Case Number: 3201225/2017

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EMPLOYMENT TRIBUNALS

Claimant: **Mr D Quarm**

Respondent: **The Commissioner of the Metropolitan Police**

Heard at: **East London Hearing Centre**

On: **12 January 2018**

Before: **Employment Judge Jones**

Representation

Claimant: In person

Respondent: Mr N De Silva (Counsel)

JUDGMENT ON PRELIMINARY HEARING

Under Rule 37 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, this Tribunal orders that the Claimant's claim is struck out on the ground that it has no reasonable prospect of success.

It is this Tribunal's judgment that this claim is totally without merit.

REASONS

1 Today's Hearing was an open preliminary hearing to determine the following:

"whether some or all of the allegations or arguments pursued by the Claimant have

(i) little prospect of success and deposit order(s) should be made, or
(ii) no reasonable prospect of success and should be struck out".

2 The Respondent had applied for such an order in its Grounds of Resistance. The Tribunal sent a Notice of Hearing out to both parties dated 30 November 2017 and parties were ordered to exchange written submissions in support of their position on the issue by 18 December 2017.

3 Both parties made written submissions. The Claimant's was in the form of a witness statement. The Claimant also sent in a statement of means and a completed Agenda Form. The Claimant made a counter application for an order striking out the Response and an application to amend his ET1.

The claim

4 The claimant's complaints in his ET1 were not clear but from today's discussion, the Tribunal concludes that his complaints were that he had been subject to a detriment following the making of a protected public interest disclosure and of discrimination/victimisation on grounds of race. The claimant sought compensation for injury to feelings commensurate with the top Vento band. He also asked the tribunal to make recommendations.

5 The protected act the claimant relied on was his previous employment tribunal proceedings against the Respondent in which he had alleged race discrimination. He also considered that he had done a protected act/made a protected public interest disclosure by sending a document to the Independent Police Complaints Commission (IPCC) called "The Complete Ridiculous" (TCR) in which he set out his belief that the respondent had operated practices and policies which suppress the reporting of, and investigation of, incidents of discrimination and the existence of police corruption/police criminal networks and the evidence on which those beliefs are based. In that document, he also talked about his belief that the Police Federation was involved in that suppression and in police corruption. The claimant sent copies of his report to the chair of the police Federation of England and Wales and various media outlets, among other organisations. No decisions were made today as to whether these were protected acts or public interest disclosures.

6 The IPCC sent a copy of TCR to the respondent's Department of Professional Standards – Customer Support Team (DPS-CST). The Claimant complains that Detective Sgt Murphy, who was based in the DPS - CST subjected him to a detriment and victimised him on racial grounds when she wrote a letter to him dated 16 September 2017 in which she stated that she was not going to officially record his complaint which meant that it was not going to be taken forward for investigation. She gave reasons for her decision in the letter. The Claimant's case is that she made her decision in an attempt to hide evidence of police criminal networks disclosed within his report, that she was protecting other DPS-CST staff from being held accountable for mishandling his previous protected disclosures and that she was aware that the respondent could be held vicariously liable for the alleged wrongdoing/criminal offences that he disclosed in TCR. He also alleged that he had been subjected to a detriment by the Respondent's failure to subject him to misconduct investigations for what he suggests is a pattern of preventable deaths linked link to him. In the ET1 claim form he alleged that DS Murphy preferred to breach the police code of ethics 2014 and commit an offence of corrupt and improper exercise of her duties/privileges rather than record the contents of TCR as misconduct matters.

The response

7 In its response, the Respondent denied all the claimant allegations. It informed the tribunal that the claimant has brought 11 previous employment tribunal claims and that this is his 12th claim. The 1st and 2nd claims had been dismissed following a hearing in November 2008. The third claim was dismissed on withdrawal. The 4th and 5th claims were heard together and dismissed following a hearing in December 2011. The 6th to 9th claims

were heard together and were dismissed following a hearing in 2015. In respect of the 10th claim the claimant failed to pay a deposit within the stipulated time, which meant that the claim was struck out on 27 July 2016. The 11th claim was dismissed after a hearing in September 2017.

