EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105229/2016 Preliminary Hearing at Edinburgh on 15 March 2017

Employment Judge: M A Macleod

Belinda Merrilees	Claimant In Person
Kestrel Ophthalmics Ltd	Respondent Represented by Mr A Philp Consultant

DECISION

The Judgment of the Employment Tribunal is that the respondent's application for strike out of the claimant's claim is refused; and that the respondent's application, in the alternative, for a deposit order is also refused.

REASONS

1. In this case, the claimant complains that the respondent dismissed her unfairly following upon the making of a protected disclosure, or protected disclosures. The respondent resists the claimant's complaints.

2. A Preliminary Hearing was fixed to take place on 15 March 2017. The purpose of this PH was to determine the respondent's application for strike out of the claim in its entirety on the basis that it has no reasonable prospects of success, which failing a deposit order as a condition of the claimant being permitted to continue with her claim, on the basis that it has little reasonable prospects of success.

3. The claimant appeared on her own behalf, and Mr Philp appeared for the respondent.

4. Mr Philp, for the respondent, produced two bundles of documents, one of which set out correspondence and other contemporaneous documents relevant to the dispute between the parties, and the other which provided copies of authorities upon which he sought to rely in his submission.

Submissions

5. Mr Philp referred to Rule 37 of the Employment Tribunals Rules of Procedure 2013, upon which his application is based. It is useful at this stage to set out the relevant terms of Rule 37:

"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –

(a) that it is scandalous or vexatious or has no reasonable prospect of success;…"

6. He made reference to paragraph 29 of the judgment in **Eszias v North Glamorgan NHS Trust (CA) [2007] ICR 1126**:

"…it would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous"

7. Mr Philp accepted that it is a "high test", and that while it is not appropriate to consider the facts in the case, the Tribunal can review the contemporaneous correspondence.

8. He also referred to Rule 39, with regard to his alternative application, for a deposit order on the basis that the claim has little reasonable prospects of success.

9. He observed that it is critical to remember that the claim here is made by a claimant who has less than 2 years' qualifying service, and thus cannot bring an ordinary unfair dismissal claim. Her entire claim rests on her claim that she was dismissed because she made protected disclosures.

10. In the case of **Chandhok & Another v Tirkey UKEAT/0190/14KN**, the Employment Appeal Tribunal reminded Tribunals that it is necessary to focus upon the claim as pled. Mr Philp pointed to paragraph 16 (p31, authorities bundle), in which it was said: *"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Indeed, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond…"*

11. Paragraph 17 goes on *"I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication…Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it…"*

12. Mr Philp referred also to the case of **ALM Medical Services Limited v Bladon [2002] EWCA Civ 1085**, and said that what that case says is that there the claimant has not served the minimum qualifying period for an unfair dismissal claim, the question is whether the criteria for protected disclosures have been satisfied on the evidence. He went on to say that the additional issue before the Tribunal is whether the disclosures, or alleged disclosures meet the criteria set out in section 43B of the Employment Rights Act 1996, and if not, the claim must fail.

13. He then addressed the Tribunal on the allegations set out in the pleadings, said to amount to protected disclosures.

14. Firstly, he said, there is an allegation of bullying and harassment, which is pled at p7 in the ET1 at points 3 and 5. In addition, the Note following the Preliminary Hearing on 17 February 2017, at paragraphs 5 to 7, and in particular the point made that if the claimant wished to assert that the respondent had breached any legal obligations, she must be specific in setting out which sections or sub-sections of the respective Acts of Parliament she is relying upon; and that if the claimant wished to characterise the alleged bullying and harassment as relevant to the Equality Act 2010, she would require to identify a protected characteristic under that Act.

15. He went on to point out that the claimant did respond to the Tribunal's Order, at 51/2, and that what she says is in response to the requirement to be as specific as possible.

16. Mr Philp referred to the well known case of **Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325 EAT**, in which it was affirmed that in order to satisfy the meaning of "disclosure of information", the claimant must disclose facts, and do more than make an allegation.

17. The claimant relies upon emails of 2 and 20 April 2016. Mr Philp advised the Tribunal to remember that the allegation was of bullying and harassment of certain staff by Steve Bryan and Maria Ponsford.

