taking diazepam.

88. For the sake of completeness, I also note the notes appear to confirm that the claimant has asthma since at least 16 September 1982 and keratoconus since 2 April 1998. They provide no detail as to the seriousness of the conditions.

89. In relation to anything evidencing his experience of psychosis, the claimant provided a discharge summary that confirmed that he had attended Charing Cross Hospital Emergency Department on 19 March 2022. I note that it records the following:

"*Initial assessment: pt says he has depression and anxiety, usually takes diazepam, has been suspended from work so it unable to pick up his prescription in the shop he works in, says he now hearing voices and feeling suicidal as he needs his diazepam.*"

90. The action taken by the Emergency department was to prescribe the claimant with 2mg of diazepam and recommend he contact his GP and ask for a referral to his local mental health team. The claimant told me he contacted his GP the next day and an urgent referral was made for him. This led to his GP signing him off as unfit for work on 21 March 2022. The claimant provided a copy of the fit note to the respondent and asked it not to proceed with the disciplinary hearing. He did give me a copy of this fit note, but I see no reason not to believe that it exists.

91. The further evidence that the claimant produced at the hearing was a letter dated 23 March 2022 confirming an appointment with his local community mental health team on 11 April 2022. He told me he attended that appointment and was awaiting a report. He did not have it at the hearing because it had taken longer than usual to produce because of the Easter Bank Holiday. He has not provided a copy of the report subsequently.

Decision

92. I do not consider the circumstances outlined by the claimant justify his non-compliance with the tribunal orders. I say this for a number of reasons.

93. He was given extra time to comply with the orders at the time they were made, for the very reason that at the time there was an ongoing investigation and it was envisaged that he would need to devote some time to that.

94. The claimant had the medical records in his possession in February and could very easily have provided them to the respondent within a few days of the hearing. As noted above, they were just six pages of A4. He could very easily have photographed them using a mobile phone and sent them tot eh respondent in that format.

95. Although the medical evidence the claimant provided demonstrates that he became unwell and was signed off for work at the time that he was suspended and facing a disciplinary hearing, it does not provide an opinion that he was unable to comply with the tribunal orders. Taking his case at its highest, he experienced some form of acute psychosis for a few days in the middle of March, but received appropriate treatment for it as an out-patient. He continued to be able to correspond with the respondent throughout this period in connection with the investigation.

FINAL CONCLUSION

96. Having decided that the claimant has failed to comply with a tribunal order without justification, I have given careful consideration to what action I should take. A simple failure to comply with an ordinary order does not result in an automatic strike out of a claim. Strike out is a severe action to take, particularly where the litigant involved in a litigant in person.

97. I have decided that strike out of the relevant claims is a proportionate response in this case. The reason I have reached this decision is because the claimant had several changes to provide his medical evidence, but failed to do so repeatedly, notwithstanding measures being put in place to assist him. In my judgment, his conduct went beyond mere non-compliance and became unreasonable.

98. This decision only applies to the claimant’s disability discrimination claims presented under this claim number. I note that the claimant presented a fresh claim to the tribunal on 28 August 2022, which has been served on the respondent which also includes claims of disability discrimination.

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Employment Judge E Burns
22 September 2022

JUDGMENT SENT TO THE PARTIES ON

22/09/2022

FOR THE TRIBUNAL OFFICE