# THE EMPLOYMENT TRIBUNALS

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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| **Claimant** | **Mr D Quarm** |
| **Represented by** | **In Person** |
| **Respondent** | **Commissioner of the Police of the Metropolis** |
| **Represented by** | **Mr N De Silva, Counsel** |
| **Employment Judge:** | **Mr J Tayler** |
| **Members:** | **Mr J Carroll**<br>**Mr M Simon** |
| **Date:** | **4 -7 September 2017** |

# Judgement

The claim fails and is dismissed.

# Reasons

**Introduction**

1. The Claimant has brought a series of complaints against the Respondent. This is the eleventh. He did not succeed in the first 10. The initial claims focused on complaints of race discrimination. Latter claims focused on victimisation and detriment done on the grounds of having made protected disclosures.

2. Claims 6 to 9 were made in 2013 and 2014. They came before a tribunal chaired by Employment Judge Baron between February and March 2015. The complaints were dismissed. The Claimant was ordered to pay costs.

3. On 19 October 2015, the Claimant made a complaint to the IPCC. He raised a number of historical complaints and also complained about the actions of various officers when giving evidence at the Baron tribunal; alleging that they had been guilty of criminal conduct, principally that they had perjured themselves.

4. The Claimant also complained that on 25 January 2016 that he had made a protected disclosure that no severity assessment been undertaken by the Department of Professional Standards (DPS) of the Respondent into his complaint to the IPCC of 19 October 2015 and that he had been refused an appeal against that decision. On 9 March 2016, the Claimant issued Claim 10 complaining about the failure to undertake a severity assessment and the refusal of an appeal. The claim was subject to an application for deposit orders which was heard on 16 May 2016. Deposit orders were made in a Judgment sent to the parties on 27 May 2016.

5. On 19 May 2016, the Claimant, having ticked the box on the ET1 that asks that the matter be referred to the relevant regulator, the Employment Tribunal sent a copy of the ET1 in Claim 10 to the IPCC (but not a document headed List of Protected Disclosures[1] that was stated to be appended to it as this had not been uploaded to the Employment Tribunal sever by the Claimant).

6. The deposit order in Claim 10 was due for payment on 27 June 2016. The Claimant did not pay the deposit order so the claim was struck out on 27 July 2016. The Judgment was sent to the parties on 16 August 2016.

7. On 25 August 2006, the Claimant submitted Claim 11. A Preliminary Hearing for Case Management held before Employment Judge Grewal on 25 October 2015. The issues were identified.

8. The Claimant withdrew a public interest disclosure complaint and complaints of direct and indirect race discrimination at a Preliminary Hearing before me on 17 November 2016.

**The Issue**

9. The only complaint that remained in Claim 11 was that the failure by the Respondent to undertake a severity assessment between 15 to 21 June 2016, once the IPCC had passed the Claim Form in Claim 10 to the Respondent's Department of Professional Standards, constituted an act of victimisation. He stated that that was done because of protected acts; being his previous allegations of discrimination made in his previous Employment Tribunal proceedings and in the Claim Form in Claim 10.

[1] The list of protected disclosures included complaints about events prior to the Baron tribunal and conduct at the Baron tribunal that were similar to the IPCC complaint of 19 October 2015.

**The Application to Amend**

10. In Closing Submissions, the Claimant made an application to amend his Claim Form to replace the end date 21/06/2016 in the following section of the ET1:

> "Between 15/06/2016 to **13/09/2016** the Respondent's Department of Professional Standards (DPS ) was supplied Protected disclosure information from Mr Quarm regarding various racially motivated criminal offences and breaches of legal obligations by a number of its staff. The regulator, the Independent Police Complaints Commission (IPCC) required the Respondent to complete a Severity Assessment for these matters under the Police Reform Act 2002."

11. The Claimant sought to make this amendment because of evidence given by Miss Brownrigg in which she made it explicit that her understanding was that there would be no assessment of the Claimant's claim to consider whether any members of staff or officers were guilty of misconduct until the tribunal proceedings had been concluded. Miss Brownrigg was questioned about why she did not carry out an assessment after Claim 10 had been struck out stated that it was because the matter had "slipped off her radar". The Claimant wished to add a claim that a severity assessment should have been conducted once Claim 10 had been struck out. I proposed a form of wording that I considered better expressed that point. During closing submissions, the Claimant agreed to that wording but subsequently in the morning on 7 September 2017 he sent correspondence expanding on his application to amend and reverting to the original wording he had proposed. Accordingly, we have assessed the application to amend on the basis of the wording put forward by the Claimant.