18. Looking at the email of 2 April 2016 (89/90), he submitted that there is nothing to support the allegation. The email of 20 April 2016 (91) was more detailed, but did not say anything about bullying and harassment of staff members. The email stated that she felt intimidated by direct questions from Steve Bryan as to why she had decided to change her mind about leaving.

19. This, he submitted, did not support the allegation that other staff had been bullied and harassed.

20. Then he asked the Tribunal to consider the verbal assertions made by the claimant on 30 March, 1 April and 20 April, and argued that if verbal assertions are made it is necessary to look at the claimant's actions thereafter. If she were saying that bullying and harassment had taken place, that would appear to be a serious issue, but it is relevant to consider the actions of the person thereafter. He argued that there is no reference to any of this in the notes of the disciplinary hearing (95-97), the dismissal or the appeal (99-101). When she suggests that she has been dismissed as a result of having made protected disclosures, she only refers to the issue of the tracker. There is no reference to this assertion in what the appeal letter says three days after her dismissal.

21. Looking through the remainder of the contemporaneous documents there is no reference to this, including in the statement provided by the claimant for her appeal (129-131). It is mentioned in the course of the appeal hearing, as recorded in the notes (118). In addition, a statement presented in respect of the evidence of Kath Ferrier (65-68) dated 13 October 2016 contains reference to bullying and harassment, but that statement dates from just before the presentation of the Employment Tribunal claim.

22. Mr Philp therefore argued that what is available is verbal communications not supported by contemporaneous documents, and the first time these issues are raised with the respondent is in the appeal hearing or in Kath Ferrier's statement.

23. He submitted that if you look at what the respondent had, it amounted to an allegation of bullying and harassment; if you have to ask for details, then no specific facts have been provided in the alleged disclosure, and without facts, it simply cannot be a disclosure.

24. If that submission is not accepted, he argued that the next component must be whether the claimant had a reasonable belief that the

respondent has breached a legal obligation. There must, therefore, be a legal obligation, to which the respondent is subject, and which the respondent has breached.

25. The belief must have a substantiated basis. Mr Philp referred to **Eiger Securities LLP v Korshunova UKEAT/0149/16/DM**, and said that it showed that the language of the disclosure must in some way identify the legal obligation which is said to have been breached.

26. When asked what legal provisions, namely sections of the legislation relied upon, the claimant was referring to, she responded by pointing to the Health and Safety at Work Act 1974 and regulations. It is not obvious what legal obligation the claimant is referring to. She has simply referred to generalities. Mr Philp argued that the claimant could easily have googled the legislation in order to identify the appropriate specific legal provisions. Also, she took legal advice early on in the proceedings in this case. He submitted that she has got "nowhere near" identifying a legal obligation which the respondent was subject to and had breached.

27. Mr Philp then turned to the allegations about the mileage tracker. Those allegations are set out in the ET1 at p7, in paragraph 7. At 51, she provided further particulars that her private mileage was being tracked, and that there was no privacy button on her car.

28. The Note following Preliminary Hearing records at paragraph 7 (58) that the disclosures were made, in this regard, to Steve Bryan by telephone on 28 March 2016, to Ian Ponsford on 30 March 2016 by telephone and by emails on 2 and 20 April 2016.

29. He argued that the emails, all that can be said is that they refer to the tracker. At 90 she asked if the tracker could be removed and a daily mileage be recorded. That suggests two things, he submitted: that there had been no prior discussion with Ian Ponsford about this, and that she was asking for the tracker to be removed for insurance purposes. This was confirmed on 91. There is nothing to suggest she was saying that there was something illegal about the tracker being used. It is nothing

more than a request. There is no subsequent reference to this in the minutes of the disciplinary hearing.

30. In the letter of appeal against dismissal, he said, the matter is raised, and the claimant says that it is illegal to monitor private mileage, under the Data Protection Act. That, however, was inconsistent with what had been said earlier. The fact that there was a tracker without a privacy button "tells us nothing". There are no facts alleged, and therefore there is no disclosure here.

