



EMPLOYMENT TRIBUNALS

Claimant: Ms J Taylor

Respondent: Kier Limited

Heard at: Manchester (in public; by CVP) **On:** 15 March 2023

Before: Employment Judge Holmes (sitting alone)

Representatives

For the claimant: Not in attendance or represented

For the respondent: Ms R Levene , Counsel

RESERVED JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal that:

The application by the respondent to strike out the claims pursuant to rule 37(1)(d) on the grounds that they are not being actively pursued is refused.

UNLESS ORDERS

1. It is the Order of the Tribunal that:

Unless by 5.00 pm. on Friday 14 April 2023 the claimant:

- a) Provides to the respondent copies of documents in her possession or control which are relevant to the claims that she makes, including those relevant to remedy (i.e compensation) , or confirms to the respondent that she has no further documents to provide; and
- b) Provides to the respondent a schedule of loss complying with para. 2.1 of the Orders of the Tribunal sent to the parties on 10 March 2022, by deleting therefrom sums claimed in respect of claims which are not, and cannot be, before the Tribunal, and providing details of the losses that she is claiming to have sustained by reason of the claims that properly are (i.e how much by way of loss of earnings she claims to have sustained by reason of the alleged discrimination, what sums by way of earnings or benefits she has received since, and, to the extent that she has not been able to mitigate her loss, why she has been unable to do so); and;

- c) Sends to the respondent a copy of her witness statement , and those of any witnesses upon whose evidence she intends to rely

her claims, upon her defaulting in respect of any of these Orders, will stand struck out without any further order or hearing.

2. Para. 5.1 of the Order of the Tribunal sent to the parties on 10 March 2022 is varied so as not to require the respondent to exchange witness statements at the same time as the claimant provides hers to it. In the event that the claimant complies with this Order, the respondent is to provide its witness statements to the claimant no later than **4 weeks** after receipt of her witness statement(s).

3. The claimant's applications for a stay of the proceedings is refused.

4. The respondent is to inform the Tribunal by **21 April 2023** whether the claimant has complied with these Orders in full.

REASONS

1. The claimant underwent gender reassignment surgery in 2003 and was issued with a gender recognition certificate on 21 October 2005. The original second respondent is an employment business and in January 2021 was engaged to find a site engineer for one of its clients, the first, and now only, respondent. The second respondent contacted the claimant and made her an offer of employment which was accepted. The claimant notified the second respondent that she had changed gender and thereafter the offer was withdrawn. By a claim form presented on 16 July 2021 the claimant has brought a claim of direct discrimination on the protected characteristic of gender reassignment. In her claim form, the claimant was unsure as to whether the first or the respondent were responsible for withdrawing the offer, but she later accepted that it was the (first) respondent who was responsible for making that decision. The claims against the second respondent were accordingly dismissed.

2. During the preliminary hearing on 10 February 2022 , it was agreed that the claim of direct discrimination is based upon the respondent being the principal of the claimant (pursuant to section 41 of the Equality Act 2010). It was further accepted that sections 109 and 110 of the Equality Act 2010 have no relevance to these proceedings in view of the acceptance that it was the then first respondent who was responsible for making the decision to withdraw the offer. As such the only existing claims were those against the first respondent.

3. The respondent denies all claims. It says that firstly it was not aware that the claimant had undergone gender reassignment and further, that because of COVID measures and restrictions to site personnel at the site at which the claimant was to be engaged, all applications for the role had to be put on hold. It therefore contends that the reason for the claimant's role not being progressed was a commercial decision based upon client's requirements, and that the claimant was treated consistently with all other candidates.

4. At that hearing the claimant was granted leave to amend the claim to include a complaint against the (first) respondent that in the alternative the first respondent instructed, caused or induced the second respondent to unlawfully discriminate by

withdrawing the job offer on the grounds of the claimant's gender reassignment contract to section 111 of the Equality Act 2010. The respondent was given have leave to file an amended response by 18 March 2022.