12. In his letter making further submissions in support of his application to amend the Claimant stated that it was not until Miss Brownrigg gave evidence on 5 September 2017 that he understood that the Respondent was contending that it had not been appropriate to assess his claim pending the conclusion of the Employment Tribunal proceedings. He pointed out that no mention was made of the ongoing legal proceedings being a block to a severity assessment in the Respondent's Grounds of Resistance. This is correct. He also mentioned that this issue was not raised at the Preliminary Hearing for Case Management on 25 October 2106. This is also correct. He pointed out that it was not raised at the Preliminary Hearing on 17 November 2016 before me. Again, that is correct: one of the reasons I declined to make a Deposit Order or to strike out the claim was the fact that the Respondent had not given an explanation for what it had done on receipt of the ET1 from the IPCC. The Claimant states the matter was not dealt with at a Preliminary Hearing for Case Management on 13 April 2017. That is correct; but perhaps not surprising as the hearing was to deal with disclosure issues.

13. The Claimant states that it was not dealt with in the witness statement of Miss Brownrigg. He referred to paragraph 21 in which Miss Brownrigg stated about having referred the matter to the Respondent's ET unit:

> "What I had in mind when writing to them was clarifying whether the document which had been sent to the IPCC was the same as the Claim Form. Had they come back to me and told me that it was (which is what I have now been told), then I would not have recorded it as a separate Conduct matter. I would have told Mr Atherton that it duplicated the Tribunal Claim and that we were not recording anything at that time. It is my understanding that the organisation considers court or Tribunal Judgments and if there were a finding of Misconduct, this would be referred to the DPS at that stage through the DPS mailbox"

14. In her statement, Miss Brownrigg focused on the fact that the matter slipped off her radar but did make it clear that her understanding was that any assessment of matters duplicating the ET1 would await the outcome of Employment Tribunal proceedings. That is consistent with her email of 7 June 2016 when she referred to her understanding that correspondence the IPCC was referring to related to Employment Tribunal proceedings and that "At this time we will not be referring It to the IPCC".

15. However, we accept that it was not until the Employment Tribunal hearing that Miss Brownrigg's position was made explicit in that she was not expecting any further action as there were ongoing Employment Tribunal proceedings.

16. In considering the application to amend we had regard to **Selkent Bus Co v Moore** [1996] ICR 836 at 843F. Whenever the discretion to grant an amendment is invoked, the Tribunal should consider all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Mummery J as he then was, noted a number of relevant factors; including, the nature of the amendment and the applicability of any of the time limits and the timing and manner of the application. Those are examples of factors that should be considered. Essentially, the approach in **Selkent** is at one with the overriding objective: the focus is on the balance of hardship in allowing or refusing the amendment, which is a key component of dealing with cases fairly and justly. This is also the approach set out in the Presidential Guidance.

17. The Respondent's contention that no assessment of whether staff or officers were guilty of misconduct would be conducted until the Employment Tribunal proceedings had concluded was not made explicit until Miss Brownrigg gave evidence. In the circumstances, even though the matter was dealt with more briefly in Miss Brownrigg evidence than would be ideal, we consider she did have an opportunity to explain her position and the injustice of refusing the Claimant the opportunity to advance the case that there should have been an assessment for possible allegations of misconduct in his Claim Form after his claim had been struck out outweighs that to the Respondent of permitting the amendment. This position could have been avoided if the Respondent had been clear from the outset that no assessment would be undertaken pending conclusion the Employment Tribunal proceedings.

**Evidence**

18. The Claimant gave evidence on his own behalf.

19. The Respondents called Geri Brownrigg, at the relevant time a Band D Complaints Assessor in the Complaints Support Team.

20. The witnesses who gave evidence before us did so from written witness statements. They were subject to cross-examination, questioning by the Tribunal and, where appropriate, re-examination.

21. We were provided with an agreed bundle of documents. References to page numbers are to the page number in the agreed bundle of documents.

**Findings of fact**

22. In 2013 Miss Brownrigg was a Fairness at Work Administrator reporting to Practice Manager, Mel Reilly. The Claimant made a Fairness at Work Complaint. Miss Brownrigg's only involvement was to input the complaint onto an HR system and pass it to Mel Reilly to assess. We do not consider that this minor involvement was of any relevance to Miss Brownrigg's subsequent dealings with the Claimant.