31. Again, if that is not accepted by the Tribunal, there is no reasonable belief on the part of the claimant that the respondent has breached a legal obligation to which it was subject. At 52, the claimant makes reference to Article 8 of the European Convention on Human Rights and the Human Rights Act. The only document which refers to this matter is the appeal letter, and that only talks about the Data Protection Act and the Human Rights Act, and says that it is illegal.

32. Mr Philp then submitted that the contract of employment and company handbook, both produced before this hearing, show that there was a specific reference therein to vehicle tracking, and therefore the claimant cannot possibly hold the reasonable belief that she had not consented to the use of the tracker when her own contract of employment makes it clear that that would and did happen.

33. Her induction on 30 November 2015 includes nothing to suggest that the claimant had any difficulties with the tracker at that point. It may, he said, be a question of affirmation.

34. He submitted that in any event the claimant has not referred to a specific provision in any of these enactments upon which it can be understood what legal obligation is being relied upon.

35. The claimant has argued that the actions of the respondent were "illegal", which suggests a criminal penalty to be applied for infringement.

There is no basis for that, and therefore no reasonable belief that this could amount to a protected disclosure.

36. The European Convention on Human Rights has no application to a private company, and therefore it could not be said that the respondent had acted illegally towards the claimant under this enactment.

37. There is no clarity in the pleadings as to why the claimant suggests that it is in the public interest to disclose these matters. There is no information available to the Tribunal to show that that could amount to a qualifying disclosure.

38. Mr Philp then turned to the allegation about the pension. At p7, paragraph 5, the ET1 alleges that staff were complaining that they were not receiving their pension payments. At 51, the claimant stated that Bridget Neuval and Kath Ferrier were not receiving pension payments. At p62, she clarified that she had disclosed these issues to Ian Ponsford in person at a meeting on 1 April, and in an email of 28 May 2016. That email, he said, made no reference to a disclosure but to an inquiry.

39. If the issue verbally disclosed to Ian Ponsford related to the other members of staff, he said, it is strange that there is nothing mentioned about that in the subsequent documentation. It is not clear, in any event, what is meant by non payment of pension. It could mean pension contributions or payments of the pension itself, but the claimant does not specify. The correspondence is inconsistent with any suggestion that there had been some non payment to Kath Ferrier in April, because there is no evidence that she was unhappy about this matter at that point. Kath Ferrier's statement is not clear about the matter, and in any event what she says does not amount to a disclosure of information.

40. If the Tribunal does not accept that submission, then Mr Philp argued that it is necessary to look at whether there was a reasonable belief that the respondent had failed to comply with a legal obligation. A contractual obligation is, he acknowledged, capable of amounting to a

legal obligation, but it is not sufficient that it is merely a breach of contract – it must be a breach of a legal obligation.

41. He queried what the claimant had said to show that the respondent had breached a legal obligation to make pension payments. The contracts of Kath Ferrier and Bridget Neuval have been lodged (146-148), showing that eligibility for the pension scheme arose after 6 months' continuous service. There is no basis for showing that the individuals took up their eligibility and that right was somehow breached. He said his information is that Ms Neuval never joined the pension scheme but the claimant has no substantiated basis for showing that anyway.

42. Essentially, Mr Philp argued that there is an uncorroborated verbal assertion of 1 April in relation to what cannot be a reasonable belief in something which did not happen until June or July that year. The claimant could not have made a disclosure about that.

43. In any event, why, he asked, is this in the public interest? There is no basis for suggesting it is.

44. Mr Philp invited the Tribunal to strike out the claim on the basis that it has no reasonable prospects of success, given the failure of the claimant to set out a substantiated basis upon which the components of section 3B of the Employment Rights Act 1996 could be satisfied.

45. Further, he said that if that is not accepted, the claim has little reasonable prospects of success.

46. In any event, the claimant says she was dismissed for having made disclosures to the respondent. She must show that that was the only or principal reason for dismissal. The respondent says that the reason for dismissal was a combination of conduct issues relating to expenses and alcohol consumption. There are concessions made in the appeal letter in which she accepts that she claimed for incorrect mileage, saying that they were genuine oversights, and admitted that she purchased alcohol,

concessions which could make it difficult to prove that the main reason for dismissal was the making of protected disclosures.