5. Orders were also made for Schedule of Loss, exchange of documents by 6 May 2022, and preparation of the hearing bundle by 3 June 2022. The Tribunal also ordered that Witness Statements be exchanged by 30 September 2022. The Tribunal's orders were sent to the parties on 10 March 2022. The final hearing of the claims was listed for 15 to 17 March 2023.

6. Further, as the claimant had indicated that she would wish to give evidence from the United States where she expected she would be based at the time of the final hearing, the requirements for the giving of such evidence were drawn to her attention , and she was directed to the relevant provisions in the Order.

7. The claimant was at that time legally represented.

The respondent's application and this hearing.

8. By email dated 2 December 2022 the respondent made application to have the claims struck out, pursuant to rule 37(1)(d) on the grounds that they were not being actively pursued.

9. The Tribunal, by two letters of 21 February 2023 postponed the final hearing, and instead listed an open preliminary hearing to determine the respondent's application to strike out the claims.

10. The claimant by email of 25 February 2023 applied to the Tribunal to postpone the hearing, on the grounds that she was trying to find "suitable Solicitors under the Legal Aid scheme" , having previously been advised by Stephenson's, who were not now representing her. She said that she needed proper representation to address the issue, and that Stephenson's still had her files. The respondent objected to the application by email of 28 February 2023, and by letter of 14 March 2023 he Tribunal refused the application, on the grounds that lack of legal representation was not normally sufficient a reason for a postponement, but advising the claimant that she could renew the application before the Employment Judge conducting the hearing if she felt unable to address the issues being dealt with.

11. On the morning of the hearing the claimant did not participate (she had been sent the CVP link) , but, in response to the Tribunal clerk contacting her by email, sent to the Tribunal an email, at 10.17, in which she said:

"I am unable too (sic) attend by remote as i do not have access to an office to conduct the matter in private but i rely on the information and documents i have sent in about the disclosure of my gender recognition certificate by kier agency and that i had worked for kier before in my previous gender

I am happy to appear in person to provide evidence before the tribunal but unable to conduct this as i am currently homeless"

12. The respondent was represented by counsel, Ms Levene. She opposed any postponement, pointing out that the claimant had unsuccessfully applied for a postponement, and that participating in the hearing did not require access to an office, merely a room somewhere, which she submitted the claimant ought to have been able to access. She also pointed out that the claimant still appeared not to be addressing the issues in the case.

13. The Employment Judge agreed. He considered that the application should be heard, and he would then consider what, if any, orders were appropriate.

14. Ms Levene accordingly took the Tribunal through the application, originally made in the respondent's email of 2 December 2022. There was a bundle for this hearing, and page numbers are references to that bundle.

The grounds of the application.

15. Ms Levene took the Tribunal through the history of the claims, and in particular the preliminary hearing held on 10 February 2022. Case management orders were made on that occasion, which required the claimant to serve a schedule of loss by for March 2022, exchange of documents by 6 May 2022, and exchange of witness statements by 30 September 2022. The claimant had been represented by solicitors at the hearing, but they had ceased to act for her on 26 April 2022 (page 47 of the bundle), and they indicated that the claimant be seeking a stay what she sought representation under "the legal help scheme".

16. Thereafter the claimant did nothing until, after the respondent's application of 2 December 2022 was sent to the Tribunal and the claimant, she then began to communicate with respondent's solicitors sending them copies of documents which were not relevant to the issues in the claims that she makes (pages 51 to 64 of the bundle) . This includes (at page 64) a letter from her doctor dated 17 March 2022 supporting application for her to be granted asylum in the USA, where, apparently she is a homeowner. The claimant further disclosed to the respondent and indeed the tribunal a copy of her gender recognition certificate, and a report of a hate crime.

17. On 30 December 2022 the claimant sent to the respondent and the Tribunal a schedule of loss (pages 65 and 66 of the bundle), but this is a document has little relevance to her claims, as it refers, as the claimant has done elsewhere, to s.22 of the Gender Recognition Act 2004, and to the alleged disclosure of a gender recognition certificate without her authority.