23. On 1 July 2015 Judgment was promulgated in Claims 6-9 (p306-367).

24. On 19 October 2015, the Claimant made a complaint to the IPCC (p374-9). The IPCC referred the matter to the Respondent. On 11 January 2016, the matter was considered by Miss Brownrigg and Inspector O'Connell (p398) who decided that items 1-22 in the complaint had previously been considered by the Employment Tribunal and that the remaining matters 23-29 did not meet the threshold to instigate a misconduct investigation. This decision was the subject matter of the Claimant Claim 10 issued on 9 March 2016.

25. On 16 May 2016 the Claimant was ordered to pay a deposit in Claim 10.

26. On 19 May 2016 Claim 10 was sent by the Employment Tribunal to the IPCC as the Claimant had ticked the box on the ET1 asking that it be referred to the relevant regulator (p58). As stated above, the list of protected disclosure stated to be attached in the Claim Form were not. They had not been uploaded successfully to the Employment Tribunal website by the Claimant.

27. On 6 June 2016 Jonathan Atherton, an Assessment Analyst at the IPCC sent an email to the Respondent's DPS inbox stating (p45):

> "The IPCC has received correspondence dated 19 May 2016 from HM Courts & Tribunal Service in relation to an ongoing employment tribunal concerning Mr Derrick Qualm [sic]. Within this correspondence Mr Qualm raises allegations against a number of officers of the DPS. The allegations

> appear to relate to a decision taken by the DPS not to record previous conduct allegations arising from the employment tribunal.
>
> I was wondering whether you have had sight of this correspondence and whether you are intending to make a referral to the IPCC in relation to that correspondence?"

28. Although the documentation was not enclosed it was clear that it was in relation to Claim 10. The matter was considered by Miss Brownrigg who replied on 7 June 2016 (p45):

> "We have not had sight of this correspondence, please could you forward to our mailbox for assessment. The Employment Tribunal in relation to this matter is not taking place until November 2016.
>
> At this time we will not be referring It to the IPCC."

29. We accept that in this email Miss Brownrigg was stating that the issues raised in Claim 10 would not be referred to the IPCC at that time. That was because there was an ongoing Employment Tribunal complaint about the matter and her understanding was that consideration would not be given to any potential misconduct issues until the Employment Tribunal proceedings were completed.

30. Miss Brownrigg accepted in evidence that she was unhappy that she was subject to Employment Tribunal proceedings. We accept her evidence that if a stage had been reached when the allegations should be assessed to determine whether any misconduct proceedings should be brought, she would not have carried out the assessment herself as complaints had been made against her.

31. Mr Atherton replied on 9 June 2016 stating:

> "Thank you for coming back to me. Would you be able to check with your legal team to see if this has been received by them? Otherwise we will require Mr Qualm's permission before we can disclose this information."

32. Miss Brownrigg forwarded the correspondence to the ET Client Unit and to the Respondent's solicitors.

33. On 9 June 2016 Dave Longhurst of the Respondent's ET Client Unit responded stating:

> "I have not seen any correspondence from MC Quarm of 19 May 2016.
>
> I would not normally receive correspondence from MPS ET Claimants as they are required to correspond with the Service through the legal representative i.e. Weightmans, if the issue is directly linked to ongoing and outstanding ET matters.

> If Mr Quarm has submitted something to the IPCC that links into the current litigation then we should ideally have access to this so we are aware of his concerns.
>
> If this new correspondence is in relation to matters that post-date the current claim (March 2016 onwards), then It should be processed as per normal by the IPCC / DPS or any other appropriate area of the Service."

34. This response was consistent with Miss Brownrigg understanding that the matter would not be assessed for possible misconduct issues in relation to matters that were before the Employment Tribunal. However, if there were matters other than those before the Employment Tribunal they would be assessed in the usual way. Strictly speaking such assessment would not be a severity assessment, which is a process used where complaints are made by members of the public. However, where a complaint was made by a serving Police Officer it could be assessed to determine whether it raised any allegations of misconduct etc.

35. The Respondent's solicitors confirmed that they also had not received a copy of the documentation referred to and noted that it might well be a copy of the Claim Form if the Claimant had ticked the box suggesting that it should be referred to an appropriate regulator.

36. Miss Brownrigg forwarded the correspondence to Mr Atherton who then sent a copy of the Claim Form to Miss Brownrigg on 20 June 2016 stating (p50):

> "Thank you for coming back to me with this information. Further to my email please find attached a copy of the disclosure made on behalf of Mr Quarm by HM Courts & Tribunal Service. After you have reviewed the disclosure could you please let me know if you intend to record any conduct in relation to the allegations raised by Mr Quarm?"