8 The Respondent's case is that DS Murphy's decision was one that was open to her and that she dealt with TCR properly and that the Claimant's allegations were wild, unfounded and entirely unsupported by the evidence. DS Murphy's reasons for refusing to record TCR as a complaint were stated as follows: (1) TCR was an amalgamation of his previous reports which had been reviewed previously and no misconduct had been found. (2) it did not meet the requirement for referral to the IPCC or a complaint under Police Reform Act 2002 because the effect of section 29 is that as a serving member of the Metropolitan Police Service (MPS) the claimant cannot make complaints against other officers, also in this MPS, in this way (3) in relation to the reports of wrongdoing up to 2016, the matter had been fully reviewed by Inspector O'Connell, who was also part of the DPS – CST and he notified the claimant of his findings on 11 January 2016. It was Inspector O'Connell's decision that most of the report that he looked at, highlighted issues which had previously been dealt with by various employment tribunals which the claimant had taken the MPS to previously, and (4) she had reviewed the additional points raised by the claimant and it was her decision that they did not meet the threshold to be investigated as any form of misconduct.

9 The respondent made an application that this claim should be struck out because of the following: (a) the claimant failed to particularise his race or any comparator or the alleged protected disclosure which is alleged to be the reason for the treatment. (b) the claimant does not allege that DS Murphy's letter was sent because of race or on the grounds of the protected disclosure (c) the claim form does not adequately or properly plead a race discrimination or whistleblowing detriment or any further victimisation claim (d) the claimant is relying on these jurisdictions simply as a means of litigating against the respondent because he is dissatisfied with DS Murphy's letter; and (e) the claim is vexatious and should be struck out pursuant to rule 37(1)(a) of the employment tribunal rules 2013. The respondent averred that the claim has no reasonable prospect of success or in the alternative, has little reasonable prospects of success and therefore should either be struck out or be made the subject of a deposit order pursuant to rule 39 of the employment tribunal rules.

The application

10 At today's hearing, Mr N De Silva made further submissions in support of the Respondent's applications.

11 He submitted that the Respondent was aware that the power to strike out a claim under the Tribunal Rules on the grounds that it had no reasonable prospect of success should only be exercised in rare circumstances and that even more caution should be exercised when the claim involves allegations of discrimination as those are usually fact specific and would best be determined after a Hearing with evidence. He referred to the case of Qdos Consulting Ltd & Others v Mr S Swanson UKEAT/0495/11 (12 April 2012 unreported) in which HH Judge Serota confirmed that the burden upon an applicant who seeks to strike out a discrimination claim is a high one and it is necessary to go further than showing that the case is weak or perhaps unlikely to succeed but that it has no reasonable prospect of success. He stated that such applications should only be made in

the most obvious and plain cases in which there is no factual dispute and where the applicant can clearly cross the high threshold of showing that there are no reasonable prospects of success. He stated that applications that involve prolonged or extensive study of documents and the assessment of disputed evidence that may depend on the credibility of the witnesses should not be brought under this rule must be left to be determined at full hearing.

12 The tribunal was also referred to the case of North Glamorgan NHS trust v Ezsias [2007] EWCA Civ 330 in which it was held that it would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospects of success when the central facts were in dispute. If the facts sought to be established by the claimant were 'totally and inexplicably inconsistent with the undisputed contemporaneous documentation' then a strike out may be appropriate. In a case where there is an extensive number of disputed facts between the parties which go to the core of the issues to be determined by the tribunal, a strike out would not be appropriate. In these circumstances it has been held that the correct approach for a tribunal to adopt is to take the claimant's case at its highest, as set out in the claim, unless contradicted by plainly inconsistent documents, taking care to exercise caution if the case has been badly pleaded; and assess whether or not there are any reasonable prospects of success. (Ukegheson v London Borough of Haringey [2015] ICR 1285 EAT)

13 In support of the respondent's secondary application that should the tribunal otherwise consider whether there is little reasonable prospect of the claim succeeding and order the claimant to pay a deposit as a condition of continuing with his claim; the tribunal was referred to the case of van Rensburg the Royal Borough of Kensington upon Thames and others UKEAT/0096/07. In that case the President of the EAT confirmed that the test of little prospect of success is plainly not as rigorous as the test that the claim has no reasonable prospect of success. This means that the tribunal has greater leeway when considering whether or not to order a deposit. The tribunal must have a proper basis for doubting the likelihood of the party been able to establish the facts essential to the claim or response.

14 In addition to the witness statements filed in response to the Respondent's application, the Claimant made the following submissions. He submitted that he had demonstrated the existence of police criminal networks and that the respondent was unable to disprove their existence. He submitted that the 2015 document which inspector O'Connell had assessed was different to the document he now submits should have been recorded as a complaint by the DPS – CST. He disagreed with the assessment that TCR is an amalgamation of previous reports. He agreed that the IPCC procedure is not open to the police as serving officers but contended that he had used the correct process. He believed that DS Murphy's decision not to accept his complaint as a formal complaint was done on the grounds of his race, his previous complaints and because he had made protected disclosures.

