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EMPLOYMENT TRIBUNALS

Claimant	**AND**	**Respondents**
Mr O Mba		HRMC and Others

Heard at: London Central **On**: 15 December 2017

Employment Judge: Dr S J Auerbach

Representation

For the Claimant: In person

For the Respondent: Mr C Jeans QC

REASONS

1. At the conclusion of this Preliminary Hearing I gave an oral decision refusing an application to amend, and striking out all the Claimant's live complaints. A written judgment was subsequently promulgated. At the hearing, and also in writing, the Claimant requested written reasons. I now provide these.

2. It is convenient to set out, at the outset, the following factual context, which was, as such, common ground.

3. In May 2017 HMRC advertised a recruitment exercise for tax lawyers. Applicants had to complete a prescribed application form. The initial stages of assessment were managed by another organisation, TMP, on HMRC's behalf. TMP was required to screen out applicants who did not have a minimum 2.1 degree and a stipulated professional qualification. The first substantive stage of the selection process was an online test, managed by TMP. In respect of candidates who passed that test, the next stage was that their paper application forms were reviewed and marked by people from HMRC in what was called a sift.

4. The sift was required to be carried out in the following way. The application form required each candidate to provide written evidence in respect of each of four competencies, by providing a statement, confined to a word limit. The sifters then had to rate the written evidence provided in relation to the competencies, awarding marks for each. Each application form was assessed by two sifters. Having

separately considered the form, they were then required to discuss, agree, and record, a single set of sift scores. They were required to follow written guidance as to how to carry out the marking exercise.

5. The four competencies were: legal professional skills, motivational fit, delivering at pace and communication. The final sift form required a mark to be given in relation to each, for the level of positive evidence provided in respect of that competency. In relation to each of the competencies of legal professional skills and motivational fit, the possible scores ranged from 0 to 10. Each score corresponded to a description of the level of positive evidence provided. A score of 0 applied where the evidence was assessed as being "none"; 1 was "insufficient"; 2 was "weak"; and so on, up to 9, being "strong" and 10, being "very strong". In relation to the competencies of both delivering at pace and communication, the range of scores was from 0 to 5. A score of 0 was for where the evidence was assessed as being "insufficient or none"; 1 was "weak"; 2 was "limited"; 3 was "acceptable"; 4 was "clear"; and 5 was "very strong". The maximum possible cumulative score for all four competencies was therefore 30.

6. After all applications which had got through to the sift stage had been sifted and marked in this way, by the initial pair of assessors, there was then a consistency check, also carried out by a pair of people from HMRC.

7. There were minimum required scores for each competency. In relation to this particular exercise, the documentation recorded that the minimum required scores were: 6 for legal professional skills; 6 for motivational fit; 3 for delivering at pace; and 3 for communication. An overall minimum pass score was also set. The overall minimum pass that was set in this exercise was 18.

8. If a candidate did not, at the sift stage, achieve at least the minimum required scores for every competency, *and* at least the minimum overall pass mark, they would not be eligible to be invited to interview, but would receive a letter of regret. There was also a further score set, necessary to secure an interview, based on the overall performance of the cohort.

9. The Claimant submitted a completed application form on 30 May 2017. He had the minimum required qualifications and he also passed the initial online test in June. However, following the completion of the sift, the Claimant was informed, on 3 July 2017, that he had not been selected for interview.

10. By a claim form presented on 25 August 2017 the Claimant brought complaints in respect of the decision not to select him for interview. Specifically, he complained that this was:

(a) detrimental treatment for having raised protected disclosures, contrary to section 47B **Employment Rights Act 1996**; and
(b) direct race discrimination, contrary to sections 13 and 39 **Equality Act 2010**.

11. The Claimant worked for HMRC from 2007 to 2013. The protected disclosures relied on by him concerned actions he took between March and

October 2011, whereby he raised concerns about an agreement entered into by the then Permanent Secretary with a large corporate tax payer. I was told that the Respondents accept that he did do that, and that he thereby made what amounted in law to protected disclosures.

12. The Respondents to this claim, when first presented, were HMRC and four individuals, all of whom work for HMRC. The Second and Third Respondents were Edward Troup, Executive Chair and Permanent Secretary, and Gill Aitken, General Counsel. The Fourth and Fifth Respondents were Alex Bentley and Julia Sohrab.