18. Other than by this piecemeal and largely irrelevant process of disclosure have the claimant attempted to comply with the Orders of the Tribunal.

19. The Tribunal was also referred to its letter of 6 January 2023 in which the claimant was effectively warned the Tribunal would consider striking out her claims on the grounds they had not been actively pursued. (That letter is a response to 2 emails to the Tribunal 14 December 2022 and 22 December 2022, neither of which appear to have been copied to the respondent, either by the claimant, or by the Tribunal, which it apologises.)

20. The claimant then by email of 1 February 2023 (page 69 of the bundle) applied for a stay of these proceedings while the claim was “sent too (*sic*) the EU as the claimant believes that the Employment Tribunal and UK Government are in breach of her Human rights article 8”. The respondent replied by email , to the claimant and Tribunal , of 9 February 2023 (page 70 of the bundle) indicating that the claimant’s response was inadequate, and pressing its application of 2 December 2022.

21. The claimant then on 11 February 2023 sent a further email to the Tribunal, and to the respondent. It is unclear what the claimant was seeking to do by this email, which is best reproduced in full :

“Please accept the claimants list below

1 The Respondent agency VCG disclosed details of the claimants gender recognition certificate without her authorisation and discussed with others the withdrawal of her P4 Pass with HR as the claimant had asked VCG George not to disclose her private information with others but decided to share the claimants private information she had provided

The claimants has asked for a full criminal investigation prior to her hearing and a warrant for arrest

2 The claimant had worked for Kiers before her gender reassignment and Kiers knew that the claimant had worked under the name of Ian Fallon before with Kier

3 Kiers commercial officer has been involved in blacklisting and has secured employment within the respondents company but the claimant was denied work and negative comments about the claimants gender reassignment where made whilst she was in employment at the time of her first hearing and reported to Lisa her employment solicitors lclark@marsdenrawsthorn.com,

4 The claimant made applications for work before with the respondent under her previous name Emma Dixon and was unsuccessful on each occasion

5 Legal Aid

The claimant qualified for legal aid her certificate was sent to Stephenson Solicitor but they refused to carry out any work for the claimant

The claimant financial position has not changed

6 The claimant asked the home office for her to be able to provide evidence from the United States of America

Her request to the home office was never replied to

7 The tribunal responded to the claimant to discuss the terms of the case to be withdrawn as the respondent does not have any legal assistance

Home Office Issues

8 Disclosure of a gender recognition application to the GRP Panel to her employers

9 The UK Government where aware that the claimant had a breach in her privacy of her GRP Certificate but did nothing

10 The claimant asked for immigration assistance and requested to be able to work in the USA but she was denied help or support to meet the immigration requirements

11 The claimant qualified for her GRP Certificate with the UK Government under her terms and conditions sent to her in 2005 any unlawful disclosure would be prosecuted and there was no time limit in place in her package sent to her

Claimants Grievance

The claimants had a identical employment issue based in and around section 22 of the gender recognition which was advertised on the employment web site and dismissed by the ETA without any coarse of investigation

Her case with the MW Group was dismissed and is identical to her current case the claimant has suffered finical loss as a result and lost her home

The claimant also had a previous employment matter with Carillon Plc her case was also dismissed by the employment tribunal the case relied on section 22 of the gender recognition act 2004 as a result the claimant could not pay for her normal bills and CCJ where secured against the claimants home and was subjected to poor credit score

It is for this reason that the claimant believes and has evidence to support a claim in the EU that the UK tribunal and UK Government are in breach of the claimants Human Rights under article 8

The claimant was born in the UK and should have full access to a barrister and solicitor to address all the issues

The claimant has suffered loss of income and a home and her mental health has suffered as a result of repeated employment issues and blacklisting”

22. The Employment Judge will revert to this, and other emails from the claimant further below.

23. Ms Levene submitted that the claimant had done nothing to comply with the Tribunal's orders , but rather had , in her schedule of loss, and the other documents she had sent to the Tribunal, made reference to other matters which are not part of her claims before the Tribunal, and do not address what she was required to do to pursue her claims. Her non – participation in the hearing was yet a further example of her lack of engagement in the process.