47. Mr Philp also pointed out that those persons to whom she made the disclosures did not dismiss her, and there is no basis in the pleadings for suggesting that the dismissing officer knew about the disclosures when dismissing her. That being the case, it is, he said, "impossible" for the claimant to be able to demonstrate that the reason for the dismissal was the making of the protected disclosures because it is not alleged that the dismissing officer, Carol Innes, knew about them.

48. The claimant made a short submission on her own behalf.

49. She confirmed that she opposes both applications made by the respondent. She stated that she will dispute the alleged reason for dismissal, and dispute the facts on which the respondent will say that they were justified in dismissing her. She will, further, deny any breach of policies.

50. She submitted that she believes that she suffered a number of detriments as a result of making protected disclosures, and that she was subjected to a spurious investigation. She believes that her dismissal was a direct result of having made protected disclosures.

51. She asserted that she has provided details of the disclosures, and that they go beyond mere allegations. She submitted that the question whether they amount to protected disclosures can only properly be determined on the facts after hearing evidence. She has provided the respondent with ample evidence of their wrongdoing to allow them to understand that she was making protected disclosures. The conversations included information about breaches of obligations, and the respondent's denials, she said, are completely untrue.

52. She said that she strongly believes that her disclosures were in the public interest. It must be in the public interest that an employer has ignored bullying and harassment, breach of the Human Rights Act,

failure to comply with pensions obligations. She has a reasonable belief in all the facts.

53. Strike out is a very serious sanction, and she argued that she has the right to have her claims heard by the Tribunal. It is not for the Tribunal to conduct an impromptu trial of the acts unless the documents conclusively disprove the allegations, and that is not the case here.

54. There is a clear dispute about the facts relating to the tracker.

55. She argued that the deposit order should not be granted either. She argued that if the evidence were established her case would be successful. She confirmed that she has no job and no income, not being in receipt of benefits. She is reliant upon her family, and particular her partner, for financial support.

56. She asked the Tribunal to refuse both applications.

Discussion and Decision

57. The respondent seeks the strike out of the claimant's claim on the basis that it has no reasonable prospects of success, or in the alternative, a deposit order on the basis that it has little reasonable prospects of success. The claimant opposes both applications.

58. Mr Philp appropriately drew the Tribunal's attention to a number of cases, but at the outset he referred to the well-known and important case of **Eszias**, in which the Tribunal is given guidance as to the approach to be taken to such an application:

"…it would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous"

59. It is therefore a very high test which the respondent requires to pass if they are to succeed in this application. It is only in an exceptional case that the claim is to be struck out where the central facts are in dispute.

60. What Mr Philp has sought to do, in some detail, is to examine the pleadings and argue that the claimant has failed to make a relevant claim under the 1996 Act. He does not, fundamentally, seek to suggest that the central facts are not in dispute: what he says, in my assessment of his submission, is that those facts, even if proved, could not provide the basis for a successful claim for the claimant.

61. A qualifying disclosure is defined in section 43B as *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one ore more of the following:*

   a. *That a criminal offence has been committed, is being committed or is likely to be committed;*
   b. *That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
   c. *That a miscarriage of justice has occurred, is occurring or is likely to occur;*
   d. *That the health or safety of any individual has been, is being or is likely to be endangered;*
   e. *That the environment has been, is being or is likely to be damaged; or*
   f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."*

62. The claimant relies upon three assertions: that she and others were subjected to bullying and harassment; that she was subjected to inappropriate monitoring of her private mileage in the use of a tracker on her company vehicle; and that others were subjected to non-payment of pensions by the respondent.

63. The claimant has tried, in her ET1 and further and better particulars, to identify the wrongdoing which she says took place and about which she made her disclosures. Mr Philp has criticised her failure, as he asserted it, to identify a specific statutory provision to which the respondent is subject and which they have breached, under each heading. It is therefore appropriate to consider each assertion and determine whether or not that criticism is such as to persuade the Tribunal, at this stage in the proceedings, that this claim or any part of it falls into the bracket of an exceptional case which should not be allowed to proceed to a full hearing.