13. A response was entered on behalf of all the Respondents defending the claims on their merits. In short, their case is that the sole reason the Claimant was not invited to interview was because of the marks that he was awarded on the sift, upon assessment of the contents of his application form, and not because of his race or the above-mentioned protected disclosures. Specifically, at paragraph 7 of the response they state:

> On the sifting process, he attained a score of 19. This was above the minimum overall pass mark (18) but below the lowest score of those selected for interview (20). In any event, he did not attain the minimum required score for the competency "delivering at pace" and could not therefore have been invited for interview even if he had scored 20 or more overall.

14. They also indicated that the Second and Third Respondents had had no involvement in the exercise at all.

15. As to that last point, it was common ground before me, that the substantive sift of the Claimant's application form was carried out by Ms Bentley and Ms Sohrab, and that the consistency check was carried out by two other colleagues, Fiona Fraser and Nick Jessop. I was also told that the consistency check did not lead to the Claimant's initial marking being revised in any way.

16. On 12 December 2017 the Claimant tabled an application to amend. He applied to substitute, as Second and Third Respondents, Ms Fraser and Mr Jessop, in place of Mr Troup and Ms Aitken. He also applied to substitute, in place of the complaint of direct discrimination, a complaint of victimisation. He also tabled proposed amended particulars of claim. In respect of victimisation, the protected act he sought to rely upon was an earlier Employment Tribunal claim presented by him against HMRC in December 2016, which, following amendment in March 2017, proceeded as a claim of indirect race discrimination. At the present preliminary hearing I was told that there had been a recent merits hearing in that case, and that the reserved decision of the Tribunal was presently awaited.

17. The existing and proposed Respondents resisted the application to amend and applied for all the complaints to be struck out or, alternatively, made the subject of deposit orders. The Claimant resisted the strike out and deposit applications. The purpose of the present preliminary hearing was to determine those applications.

18. I had before me bundles prepared by the Respondent's solicitors and a further bundle prepared by the Claimant, and copies of various authorities. I also had written submissions from the Claimant, who appeared in person, and from Mr Jeans QC, who appeared for the existing and proposed Respondents, and I heard oral argument from them both. Mr Jeans, indicated that, if I did not strike out the claims, he was seeking deposits of £1000 in respect of each Respondent against whom the claims might go forward, therefore a maximum of five such deposits. The Claimant responded to my enquiries for information about his means.

19. Rule 37 of the **Employment Tribunals Rules of Procedure 2013**, among other things, gives the Tribunal the power to strike out all or part of a claim on the grounds that it is scandalous or vexatious or has no reasonable prospect of success. Rule 39 gives the Tribunal the power to make a deposit order in respect of an allegation or argument which it considers has little reasonable prospect of success.

20. Although he advanced an alternative basis for strike out, being that these complaints were vexatious, Mr Jeans' primary case was that the complaints should all be struck out as having no reasonable prospect of success (or, if I at least considered that they had little reasonable prospect of success, made the subject of deposit orders).

21. There is a well-known body of authority which guides the Tribunal when faced with an application to strike out a complaint as having no reasonable prospect of success. I was referred, in particular, to **Anyanwu v South Bank Students Union** [2001] ICR 391 (HL); **Ezsias v North Glamorgan NHS Trust** [2007] ICR 1126, **ABN Amro v Hogben**, EAT 0266/99, and **Patel v Lloyds Pharmacy** EAT/0418/12. The Claimant and Mr Jeans did not disagree about the main guiding principles, which emerge, and these may be briefly stated as follows.

22. Strike-out is self-evidently a draconian step. Discrimination claims should only be struck out in the most obvious and plainest cases. Where the central facts are in dispute a complaint should not be struck out, save in very exceptional cases. But in an appropriate case a discrimination complaint should be struck out, if the Tribunal can be satisfied that it has no reasonable prospect of success. It is wrong in principle to allow an apparently hopeless case to proceed to trial, simply on the basis that something may turn up. The same principles should be applied to strike out applications in respect of protected disclosure complaints.

23. The Tribunal has the case management power to grant an application to amend (including by way of adding new Respondents) at any stage of a case. Again, there is a well-known body of case law, setting out guiding principles, and factors that may be considered relevant to the exercise of this power, in a given case, going back to **Selkent Bus v Moore** [1996] ICR 836.