24. The respondent was prejudiced by this. The final hearing should have been held today, but has been postponed. It is approaching two years since the claims were

issued, and it is unfair to expect witnesses now to recall events that are two years old, or more. The respondent was having to incur costs in dealing with this matter which the claimant was not pursuing, and has actually applied to stay.

25. The Tribunal should, she therefore submitted, strike out the claims. In the alternative the Tribunal should make Unless Orders , compelling the claimant to comply, at the risk of her claims being struck out if she fails to do so.

Discussion and ruling.

26. It is regrettable that the claimant did not attend , as this would have been a good opportunity to discuss with her in person what her claims are, what she thinks they, what they are not , and cannot be, and what she needs to do to ensure that her claims can proceed to a hearing. These matters can , however, be considered below, the Tribunal's first task is to determine whether the grounds for consideration of striking out the claims have been made out by the respondent.

27. The Tribunal has no hesitation in finding that they have been. The claimant has not actively pursued her claims. She has, it is true, engaged in some activity, mainly by the provision of certain documents in December 2022 and February 2023, including what purports to be a schedule of loss. This was, however, months late, and largely irrelevant, as the claimant has included in it claims for £100,000s , in respect of matters which are not, and cannot be , claims before this Tribunal.

28. Indeed, far from pursuing these claims, the claimant has sought to stay them, pending some form of other claims, to be brought before, it would seem the European Court of Justice, or criminal proceedings. She has given no indication of how long such processes are likely to take, and the implication of her application is that these proceedings could be stayed indefinitely.

29. The claimant has, of course, raised the fact that she is no longer represented, and was only afforded limited advice and representation by Stephenson's, a matter of which she appears to want to make some further complaint. That does not, however, excuse her failure adequately and relevantly to comply with the Tribunal's orders, and progress the actual claims that she has before the Tribunal. As will be apparent from the further discussion below, the claims that she makes , and properly makes, to the Tribunal , are quite straightforward, and compliance with the Tribunal's orders should not be difficult.

30. The Tribunal takes cognisance of the fact that the claimant faces some difficulties, being, as she terms it, "homeless", but she has internet access, and has demonstrated herself quite capable of finding and sending copy documents, and of composing her own documents, such as her schedule of loss. If she is able to do that, she is able to address exchange of relevant documents, and, most importantly, to draft and serve her witness statement.

31. The Tribunal is therefore quite satisfied that the threshold in rule 37(1)(d) is made out, so as to entitle the Tribunal to consider whether to strike out the claims. The Tribunal would also consider that the grounds under rule 37(1)(..) are also made out, breach of the Tribunal's rules.

32. The law on striking out under rule 37 is as follows. The power to strike out all or part of a claim or response is discretionary. Even if one or more of the five grounds in rule 37(1) is made out, the Tribunal must consider whether to exercise their discretion or make an alternative order. This two-stage process was confirmed in **HM Prison Service v Dolby [2003] IRLR 694**, at [15] (approved and applied in **Hasan v Tesco Stores Ltd UKEAT/0098/16**). The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the Tribunal to decide as a matter of discretion whether to strike out the claim or response (or part thereof), order the claim or response (or relevant part) to be amended, or order a deposit to be paid.

33. In relation to applications under rule 37(1)(d), there are two species of failure actively to pursue a claim. The first is intentional and contumelious default. That has not been the basis upon which the application has been advanced, and the Tribunal would not be satisfied that the claimant's conduct can be so categorised. As to the second situation, it must be shown '(a) that there has been inordinate and inexcusable delay on the part of the [claimant] or his lawyers, and (b) that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in the action or is such as is likely to cause or to have caused serious prejudice to the defendants either as between themselves and the plaintiffs or between each other or between them and a third party' (**Birkett v James [1978] AC 297**, per Lord Diplock). In summary, therefore, if the delay is excusable, there can be no striking out; but if it is inordinate and inexcusable, a striking out order can only be made where it is also shown that a fair trial would be impossible or that there is or would be serious prejudice to the respondents.