64. With regard to the bullying and harassment which the claimant says she was subjected to, she refers to disclosures made not only in writing but verbally on 30 March, 1 and 20 April. The respondent says that the written assertions do not amount to the disclosure of information, but mere allegations, and that saying that the claimant felt intimidated by direct questions from Steve Bryan does not amount to an allegation, in any event, of bullying and harassment.

65. In my judgment, that is a matter for the Tribunal to determine following the hearing of evidence. I do not accept the submission of the respondent that that statement, about feeling intimidated, does not amount to an assertion that bullying or harassment took place. There is, in my judgment, a basis for the claimant to suggest that such a disclosure has been made.

66. The claimant has not identified a protected characteristic under the Equality Act upon which she seeks to rely in saying that she was bullied and harassed, but in my judgment that is not necessary unless she is specifically asserting that it was harassment on the grounds, for example, of her sex. It is open to the Tribunal to conclude that an assertion of bullying and harassment may fall into sub-sections (b) or (d). A legal obligation under sub-section (b) may include a contractual obligation (as Mr Philp conceded), and it is at least arguable for the claimant to suggest that the actions of the respondent breached the

implied term of trust and confidence between employer and employee. It may also be argued that her health and safety, or that of others, was placed at risk by conduct falling into this category.

67. While I appreciate that no evidence has been led as to the detail of this, it appears to me that it would be unsafe and unjust to exclude this claim from a full hearing.

68. Mr Philp also observed that the verbal disclosures must be considered by the Tribunal at this stage in the proceedings as unsupported given the lack of subsequent evidence, available in the minutes of the internal proceedings which followed, to show that the claimant was raising these matters again. In my judgment, that falls short of allowing the Tribunal to conclude that the assertions were totally and inexplicably inconsistent with the undisputed contemporaneous correspondence, referred to in **Eszias**, The absence of further assertions may be an important piece of evidence to which the respondent may point at the conclusion of an evidential hearing, but I am not persuaded that there is sufficient in that absence at this stage to permit the Tribunal to take the draconian step of excluding the claim altogether.

69. Accordingly, I am not persuaded that the claim in respect of bullying and harassment has no or even little prospects of success, and that it should be permitted to proceed to a full hearing on the evidence. I consider that the disclosures, while sparely pled, do set out the disclosure of information about what caused her to suggest that she felt bullied and harassed, and that she is offering to prove that she had a reasonable belief that the conduct complained of had taken place. Further, such an allegation may be in the public interest, given the potential impact upon other employees.

70. None of these conclusions may be taken as disclosing any view about the strength of that evidence. However, it is my conclusion that the claim in this regard is not such as to fall into the exceptional category which would justify its being struck out as having no reasonable

prospects of success. It is, in my judgment, impossible to say at this stage that the claim has little reasonable prospects of success, and therefore it is not appropriate that this claim should attract a deposit order.

71. With regard to the second heading, the claimant seeks to argue that the installation of a tracker which took account of the claimant's private mileage was a breach of the respondent's obligations under the Data Protection Act and the ECHR or Human Rights Act.

72. Mr Philp pointed out that the claimant was required by the Tribunal to specify which particular provisions she was seeking to rely upon, and has repeatedly failed to do so. He argued that the respondent has no clear notice of the provisions which it is supposed to have breached, and that the claimant has, in this regard, come "nowhere near" identifying a breach of a legal obligation to which the respondent was subject.

73. The claimant asserts that she disclosed the tracker issue in telephone calls on 28 March and 30 March, and by emails on 2 and 20 April. Again, it is suggested that the emails do not provide the substantive basis for asserting that the claimant disclosed any information which could lead to the conclusion that a legal obligation was being breached.

74. What the respondent asks the Tribunal to do is to find that this claim has no reasonable prospects of success on the basis on which it is advanced. In my judgment, the criticisms made by Mr Philp of the claimant's failure to identify specific provisions within Data Protection or Human Rights legislation are valid. The claimant was required by the Tribunal to be clearer in setting out the provisions which she said amounted to legal obligations breached by the respondent. In my judgment, she has not done so with any clarity.