24. I make two preliminary points concerning the applications that were before me, and their potential interaction.

25. First, as I have noted, the Claimant applied to *substitute* two Respondents for two others, and to *substitute* a complaint of victimisation for the complaint of

direct discrimination. Mr Jeans submitted that he had, thereby, effectively abandoned the complaints against Mr Troup and Ms Aitken, and those of direct discrimination. As to that, true it is that the Claimant had not simply withdrawn those complaints, but nor had he applied – as he plainly knew he could have done – simply to *add* two new Respondents, and to *add* complaints of victimisation. In his submissions, he commented only that the approach he had adopted was done to assist the Tribunal to further the overriding objective of dealing with the case fairly and justly, including because the proposed victimisation complaint was more closely analogous to the existing protected disclosure complaint than the existing direct discrimination complaint. He did not advance any distinct case as to the basis on which Mr Troup and Ms Aitken could be liable to him, nor any discrete points specifically in support of the particular complaints of direct discrimination.

26. Secondly, I considered, first, the question of whether the actual, or proposed, complaints, had no reasonable prospect of success. That was for two reasons. Firstly, if I decided to strike out a complaint, then the application for a deposit order would fall away. Alternatively, if I considered that the prospects of success were not so weak as to warrant a strike out, the same exercise would point me to the answer as to whether they were, nevertheless, so weak as to warrant consideration of a deposit order. Secondly, if I considered that a proposed new complaint was so weak as to have no reasonable prospect of success, that would itself be a compelling reason to refuse to allow it to be added: no purpose could be served by adding a complaint which would then fall to be struck out.

27. I turn, then, to the substance of the arguments in relation to strike out, focussing at this point on the protected-disclosure-detriment complaints and the proposed victimisation complaints, and on the positions of the Fourth and Fifth and proposed Second and Third Respondents.

28. First, a knowledge point. The Claimant had referred, in the contents of his job application form, both to the protected disclosures made in 2011 and to the protected act, by way of a Tribunal claim, on which he relied. The Claimant's position was, therefore, that the proposed Second and Third Respondents, and the Fourth and Fifth Respondents, all must have known of the protected disclosure and the protected acts. Mr Jeans conceded knowledge of the protected act, on the part of Ms Fraser, who in fact appeared as a witness in the case concerned. Whilst not making any wider formal factual concession, Mr Jeans was content that I should assume, for the purposes of what I had to decide, that all four of these individuals did have knowledge of the protected disclosures and protected act. But his position was that mere knowledge of the protected disclosures or protected act was not sufficient, by itself, to support an inference that these had influenced sift decisions, and that there was simply no evidence to support such a case.

29. As to that, the Claimant indicated that he did not necessarily accept that assumed knowledge of the protected disclosures and protected act, coupled with the fact that he had not been successful at the sift stage, would not be enough to make his complaints at least reasonably arguable. But, he said, he did not rest his resistance to the strike out and deposit applications on those elements alone. His position was that it was apparent from the material before me at this preliminary hearing, that there *was* evidence which showed that his case was better than that.

30. The arguments presented to me were detailed and lengthy. In summary, however, the Claimant's key arguments related to three aspects.

31. First, he submitted, he was a very strong candidate, in terms of his expertise and experience, and his application form was replete with evidence of that. It was therefore surprising, in view of that, that he did not get through the sift to the interview stage. It called for an explanation. Secondly, the Claimant pointed to various emails which showed that those involved in the conduct of this exercise had been disappointed by the overall quality of the candidates at interview stage, and had not made as many actual appointments as they had hoped to do. That, he said, further called into question how it could be that his patently strong application had been sifted out. Allied to this, he submitted that there was, at least on the evidence so far provided, a lack of transparency in the following respect. The grounds of resistance stated that "The score necessary to secure an interview depends on the performance of the cohort and the number of interview spaces available." But the Respondents had not, or not yet, fully disclosed how, and on what basis, that score had been set in this particular exercise.

32. Thirdly, towards the end of argument, the Claimant drew my attention to an email cited in his draft amended particulars of claim. It was sent in 2012 by the then Chief Executive of HMRC, Anthony Inglese, at a time when the Claimant was due to return to work following a period suspension. It included the comment: "My people are dismayed by his return, but I believe they understand and accept my decision." The Claimant submitted that this was evidence of the general bad feeling which his having acted as a whistle blower in 2011 had engendered, and that this lent support to his present claims.