37. On 5 July 2016 Miss Brownrigg forwarded the Claim Form to the Respondent's Solicitors and ET Client Unit (p54). Miss Brownrigg wrote by email to Mr Atherton the same day stating (p50)

> "Apologies for the delay in responding to your email. Unfortunately, I had to take emergency leave due to a personal matter. Thank you for sending this through. I have forwarded this to our legal representative and ET Manager for their observations."

38. There was no reason for her to expect any further action at the time as it was now clear that the document was the ET1 from Claim 10 consideration of which would await the outcome of the Employment Tribunal proceedings in the normal way.

39. On 25 August 2016 Claim 11 was issued.

40. On 27 August 2016, the Respondent's solicitors sent an email to Miss Brownrigg informing her that Claim 10 had been struck out as the Claimant had failed to pay the deposit on time.

41. Miss Brownrigg stated that she did not think any further of the matter and that the fact that there had been previous correspondence from the IPCC enclosing the ET1 "slipped off her radar". She stated that she was having a difficult time because of the death of her father and that there was a particularly heavy caseload because of the summer holiday period. She was dealing with more than a hundred cases at that time. She had not set herself any electronic reminders.

42. Miss Brownrigg was asked why no assessment had been made of the Claimant's allegations once Claim 10 had been struck out. She stated that if she had thought about it, which she did not as the matter had slipped off her radar, while it would not have been appropriate for her to carry out an assessment as she was one of the people against whom the Claimant was complaining, she would have passed the matter to a colleague for consideration. As this matter was not previously pleaded Miss Brownrigg had to deal with the matter on the hoof and had very limited opportunity to consider her position. The questioning was put on the assumption that the strike out had brought proceedings completely to an end. However, as Mr De'Silva pointed out in resisting the application to amend, that was erroneous. The Claimant subsequently appealed the making of the deposit order and the strike out to the Employment Appeal Tribunal.

**The Law**

43. Section 39 EQA provides that an employer must not victimise or discriminate against an employee by subjecting him to a detriment (section 39(4)(d) and section 39(2)(d).

44. Section 27 EQA provides that:

> 27(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
>
> (a) B does a protected act, or
>
> (2) Each of the following is a protected act—
>
> (a) bringing proceedings under this Act; …
> (d) making an allegation (whether or not express) that A or another person has contravened this Act.

45. The protection against victimisation is an important aspect of ensuring that individuals can assert their right not to be subject to unlawful discrimination.

46. The Respondent accepted that section 136 Equality Act 2010 applies to a victimisation complaint.

> 136 Burden of proof
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

47. Guidance on the reversal of the burden of proof was given in **Igen v Wong** [2005] IRLR 258. It has repeatedly been approved thereafter: see **Madarassy v Nomura International Plc** [2007] ICR 867. However, there may be circumstances in which it is possible to make clear determinations as to the reason for treatment so that there is no need to rely on the reversal of the burden of proof: see **Amnesty International v Ahmed** [2009] ICR 1450 and **Martin v Devonshires Solicitors** [2011] ICR 352 as approved in **Hewage v Grampian Health Board** [2012] ICR 1054. However, if this approach is adopted it is important that the Tribunal does not fall into the error of looking only for the principal reason for the treatment but properly analyses whether discrimination was to any extent an effective cause of the reason for the treatment: see **Nagarajan v London Regional Transport** [1999] IRLR 572.

48. In **St Helens BC v Derbyshire** [2007] ICR 841 Lord Neuberger summarised the authorities on the meaning of the term detriment at paragraph 67:

> "67 In that connection, Brightman LJ said in *Ministry of Defence v Jeremiah [1980] ICR 13*, 31a that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment". That observation was cited with apparent approval by Lord Hoffmann in *Khan [2001] ICR 1065*, para 53. More recently it has been cited with approval in your Lordships' House in *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337*. At para 35, my noble and learned friend, Lord Hope of Craighead, after referring to the observation and describing the test as being one of "materiality", also said that an "unjustified sense of grievance cannot amount to 'detriment' ". In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: "If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice."

49. The question of whether an employer may be liable for victimisation by taking steps during litigation in which claims of discrimination are made was considered by the House of Lords in **Chief Constable of West Yorkshire Police v Khan** [2001] ICR 1065. Lord Nicholls of Birkenhead stated at paragraph 30:

> "Employers, acting honestly and reasonably, ought to be able to take steps to preserve their position in pending discrimination proceedings without laying themselves open to a charge of victimisation."