34. The Tribunal accepts that there is some prejudice to the respondent caused by the claimant's ongoing lack of relevant engagement with the Tribunal process. The final hearing should have commenced this very day, and as yet the respondent has not received a sensible schedule of loss, confirmation that the claimant has provided copies of all the relevant documents in her possession, or her witness statement.

35. The Tribunal has, however, also had to consider whether a fair trial is still possible. In considering what is a fair trial, the Tribunal bears in mind that a fair trial is one that is held within a reasonable time, as the cases on Article 6 demonstrate. Further, in **Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327** the EAT considered situations covered by rule 37(1)(e) (not relied upon in this application, but nonetheless relevant) including where a fair hearing is no longer possible because of undue delay or failure to prosecute a claim over a very substantial length of time. **Emuemukoro** was a case where some time before the set five days for a hearing (which was already a considerable time after the events in question), the ET made case management orders in relation to witness statements and the content of bundles which were not carried out by the respondent. The claimant complained of this, and the matter was considered at the start of the hearing. The ET found the respondent in breach and ordered that its response be struck out on the basis that a fair trial was no longer possible; it proceeded to hear the claim and found for the claimant. In its appeal, the respondent argued that the strike out was wrong because it would still have been possible to proceed at a later date. However, the EAT held that that was not the correct

approach in these circumstances because the question was whether there could still be a fair trial *within the set trial window*. At [18] the judgment states:

'There is nothing in any of the authorities providing support for [the employer's] proposition that the question of whether a fair trial is possible is to be determined in absolute terms; that is to say by considering whether a fair trial is possible at all and not just by considering, where an application is made at the outset of a trial, whether a fair trial is possible within the allocated trial window. Where an application to strike-out is considered on the first day of trial, it is clearly a highly relevant consideration as to whether a fair trial is possible within that trial window. In my judgment, where a party's unreasonable conduct has resulted in a fair trial not being possible within that window, the power to strike-out is triggered. Whether or not the power ought to be exercised would depend on whether or not it is proportionate to do so.'

36. These claims were listed for three days, and, even with the dismissal of the second respondent, they may still require such a hearing, though it is not likely to take any longer. Such a hearing could still be accommodated by the Tribunal within the next 6 months. The Employment Tribunal does not, of course, have “trial windows”, it simply lists cases for a final hearing. That listing, however, and a reasonable period after it, can in the view of the Employment Judge be viewed as the equivalent to a “trial window”. He would consider that a further period of 6 months after the current listing in March 2023 would be reasonably regarded as the “trial window” for these purposes.

37. Further, whilst witness statements were ordered to be exchanged in September 2022, it does not appear that the respondent was in a position to do so. It ought, of course, to have been. If it was not, and still has not prepared its witness statements, then any prejudice occasioned to the respondent by that delay is its, rather than the claimant's, responsibility. No specific prejudice has been identified by Ms Levene in terms of availability of witnesses, or difficulties in recollection. As it was, the respondent was able to plead a full response, and then amend its Grounds of Resistance after the dismissal of the second respondent, in March 2022, so instructions must have been taken from those within the respondent who allegedly perpetrated the discrimination complained of.

38. The Tribunal is not, therefore, satisfied that a fair hearing, within a reasonable time, within the “trial window”, is not still possible, or that the prejudice to the respondent occasioned by the claimant's default is entirely her responsibility. The Tribunal therefore considers that striking out would be a draconian and disproportionate response, and there is available the lesser sanction of making Unless Orders, which, with a strict timetable, if complied with, will mean that a fair hearing of these claims can be achieved within a reasonable time.

39. The claimant will therefore be ordered to comply with the existing orders, and in the case of the schedule of loss, to comply adequately with them, as explained below. The current Orders require same day exchange of witness statements, which the Employment Judge considers is unduly onerous upon the respondent, who would have to prepare theirs without knowing whether the claimant will or will not comply with the Unless Orders. If she does not, her claims will be struck out, and the time and cost

of preparing such witness statements will be wasted. In these changed circumstances, the Employment Judge considers that he can and should vary the previous order to provide for sequential exchange. As it is, in discrimination claims, the initial burden rests upon the claimant. Given the nature of the claims, the Employment Judge sees little or no risk of prejudice to the claimant in having to provide her witness statement before the respondent is required to serve theirs.