33. I take these in reverse order. As to the 2012 email, Mr Inglese was the then Chief Executive, therefore in a very senior position, with many people beneath him. The email did not identify which, if any, "people" he had in mind, when referring to "my people". Further, the concern of the Tribunal, in relation to the present complaints, is with the alleged conduct of the present and proposed individual Respondents, and whether the protected acts or protected disclosures relied upon, adversely influenced their actions. As to that, what the Claimant claimed in respect of all four of them, is that he "interacted with [them] professionally and socially during his period of employment." (Paragraph 7 of the draft amended particulars of claim.) He did not claim to have had any closer involvement or dealings with any of them. Nor did he claim that there was anything in particular said or done by, or about, any of them, which might have caused him to be concerned (or otherwise support an inference) that they might harbour negative attitudes towards him, whether because of his protected disclosures, his protected act, or otherwise.

34. I concluded that, taking the Claimant's claim at its highest, his reliance on the foregoing passage in Mr Inglese's email was essentially founded on the speculative hope that it might turn out, if the matter went to trial, that one or more of these four people was among the "my people" who he may have had in mind when he wrote it. But there was no evidence to support that particular contention: it was purely speculative, and this email did not provide any material support to the specific complaints that the Claimant sought to advance in this present claim.

35. I turn to the material concerning the review of the exercise, and the concern as to the general calibre of the cohort who were interviewed. The emails relied upon by the Claimant indeed showed that not as many appointments had been made as had been hoped, there was a concern that insufficient numbers of strong candidates were being attracted to apply for posts of this type with HMRC, and as to why this was; and a concern that, possibly, some strong candidates might not be getting through the initial online test, as the overall standard received at the sift stage also appeared to have been falling in recent exercises.

36. The Claimant's argument was that, if the standard of candidates received at the sift, and interview stages, had been falling in this way, and if there were not sufficient strong candidates at interview to enable as many appointments to be made as had been hoped, then "the 47 applicants for interview could not have provided a stronger application than me". (Paragraph 44, 47 and 50 of his written skeleton). However, I simply do not understand the logic of this argument, or how this material is said, as such, to advance his case.

37. Specifically, I do not understand how it could be said that concerns over the general quality of the sift cohort, or the interview cohort, specifically strengthened his case that *his* application should not have been sifted out. The possibility that strong candidates may have been missed because they failed the online test is plainly irrelevant: the Claimant passed that test and his complaint is not about what happened to him at that stage. But the concern that there were not more candidates, among those who reached interview, who were strong enough to appointed, also casts no light, as such, on why *his* application was sifted out. Self-evidently, being good enough to pass the sift does not equate to being good enough to pass the interview, or there would be no purpose to the further interview stage at all. To put the matter another way, the fact that there were not more candidates who passed sift, who were *also* good enough to pass interview, does not show that more candidates (including the Claimant) *should* have passed sift.

38. So I turn to the aspect that, it seemed to me, was really at the heart of the Claimant's case that his complaints at least had reasonable prospects of success. That is the Claimant's argument that he put in what was on its face a strong application form, so that this material at least calls into question why he was marked the way he was on the sift, and why he did not get through the sift stage. I observe that I did not assume (nor did Mr Jeans argue) that, for the merits to be above the strike-out threshold, there would need to be sufficient material as might support a shifting of the statutory burden of proof. But a case does need to have *some* arguable basis (assuming disputed factual matters in the complainant's favour) to get it off the ground. I simply looked at whether there was enough material in this case to make these complaints reasonably arguable.

39. In terms of how the Claimant's application was, as a matter of fact, marked (as opposed to why he received those marks) there was no dispute that the evidence of the completed marking form (that is, in the exercise carried out by Ms Bentley and Ms Sohrab, and which marks were left to stand in the check carried out by Ms Fraser and Mr Jessop) the marks awarded were as follows. He scored: 8 for legal professional skills, corresponding to "clear positive evidence provided";

6 for motivational fit, that is, "acceptable evidence provided"; 2 for delivering at pace, that is, "limited evidence provided", and 4 for communication, meaning "acceptable evidence provided". His overall score was therefore 19.

40. The Respondent's case therefore was that the Claimant did pass the threshold of the minimum total score. That was 18, and his total score was 19. However, a further necessary condition, in order to pass the sift stage, was that the minimum scores for each of the competencies also be achieved or surpassed. But he did not achieve this in relation to "delivering at pace", as the minimum score was 3, but his score was 2. That alone was fatal to him at the sift stage.