15 The claimant submitted that the respondent's failure to investigate a series of deaths which he says he had been involved with in the course of his work, had been a detriment to him. He believes that they may well be a cloud over him and his future because of those deaths and that he would rather have this set out in the open rather than affecting him from the background. The claimant submitted that he had been in conflict with some of the staff at the DPS – CST although he had no previous history with DS Murphy. He believes that she may have been influenced by members of staff who also

work in the DPS - CST who were the subject of a complaint that he made about the handling of previous complaints. He stated that he had previously made complaints against 3 members of staff in the DPS-CST. The claimant believes that she took the action that she did on his complaint in order to protect people that she either worked with or people that might have been the subject of disciplinary proceedings. He referred to the fact that in her witness statement for today's hearing DS Murphy stated she used to sit next to someone who dealt with one of his previous complaints. He submitted that this proved there was a connection between her and the officers in the DPS-CST about whom he had previously submitted complaints and that was part of her motivation for not recording his complaint.

16 The claimant disputed the submission that Inspector O'Connell had made a proper assessment of his previous report. He also complained that by using an incorrect procedure to deal with his previous complaints, Insp O'Connell had denied him an opportunity to appeal. However, he confirmed that these matters were not part of this present complaint.

17 The claimant submitted that he could demonstrate the pattern of treatment by the senior officers in chain of command within the DPS – CST and that there were therefore, reasonable grounds for success in his case.

18 The claimant accepted that there was some overlap between the earlier reports that he had submitted to the respondent and the present report which is attached to the complaint to the IPCC but was submitted that DS Murphy failed to address the new information that had been added.

Decision

19 From the submissions of both parties and the documents and cases referred to – the Tribunal came to the following conclusions

20 The Claimant produced a report which he entitled 'The Complete Ridiculous' which he sent to the IPCC who then sent it to the Respondent's Department of Professional Standards – Complaints Support Team. The Claimant did not challenge the Respondent's assertion today that the role of that team is to assess public complaints to ascertain whether they fit the criteria of the Police Reform Act. In previous years the Claimant had sent reports entitled 'the Ridiculous' and 'Covering up the Ridiculous'. The Reports were said to be produced from the Claimant's research. They make serious, wide-ranging allegations against the Respondent.

21 Within the DPS – CST, DS Murphy was one of a team of assessors who assessed the complaint. She determined that it did not meet the requirements of a complaint under the Police Reform Act and therefore did not need to be officially recorded and would not be taken forward.

22 I find that it is highly likely that a Tribunal conducting a full merit Hearing on this matter – will conclude that the contents of the report from the Claimant is mainly an amalgamation of previous reports that he prepared, setting out his belief that there are police criminal networks and that there is wrongdoing within the metropolitan police. I have seen earlier iterations of the report in the bundle today – and there are references to

matters that occurred in 2012, 2013 and 2014 that were in the earlier reports and reappear in the latest version known as TCR. There are new allegations in TCR that relate to the Claimant. He alleges that he has been involved in 5 deaths at work – about which he submits he should be subjected to investigation for professional negligence and misconduct. The fact that such professional negligence investigations have not happened, he says is a detriment to him. That is difficult to comprehend. I was also unclear if the Claimant was actually admitting that he did wrongdoing in the circumstances of those deaths. He was also unable to say why he thought that there might be a cloud over him or whether this was the appropriate way to address it.

23 The subject of his complaints to the Tribunal is DS Murphy's response to his complaint rather than the contents of TCR.

24 He complains to the Tribunal that her refusal to record his report as is an act of victimisation against him on the grounds of race, and that it amounts to detriment for making a protected disclosure.

25 This is therefore a complaint of race discrimination and detriment on the grounds of making a public interest disclosure. I am mindful of the law set out above that discrimination complaints should rarely be struck out at this stage of proceedings as they are usually dependent on findings of fact that a Tribunal can only be made on hearing live evidence.

26 Taking that into account, I considered the question: Is it likely that he will be able to prove facts from which a Tribunal at a Hearing will be able to conclude that DS Murphy's refusal to register or accept his complaint was not because of the reasons stated in her letter but was instead, mainly or only because of his race and the fact that he had previously brought complaints of race discrimination against the Respondent and because he was a 'whistleblower'? Is there any reasonable prospect of success of this claim?