Other matters.

40. As the claimant's application for a stay of the proceedings has not been dealt with, the Employment Judge will take the opportunity to do so. It is refused. The claimant has not provided any timescale for such a stay, and what she intends to do in terms of other proceedings. As will be apparent from the discussion below the claimant seems to have a highly inaccurate understanding of the nature of, and limitations of, these proceedings, and of other legal processes that may be available to her. A stay would delay the determination of the claims that she has brought, and would actually not be in her best interests.

41. By way of assistance to the claimant, the Employment Judge will make some further observations which, it is hoped, will assist her to concentrate upon the claims that are before the Tribunal, and enable to comply with the Unless Orders by providing relevant, and only relevant, documents and evidence. Firstly, the claims, and the only claims, before the Tribunal are those set out in the Annex to the Record of the Preliminary Hearing sent to the parties on 10 March 2022. The issues, in fact, are now simpler, as the claims against the second respondent have been withdrawn. The claims are, in fact, quite straightforward. The claimant complains that having been offered, via a recruitment agency, VGC Group Limited, the former second respondent, a post with the respondent for Sellafield Ltd. at Seascale, Cumbria, that offer was withdrawn, she believes, because the respondent was informed that she had changed gender. The respondent agrees that it did not offer the claimant employment, but denies that this was because she had changed gender, indeed, it denies that it was even aware that she had.

42. From the pleadings, it is not quite clear whether the respondent admits that an offer of employment was actually made, either by it or by VGC, but it is accepted that the claimant ultimately was not employed by it. The legal niceties of the claims do not greatly matter (it is pleaded that if it was not the respondent who withdrew the offer, but VGC, the respondent is still liable for instructing it to do so) but the simple factual issues will be what was the reason why the claimant was denied the opportunity of employment with the respondent, and, as part of that, did the respondent even know of her gender re-assignment? (It seems, however, from her schedule of loss that the claimant may herself have told the respondent, or given some information from which this could be discovered, as she referred in a telephone interview to her previous employment with the firm before her gender reassignment.)

43. It is those issues that the evidence, both in documentary form and witness statements, needs to address. Additionally, for the claimant, her evidence also needs to address the consequences of the alleged discrimination upon her, in terms of the losses that she has sustained. These will presumably be loss of the earnings that she would have earned, for whatever period that she would have been employed for, less

any sums earned in mitigation, or received by way of state benefits, plus any injury to feelings.

44. All that is, or should be, relatively straightforward. It may help the claimant, however, if the Tribunal also clarifies what claims are not before it, and, indeed, cannot be before it, as it has no jurisdiction to hear such claims. To do so, it will largely address the matters set out in the claimant's email of 11 February 2023 sent to the Tribunal and the respondent.

45. It is probably simplest if the Employment Judge sets out the matters raised in that email, and comments upon them

1 The Respondent agency VCG disclosed details of the claimants gender recognition certificate without her authorisation and discussed with others the withdrawal of her P4 Pass with HR as the claimant had asked VCG George not to disclose her private information with others but decided to share the claimants private information she had provided

The claimants has asked for a full criminal investigation prior to her hearing and a warrant for arrest

The Employment Judge notes that the claimant here makes , (and frequently does elsewhere) reference to s.22 of the Gender Recognition Act 2004. That section makes it an offence for a person to disclose (save in certain specified circumstances) "protected information" to any other person, "protected information" being information pertaining to a person's application for a gender recognition certificate. The claimant apparently believes that VGC disclosed such information to the respondent, and possibly others. The claimant has asked that these matters be investigated, an arrest warrant issued , and criminal proceedings taken.