41. As I have noted, the Claimant argued that there was a lack of transparency (at least at this stage in the litigation) as to how the benchmark for the overall performance of the cohort, and the number of candidates who went forward to interview, was determined. As to that, Mr Jeans said that, if the Claimant had scored a 3 for "delivering at pace", he would not have failed any of the individual competency minima, nor had he failed to secure the overall minimum score of 18. He also accepted (as mathematically was plainly right) that, had he scored 3, instead of 2 for delivering at pace, his overall score of 20 would then have equalled that of the lowest scoring candidate who *was* interviewed. However, I had no more information as to the basis on which the *numbers* interviewed were *further* restricted by reference to the performance of the cohort.

42. However, as I have noted, what was not in dispute was that achieving the minimum score for each competency was itself a necessary requirement to pass the sift; and Mr Jeans focussed his submissions on the documentary evidence in relation to the competency for which the mark given to the Claimant fell below the minimum required, that of "delivering at pace".

43. The documents show that, when filling out their application form with evidence in relation to that competency, candidates were instructed as follows: "Describe a time when you had to produce something under difficult circumstances and to a deadline. What action did you take? What was the result?"

44. What the Claimant wrote was this:

> As explained above I worked as a Grade 7 Lawyer in HRMC from February 2007 to September 2013. I worked in the Personal Tax Litigation team and Criminal and Information Law Advisory Team and the Enforcement and Insolvency Litigation team, becoming a source of technical and public law expertise.
>
> During this time I proved my ability to focus on delivering timely performance with energy and taking responsibility and accountability for quality outcomes for the benefit of HMRC.
>
> As a solicitor and advocate my professional career has involved working under pressure to deliver at pace and to deadlines throughout.
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> I trained and practised as a barrister and solicitor in Nigeria. In the UK, where I qualified as a solicitor I have always worked in litigation. Even when I worked in

> the Criminal and Information Law Advisory team in HMRC, I combined the advisory work with litigation on information law before the Information Tribunal.
>
> I have always demonstrated resilience in effectiveness and planning, prioritising and delivering very timely and high-quality performance.
>
> I am presently conducting the litigation and advocacy in employment tribunal claims against the Cabinet Office and HMRC involving two sets of legal teams of solicitors and barristers including Queens Counsel.

45. Mr Jeans submitted that it was unsurprising, in view of that answer, that the level of positive evidence provided was marked as "limited". There was no cause or reason to suspect that the Claimant was, or may have been, under-marked. The Claimant disagreed. He drew my attention in particular to the fact that the advertisement said: "We would particularly welcome lawyers with experience of tax and/or litigation." He said that he had a wealth of experience in those areas, not least from his previous period working at HMRC; and that if one read his application form as a whole it provided considerable evidence of that experience.

46. The evidence before me showed, on its face, that this recruitment exercise, and specifically this sift, was conducted using the methodology that is typical and common place in public sector recruitment exercises of this sort. Candidates are required to provide specific *evidence* on their application forms *against each competency*, by giving examples of things that they have done on one or more specific occasions. The evidence should show what they did, and with what result. This calls upon a candidate to not merely describe what a past role *required* them to do, or to talk in generalisations about what they did. Even if it might be assumed that, in a given area of work, an individual would be called upon to exercise the competency in question, what is required is one or more examples of a specific occasion when they did so, describing what they did, and with what result.

47. The questions posed on the application form in relation to this particular competency plainly followed that approach. They required the candidate to give an example of a particular occasion, to state what they did, and to state the result.

48. It is a reasonable view of the Claimant's answer, on its face, that it did not properly do that. It states that the Claimant has worked in environments and roles which would require him to work in a way that met this competency. It asserts that he frequently did so. He states, for example, that he "consistently delivered timely performance". It states that, as a solicitor and advocate he has "had to work under pressure and deliver to pace and to deadlines throughout his career", and so on. But what it may fairly be said this does not do is give a specific example or examples of occasions when he did that and with what result.