50. Their Lordships considered that a distinction was to be drawn between bringing proceedings and taking steps in pending proceedings. The latter would not be a response to the bringing of the proceedings and so would not constitute victimisation, provided the employer acted honestly and reasonably. This led commentators to refer to the honest and reasonable employer defence.

51. The issue was considered again by the Supreme Court in **St Helens**. The facts were set out in the headnote as follows:

> "The applicants were amongst some 510 female catering staff employed by the respondent council in its school meals service who brought equal pay claims against the council. The majority of the claims were compromised, but the applicants did not accept the settlement and pursued their claims. Two months prior to the hearing of the claims the council wrote letters to all the catering staff, including the applicants, pointing out that a successful claim was likely to lead to the cost of school meals rising to such an extent that the council would have to consider ceasing to provide them except to those entitled to receive them by law, with a consequent reduction in the school meals service for which only a very small proportion of the existing workforce would be required. It wrote letters to the same effect to the individual applicants. The applicants complained to the employment tribunal of victimisation."

52. The suggestion that there was an honest and reasonable employer "defence" was disapproved. Lord Neuberger, noted at paragraph 65:

> "as pointed out by Lloyd LJ in the Court of Appeal [2006] ICR 90, para 66, the "point which has been called the 'honest and reasonable employer' defence is not found in the legislation itself"

53. Baroness Hale stated at paragraph 36:

> "36 Neither the 1975 Act itself nor the European Directives contain any "honest and reasonable employer defence". Nor, indeed, did their Lordships in Khan invent one: they merely pointed to the sort of conduct which would not fall foul of the victimisation provisions. It would be better if the "defence" were laid to rest and the language of the legislation, construed in the light of the requirements of the Directives, applied."

54. Baroness Hale noted that where the protected act is the bringing of proceedings and the alleged detriment is a step taken in an attempt to settle those proceedings there is an obvious causal connection. The Supreme Court Justices considered that the focus should not be on causation but on detriment. Lord Neuberger stated at paragraph 68:

> "68 In my judgment, a more satisfactory conclusion, which in practice would almost always involve identical considerations, and produce a result identical, to that in Khan, involves focusing on the word "detriment" rather than on the words "by reason that". If, in the course of equal pay proceedings, the employer's solicitor were to write to the employee's solicitor setting out, in appropriately measured and accurate terms, the financial or employment consequences of the claim succeeding, or the risks to the employee if the claim fails, or terms of settlement which are unattractive to the employee, I do not see how any distress thereby induced in the employee could be said to constitute "detriment" for the purposes of sections 4 and 6 of the 1975 Act, as it would not satisfy the test as formulated by Brightman LJ in Jeremiah , as considered and approved in your Lordships' House. An alleged victim cannot establish "detriment" merely by showing that she had suffered mental distress: before she could succeed, it would have to be objectively reasonable in all the circumstances. The bringing of an equal pay claim, however strong the claim may be, carries with it, like any other litigation, inevitable distress and worry. Distress and worry which may be induced by the employer's honest and reasonable conduct in the course of his defence, or in the conduct of any settlement negotiations, cannot (save, possibly, in the most unusual circumstances) constitute "detriment" for the purposes of sections 4 and 6 of the 1975 Act."

55. Baroness Hale stated at paragraph 37:

> "Is it a "detriment" or, in the terms of the Directive, "adverse treatment"? But this has to be treatment which a reasonable employee would or might consider detrimental. As my noble and learned friend, Lord Hope of Craighead, observed in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, 349, para 35: "An unjustified sense of grievance cannot amount to 'detriment'…" There are some things that an employer might do during a discrimination claim which cannot sensibly be construed as a detriment or adverse treatment. Ordinary steps in defending the claim and ordinary attempts to settle or compromise the claim do no one any harm and may even do some good."

56. Mr Justice Underhill (as he then was) concisely summarised the principles in **Pothecary and Witham Weld v Bullimore** [2010] ICR 2008 at paragraph 19:

> "19 In these circumstances we need not attempt any elaborate analysis of how the law stands post-Derbyshire in the kinds of case with which it is concerned. Since, however, we heard some useful submissions on the question it may be helpful in other cases if we briefly summarise the position as we understand it, while repeating that in most cases this analysis is unnecessary:
> …
> (2) In the case of an act done by an employer to protect himself in litigation involving a discrimination claim, the act should be treated straightforwardly as done by reason of the protected act, i e, the bringing/continuance of the

claim; and the subtle distinctions advanced in Khan as to the different capacities of employer and party to litigation should be eschewed.