75. Again, however, I am not persuaded that I can legitimately or fairly reach the conclusion that there is no legal obligation to which the respondent was subject and which was being breached. The difficulty does arise, at least partly, from the fact that the disclosures alleged to have been made

in the emails can be viewed, but that there requires to be evidence to determine what was said in the telephone calls.

76. The authorities plainly require that the Tribunal should not take an overly formal view of the pleadings. The claimant considered that the use of the tracker for monitoring private mileage was an unwarranted and illegitimate intrusion beyond the scope of the working relationship, and damaged that relationship substantially. That may, therefore, fall under sub-section (b).

77. I am not therefore persuaded that the claimant has no reasonable prospects of success, without evidence being heard as to the basis upon which she was expressing her concerns. Mr Philp made reference to the terms of the contract of employment, and to provisions within that which he said made clear that the claimant was put on notice that the tracker would monitor both private and business mileage. That may be the case, but at this stage I do not consider that that evidence is undisputed – the claimant did not accept that either the contract was as set out or that the respondent's interpretation of it was correct. The matter may be dealt with relatively briefly by evidence but it requires to be dealt with in evidence, in my judgment. Again, the claimant may be able to demonstrate a reasonable belief in the disclosure, and to show that there is a public interest in raising such a matter with her employer.

78. Thirdly, the claimant has alleged that she disclosed information about the failure of the respondent to make pension payments to two members of staff. Mr Philp argued that the claimant has failed to provide any clear basis for this assertion, as it is not clear what is meant by "pension payments". He also pointed to a statement by Kath Ferrier, one of the concerned employees, which shows that she could not have been raising concerns about pension payments owing to the fact that she had only just been in employment long enough to be entitled to join the scheme.

79. In my judgment, the claimant has asserted that she disclosed information, which is lacking somewhat in detail, but which seeks to show that the respondent was failing in its legal obligation, based on its contractual pension scheme, to make payments due under that pension scheme. That amounts, in my judgment, to a disclosure of information about two individuals employed by the respondent, and may amount to a reasonable belief on the part of the claimant that that legal obligation had been breached.

80. That there is argument as to the timing of these events is, in my judgment, demonstration of the need for evidence to be heard in order to resolve the factual dispute which remains.

81. Accordingly, it is my judgment that it cannot be said that there is no reasonable prospects of success in relation to each of these claims.

82. As to whether or not the respondent took into account these disclosures when taking the decision to dismiss, and what effect any admissions by the claimant in the internal process may have had, these appear to me to be issued which go to the heart of the dispute between the parties, and therefore require evidence to be led in order to allow them to be determined.

83. I am influenced in my conclusion by the claimant's unrepresented status. The overriding objective of the Tribunal requires me to seek to place the parties on an equal footing, and it would not, in my judgment, be in the interests of justice nor consistent with the overriding objective to prevent this claim proceeding to a full hearing. It is noted that the claimant may well have legal representation by the time of the hearing, and that she has consulted with solicitors in preparation for this hearing, but it is clear that she has sought to respond to the orders of the Tribunal in as open and compliant a way as she could. This is a complex area of the law, but she is entitled to present her own case, and the Tribunal requires to take that into account as a factor when seeking to comply, in the exercise of its discretion, with the overriding objective.

84. It is also of significance that one of the decisions to which I was referred (**Geduld**) dealt with an analysis of the case after evidence had been heard. To prevent the case going to a hearing would not allow that analysis to take place, and in my judgment it is not in the interests of justice to do so.

85. Accordingly, the respondent's application to strike out the claim is refused.

86. In addition, the respondent's application to require the claimant to pay a deposit order as a condition of being permitted to continue with the claim is also refused. I am not persuaded that it is in the interests of justice, or at all fair, to insist on the claimant, whose financial circumstances are in any event vulnerable, being required to pay a deposit. I have not reached the conclusion that any of the claims pled by the claimant have little reasonable prospects of success, and therefore the deposit order does not arise.

87. Date listing letters will now be issued in order to list a hearing on the merits in this case.

Employment Judge: Murdo A MacLeod
Date of Judgment: 03 April 2017
Entered in Register: 04 April 2017
and Copied to Parties