49. I make these observations not because it was any part of my task to mark, or remark, the application, or this competency, myself. But it was relevant to consider whether, given the undisputed facts of what the candidate was required to do to demonstrate this competency, what the Claimant in fact did, and the marking regime, there was any arguable cause for concern about the mark awarded. It seemed to me wholly unsurprising, in light of the answer he gave, that he did not receive a mark of 3 (acceptable), let alone a higher mark. Indeed, I am not sure it

would have been beyond the bounds of fair marking for him to have received a score of 1 (weak) for this answer. But certainly the mark he did receive, of 2, meaning the evidence was judged as "limited", seemed to me, on its face, to be entirely fair and justified by reference to the content of his answer.

50. I well understood that the Claimant felt, given the general wording of the job advertisement, his general past experience, and what he says was the wealth of experience in the areas advertised that his form as a whole showed that he had, that it was wrong that he did not get through to interview. But, on the face of it, the application does not call for a general statement of how the individual says that their experience meets the general job description, but for evidence to be given, in the manner required, against each of the specific competencies. He would not be the first, and probably not the last, candidate, who has failed a sift for a post of this type, by not sufficiently addressing those very particular requirements.

51. The Claimant drew attention to a further feature of the documentation which he said was troubling, and showed a lack of transparency. The marking form has a box at the end with the rubric: "Please give clear and concise reasons for your decision. Please note that the wording you provide her would be used by the GLS Recruitment Team in written feedback to candidates (where candidates asked for this)." That box was not, however, filled in. The Guidance for Sifters carrying out this exercise stated: "With the exception of commenting on the eligibility of an applicant who does not at least have a 2.1 degree … you should not provide any written comments as to why an applicant has achieved a particular score. If you do comment, please be aware that your comments may be disclosed to an applicant who requests feedback." The Guidance in my bundle was actually from the recruitment exercise carried out in 2016, but it was common ground that it took the same form in the 2017 exercise to which these complaints relate.

52. The Claimant submitted that the Guidance therefore countermanded the standard instructions given on the form, which itself raised some cause for suspicion or concern and/or that the practical effect was that there was no contemporaneous record of the reasons why he got the mark(s) that he did. Mr Jeans accepted that this specific instruction given to those dealing with this exercise was at odds with what was on the general form; but, he submitted, there was no smoking gun here sufficient to make the Claimant's complaints arguable.

53. I agreed with Mr Jeans. This evidence suggested, first, that the failure to fill in reasons on the Claimant's mark form was a reflection of the guidance given to markers in relation to all the sift forms, rather than the result of a different approach having been taken in his particular case. Further than that, the evidence was that this approach had also been taken in the previous year's exercise, and continued in 2017. There was nothing here to suggest that this was done in order to cover up a deliberate marking down of the Claimant's form. The Claimant was correct that the consequence was that there was a lack of contemporaneous material in this particular box, supporting the Respondents' case as to the reasons for the marks. But, for reasons I have given, the documentary material that *was* before me itself supported the Respondent's case that the Claimant was marked a 2 for this competency solely on the basis of an evaluation of the evidence that he put forward for it; and there was no reasonable cause to doubt that this was the case.

54. In light of all the foregoing, I also concluded that the Claimant's originally-pleaded complaint of direct race discrimination was certainly no stronger than his complaint of protected disclosure detriment or proposed complaint of victimisation; and there simply was no evidence or basis to support the present Second and Third Respondents having had any involvement in the matter at all.

55. Standing back, and looking at the overall picture, I reflected on whether the right conclusion here was that these complaints (or proposed complaints) were so weak that they should be struck out (or not added) as having no reasonable prospect of success, or that their prospects were a little better than that, though they still had little reasonable prospect of success, so that I should instead consider making a deposit order, subject to the question of the Claimant's means. I bore in mind the guidance in the authorities, to which I have referred.

56. However, I came to the conclusion, on the basis of those central facts and documentary evidence which were not disputed, to which I have referred, that this material supported the Respondents' case that the Claimant simply failed the sift on the basis of the proper assessment of the contents of his application, and that there was no material sufficient to support a reasonably arguable case to the contrary. This was a case where the foundation of the Claimant's position was the belief that, because of his past protected disclosures and/or protected act, HMRC was determined to reject his application, and the speculative hope that, if the matter went to trial, something would turn up in the further course of the litigation or at trial, which would lend support to the complaints.

57. I therefore concluded that this was, indeed, a case where the actual complaints, and the proposed complaints, had no reasonable prospect of success. So, the amendment application was refused, and the live complaints were struck out.

Employment Judge Auerbach on 12 January 2018