46. The claimant should be clear, the Tribunal has no jurisdiction in respect of such matters. It has no investigatory powers, no power to issue warrants, or the ability to hear criminal charges. The only possible relevance of s.22 would be to the issue of whether the respondent had knowledge of the claimant's change of gender. Whether for VGC to impart such knowledge would or would not also be a criminal offence, is irrelevant. The claimant should therefore abandon any references to s.22 of the 2004 Act , they are not relevant.

2 The claimant had worked for Kiers before her gender reassignment and Kiers knew that the claimant had worked under the name of Ian Fallon before with Kier

3 Kiers commercial officer has been involved in blacklisting and has secured employment within the respondents company but the claimant was denied work and negative comments about the claimants gender reassignment where made whilst she was in employment at the time of her first hearing and reported to Lisa her employment solicitors lclark@marsdenrawsthorn.com,

4 The claimant made applications for work before with the respondent under her previous name Emma Dixon and was unsuccessful on each occasion

47. Here the claimant makes reference to an unidentified Kiers commercial officer being involved in “blacklisting” (of whom is not clear, it does not appear to have been the claimant) . There is a suggestion that the claimant was “denied work”, but it is unclear when she is referring to. She goes on to suggest that comments about her gender were made, but she is very unclear as to when this was. She says whilst she was “in employment” , but the Tribunal understands her case to be that she was never employed by the respondent after she had changed gender. To the extent that the claimant seeks to make additional claims of harassment, or of previous acts of discriminatory refusal of employment these are NOT before the Tribunal , and would require permission to amend, which would be most unlikely to be granted without full particulars being provided, along with an explanation of the lateness of any such application.

5 Legal Aid

The claimant qualified for legal aid her certificate was sent to Stephenson Solicitor but they refused to carry out any work for the claimant

The claimant financial position has not changed

48. The provision of Legal Aid for Employment Tribunal claims is very restricted, and not a matter for the Tribunal. No claim can be made about it to the Tribunal, which will simply take into account that the claimant is unrepresented.

6 The claimant asked the home office for her to be able to provide evidence from the United States of America

Her request to the home office was never replied to

7 The tribunal responded to the claimant to discuss the terms of the case to be withdrawn as the respondent does not have any legal assistance

49. The claimant appears to have misunderstood the process for obtaining permission for adducing witness evidence from abroad, which does not involve the Home Office. She is referred again to the Guidance on this topic which can be viewed at [Presidential-guidance-evidence-from-abroad-revised-July-2022.pdf](#). It is important that the Tribunal is given the information specified in paragraph 13 as far in advance of the hearing as possible. As it is, it appears that the claimant has not yet gone to the USA, and if she complies with the Unless Orders, the hearing may well be held before she leaves the country.

50. The Employment Judge simply cannot understand point 7.

Home Office Issues

8 Disclosure of a gender recognition application to the GRP Panel to her employers

9 The UK Government where aware that the claimant had a breach in her privacy of her GRP Certificate but did nothing

10 The claimant asked for immigration assistance and requested to be able to work in the USA but she was denied help or support to meet the immigration requirements

11 The claimant qualified for her GRP Certificate with the UK Government under her terms and conditions sent to her in 2005 any unlawful disclosure would be prosecuted and there was no time limit in place in her package sent to her

51. None of these matters have any relevance to the claimant's claims before the Tribunal.

Claimants Grievance

The claimants had a identical employment issue based in and around section 22 of the gender recognition which was advertised on the employment web site and dismissed by the ETA without any coarse of investigation

Her case with the MW Group was dismissed and is identical to her current case the claimant has suffered finical loss as a result and lost her home

The claimant also had a previous employment matter with Carillon Plc her case was also dismissed by the employment tribunal the case relied on section 22 of the gender recognition act 2004 as a result the claimant could not pay for her normal bills and CCJ where secured against the claimants home and was subjected to poor credit score

It is for this reason that the claimant believes and has evidence to support a claim in the EU that the UK tribunal and UK Government are in breach of the claimants Human Rights under article 8

The claimant was born in the UK and should have full access to a barrister and solicitor to address all the issues

The claimant has suffered loss of income and a home and her mental health has suffered as a result of repeated employment issues and blacklisting”