27 In considering this - I focussed on what the Claimant said this morning and on the contents of his claim form and the documents that I was taken to. I assessed the prospects of success, putting the Claimant's case at its highest.

28 The Claimant did not refer to any evidence which he would rely on to ask the tribunal to draw an inference of discrimination.

29 The Claimant agreed that as a serving member of the Metropolitan Police – the process of making a complaint to the DPS-CST was not open to him because of the provisions of the Police Reform Act 2002. He accepted that this was a process for members of the public. The Claimant accepted that that part of DS Murphy's decision was correct although he stated that she should have designated it as information rather than as a complaint and that would have circumvented the effect of the Police Reform Act. I was not shown or told about a process available to her to enable her to do that or that the DPS-CST have done so in relation to complaints made by police officers who have made complaints about officers under the direction or control of the same chief officer as them; in circumstances where they have not done a protected act, made a public interest disclosure or were of a different race to the Claimant.

30 He made no allegations that DS Murphy knew of his race when she made her decision or that she knew of his earlier complaints. In his ET1 claim form the Claimant

made no allegation that he was known to everyone in the DPS-CST or that he was aware that she knew of him and his earlier complaints or that she had any contact from Inspector O'Connell, for example, about his previous complaints - when she made the decision not to record his complaint. His suggestion at the hearing today that she knew of him came from the contents of the witness statement she produced for today's hearing. She stated that that she sat next to someone who dealt with one of his previous complaints. She did not know the outcome of the complaint and it is her evidence that she found this out by looking on the Tribune database rather than speaking to anyone. In any event, it was not something that the Claimant was aware of or on which he based his claim at the time that he issued the ET1.

31 In her decision letter - DS Murphy also stated that Inspector O'Connell had already reviewed and assessed your complaints – the Claimant takes issue with Inspector O'Connell's process but there is no denying that he did assess the earlier complaints. DS Murphy was correct in her statement. The Claimant did not refer to any evidence he would rely on to show that in making that statement DS Murphy was treating him differently because of his race or because he had made previous complaints/protected disclosures. Also, his complaint about Inspector O'Connell's assessment was part of a previous ET1 to the Tribunal. That claim was not heard as the Claimant failed to pay the deposit in time. It was judged as having little prospect of success and that is why EJ Russell made a deposit order on it. It is not part of this complaint.

32 The Claimant stated that Inspector O'Connell made his decision in an incorrect way which denied him the right to appeal. On its own that does not mean that his assessment was wrong. By contrast DS Murphy made her decision utilising the correct process which allowed him to appeal her decision to the IPCC. That is also not part of this complaint.

33 In her decision – DS Murphy stated that she reviewed the allegations post 2016 and that no misconduct had been found. I find that she means that she personally reviewed those allegations. She only relied on Inspector O'Connell's review of the allegations up to 2016. But, as already stated, the fact that DS Murphy chose not to record allegations against himself which meant that he was not subject to an investigation and/or disciplinary action, cannot be a detriment to the Claimant. Also, the Claimant failed to point to any evidence he would rely on to show the Tribunal that DS Murphy's decision not to record his complaints and investigate them was due to his previous complaints and/or to his race as opposed to or even in addition to the matters set out in her letter.

34 The claimant referred to his speculation that there may be a cloud over him in relation to his performance as a police officer and this was an attempt to bring those concerns out in the open. His suspicions cannot be a detriment and his case shows no connection between that suspicion and DS Murphy. That suspicion is not part of his ET1 but was part of his submissions today. He did not say what it was based on.

35 This is a case where there is little factual dispute. The parties agree that the Claimant sent a report – TCR – to the IPCC which then sent it on to the MPS – the DPS – CST section. DS Murphy looked at it, assessed it and refused to record it. That much is agreed between the parties. The issue is why she did so. Taking the Claimant's case at its highest, I find that there was no evidence that he pointed to which he intended to rely on in order to make a prima facie case at a full merit hearing that DS Murphy's decision

was made on the grounds of his race or because he had made protected disclosures or his previous claims in the employment tribunal.

36 In my judgment, in his ET1 the Claimant is really complaining about the previous claims that he has lost or that have not proceeded in the employment tribunal. Today, he was adamant that this claim is not related to the earlier complaints. However, the witness statement he produced for today repeated the history of his litigation with the Respondent, the existence of Police Criminal Networks, corruption within the Respondent, alleged wrongdoing by the Metropolitan Police Federation and detail alleged acts of victimisation going back to 2013. All of which appear to be continuing matters of concern to him. He makes sweeping statements about the staff at the DPS-CST without stating how he came to those conclusions. Even if this case is not an attempt to re-litigate the previous employment tribunal claims, I was not told what evidence he would rely on to show or even make a prima facie case that DS Murphy was prepared to breach the police code of ethics and commit an offence of corrupt and improper exercise of her duties rather than record the contents of TCR as misconduct matters. Those are serious allegations and apart from his assertions, the Claimant did not refer to any evidence that could support them.