(3) In considering whether the act complained of constituted a detriment the starting-point is how it would have been perceived by a reasonable litigant; but such a litigant could not properly regard as a detriment conduct by the employer which constituted no more than reasonable conduct in defence of his position in the litigation.

(4) There is no "honest and reasonable" defence as such; but the exercise required under (3) will in all or most cases lead to the same result as if there were."

**Analysis**

57. The first question is that of why the Claim Form in Claim 10 was not assessed by the Respondent to determine whether it might raise issues of misconduct when it was sent to them by the IPCC in June 2016. We consider that the evidence is clear; even though Miss Brownrigg did not give a great deal of thought to the matter at the time. The Respondent's approach in a case of this nature was to await the outcome of the Employment Tribunal proceedings before considering whether a potential case of misconduct on the part of staff or officers had been made out. We do not see anything surprising in that. It was the Claimant who had chosen to bring a complaint before the Employment Tribunal that his allegations of 19 October 2015 had not been subject to a severity assessment. He had chosen the Employment Tribunal as the venue in which he wished to have that allegation tested. When he ticked the box to state that he wished the matter to be referred to a regulator he introduced a level of circularity in that the Claim Form was sent back to the Department about which he was complaining. His logic is that Miss Brownrigg should have undertaken a severity assessment of the allegation that she had failed to conduct a severity assessment of the original complaint of 19 October 2015.

58. We consider that the analysis in St Helens is helpful. An assessment of the Claim Form was not undertaken as there was a claim, which included allegations of victimisation, before the Employment Tribunal. In that sense, a causal connection is made between Claim 10 and the decision not to assess it when it was referred by the IPCC. This was because of the ongoing Employment Tribunal proceedings. We consider the real issue is whether that can reasonably be seen to be detrimental. We do not consider it can. It was the Claimant's choice to bring the matter to the Employment Tribunal for judicial consideration and we do not see how he can reasonably have felt at a disadvantage by the Respondent's approach that any consideration of whether any member of staff or officer was guilty of misconduct should await the judicial determination of the Employment Tribunal.

59. In respect of the period after the Claim 10 had been struck out we are fully persuaded by Miss Brownrigg's evidence that the matter had slipped off her radar and she did not think about it any further. We accept that while she had

been unhappy to be subject of Employment Tribunal proceedings once she had been informed that they had been struck out she did not think about the correspondence with the IPCC further. As the Complaints Support Team does not deal with ET claims she did not record it on Tribune, the Respondent's computer system that could have been used to set reminders. Miss Brownrigg had never previously dealt with an ET Claim where the Claimant had ticked the box requesting that the Tribunal Service send the Claim to the IPCC. Miss Brownrigg was going through what she described in evidence as "an emotional time". Her father had passed away on 14 June 2016. Miss Brownrigg had a very busy caseload, dealing with on average 100 matters at one time. Summer was a particularly busy time. Miss Brownrigg was not chased by the IPCC after reverting to them on 5 July 2016. It is not surprising that seeing that the claim had been struck out by the Employment Tribunal she assumed the matter was at an end.

60. In any event, questioning to Miss Brownrigg on this matter was based on a misconception that the strike out meant that the proceedings were at end, whereas the Claimant subsequently appealed the making of the deposit order and the strike out decision the basis that had paid the deposit late. There is no reason to believe that the Respondent would not have continued with the same approach, that any consideration of misconduct proceedings should await conclusion of the tribunal proceedings, so that consideration of the matter would await the passing of the time limit of an appeal and, once the appeal had been instituted, the conclusion of the appeal. Miss Brownrigg failing to consider the matter further on hearing of the strike out has not subjected the Claimant to any detriment as even if she had thought about it and referred to claim to someone else for consideration there is no reason to believe any further steps would have been taken pending any possible appeal and, once one was instituted, its determination. Further, there is no reason to believe any consideration would have resulted in any further action in circumstances in which the Employment Tribunal made a deposit order on the basis that the claim had little reasonable prospect of success and the Claimant had failed to pay the deposit order on time resulting in it being struck out.

61. In the circumstances, we do not consider that the Claimant has established he was subject to detriment and, accordingly, his claim fails.

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Employment Judge Tayler
7 September 2017