52. The Employment Judge does not understand what the claimant means by her “grievance”. This appears to be a generalised complaint about the claimant's situation as a whole, and a summary of the ways in which she feels that she has been badly, and possibly illegally, treated. That may be so, but the Tribunal can only deal with the actual claims before it, and in respect of which it has jurisdiction. That is, the claimant will hopefully appreciate, a very narrow and limited aspect of all the matters that she raises in this document. The Tribunal notes the reference to the claimant's previous Tribunal claims. She appears to want to claim in the European Court of Justice (the “EU”) about the UK government and its judicial system. That is her prerogative. It is not, however, a matter which has any bearing on the claims before this Tribunal, and is not a reason for staying these proceedings.

53. This will hopefully help the claimant focus upon the issues in these claims, and not expend time and energy on correspondence about these peripheral and irrelevant matters.

54. Turning to her schedule of loss, again, much of it can, and should , be deleted as irrelevant, whereas other parts, which are relevant, need more details. Again, it may be beneficial if the Employment Judge sets out extracts from the document, and comments upon them.

Item 1

Claimants Loss of Earnings tbc by a solicitor under the legal aid scheme subject to appointment 70,000

Item 2

ETA award if the claimant is successful in her claim as the claimant became homeless and Kiers where aware of the Claimants gender reassignment after the telephone interview because the claimant pointed out to Kiers, she had worked for them before at BAE Barrow in Furness under a different name and the Kier interviewer would be following this up 500,000

Item 3 Vento Scale tbc 15,000

item 4

Section 22 of the gender recognition act 2004 disclosure of a gender recognition certificate to others without the claimant's authority through kiers agency x 2 disclosure 10,000

item 5

Any other offences in relationship to the gender recognition act 2004 TBC 100,000

item 6

Failure to provide legal aid support through the Government solicitor Stephenson when a valid legal aid certificate has been issued and the claimants file have been provided to Stephenson solicitors

item 7 Harassment of the claimant's mental health 300,000

925,000

55. Item 1 is potentially relevant, as, if the claimant was not employed by the respondent for discriminatory reasons, she could be entitled to recover any loss of earnings that flowed from this. The figure of £70,000, however, is inadequately particularised, and the claimant needs to explain or how long she would have been employed , what her gross and net earnings would have been, what, if any, sums she has earned since , and what, if any , state benefits she has received.

526. Item 2 appears wholly speculative. There is no breakdown of how this very high figure has been calculated, nor has the claimant explained how the allegedly discriminatory treatment which is the subject of the Tribunal claims – withdrawing the offer of employment – has caused the homelessness.

57. Item 3 - potentially relevant, noted as a suggested figure.

58. Items 4 and 5 are wholly irrelevant. As explained the Tribunal has no jurisdiction in respect of s.22, which creates criminal liability, and does not give rise to any entitlement to compensation, which the Tribunal, in any event would have no power to award.

59. Item 6 – irrelevant, as not a claim that the Tribunal can entertain, and, in any event, no figure is provided.

60. Item 7 – this is a wholly speculative and unsustainable claim. The claimant has not made any claims of “harassment”, and if the claimant is really seeking to claim that her mental health has been damaged by the actionable instances of discrimination before the Tribunal, she needs to set out her case on causation, and how, by reference to personal injury awards, she arrives at such a figure.

Conclusion.

61. It is hoped that all this will assist the claimant, and that she will now be able to comply with the Unless Orders made. She has arguable, and important, claims of discrimination before the Tribunal, which can still be, and should be, heard if possible. If the claimant can now comply with these relatively simple outstanding steps, and focus upon the relevant, discarding the irrelevant, these claims can proceed to a hearing in the not too distant future.

Employment Judge Holmes
Date: 15 March 2023

JUDGMENT SENT TO THE PARTIES ON
Date: 17 March 2023

FOR THE TRIBUNAL OFFICE

- (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 rules 74-84.**
- (3) You may apply under rule 29 for this Order to be varied, suspended or set aside.**