37 In my judgment the fact that the Respondent decided that it would not take disciplinary or any other action against him in relation to the 5 unfortunate deaths he referred to – cannot be a detriment to him. It is my judgment that the only detriment he could be referring to is the decision not to record the complaint which meant that it did not get investigated. As I was not referred to any report of crimes/misconduct towards him in TCR, it is not entirely clear that DS Murphy's decision not to record the report was a detriment to the Claimant. Although not getting what you want – even if it to your disadvantage – could technically be seen as a detriment but it is a difficult argument to make. One would expect the Claimant to be arguing a detriment if he had been disciplined rather than when he had not.

38 I am well aware that it is unusual to strike out discrimination complaints at this stage of proceedings. It is clear that the Claimant is unhappy that DS Murphy did not record TCR and that an investigation did not follow his act of submitting it to the IPCC. This is clearly what he wanted. However, he has chosen to address his dissatisfaction with her decision by bringing it to the employment tribunal as a complaint of victimisation on the grounds of race and detriment because of public interest disclosure. It may be that there is no other way to address it. But it is my judgment that even if he could show that the failure to record the complaint was a detriment to him - the Claimant has not shown any evidence on which he will rely – he would not be able to prove facts from which the Tribunal can draw an inference that DS Murphy's decision was based on his race or on the fact that he alleged discrimination in TCR or brought previous discrimination complaints in the employment tribunal. Apart from his suggestion that those were the reasons for her actions, he produced no evidence that could show that DS Murphy decisions were in any way related to the Claimants race, that she was aware of his race, that she knew him that she knew of his previous complaints. I was not shown any evidence the Claimant intended to rely on to show that DS Murphy was prepared to commit an offence of corrupt and improper exercise of her duties. The Claimant did not explain why her decision was an improper exercise of her duties and was not one that was open to her following her assessment of the contents of TCR. I was not told on what basis the Claimant alleged that DS Murphy was prepared to breach the police code of ethics or

how it was alleged that she had done so. I was not shown any evidence that the Claimant would rely on in a hearing to prove these allegations.

39 In those circumstances, it is this Tribunal's judgment that there are no reasonable prospects of this claim succeeding. It is struck out.

40 I gave this judgment and reasons in court to the parties. The Respondent applied to the Tribunal to have this claim designated as totally without merit and to include a decision on the application in the written judgment.

Totally without merit

41 The Respondent referred the tribunal to the judgment of Mrs Justice Elisabeth Laing in the case of *NMC v Harrold and North Bristol NHS Trust v Harrold* [2016] EWHC 1078.

42 That judgment arose out of an application by the NMC and the NHS Trust to have the claimant restrained from further litigation against them in the High Court, the County Court or the employment tribunal, unless she had permission of the applications Judge of the Queen's Bench Division. The employment tribunal does not have power to make such orders and the respondent has not asked me to make such an order in this case. Only the High Court has the power to make a Civil Restraint Order (CRO) restraining proceedings in the employment tribunal

43 Laing J referred to the definition of "totally without merit" (TWM) in the case of *Samia v Secretary of State for the Home Department* [2016] EWCA Civ 82 in which it was made clear that the test for certifying an application as TWM is not met merely if the claim does not have reasonable prospect of success. She then discussed the fact that the phrase TWA means one thing in the Civil Procedure Rules and another in the relevant Practice Direction but favoured the definition 'bound to fail' in her assessment of that case. She held in that case that most of the claims were bound to fail and were totally without merit and that a general CRO should be made restraining the defendant from bringing claims against the claimants (i.e. the Trust and the NMC) in the County Court, the employment tribunal and the High Court for the maximum period of two years. She also held that even if the claimants in that case had not had 'clean hands' in the litigation, the benefit of a CRO was not just for the claimant as there was a significant public interest in ensuring that the time and resources of the courts and of litigants, and not wasted on meritorious claims. She also stated that it would be desirable for employment tribunals, when making decisions on week claims, to expressly consider and make a finding on, the question whether the claimant is totally without merit as it would help the High Court if there are subsequent applications.

Decision

44 Using the definition of TWA as 'bound to fail' and applying that to the claimant's allegations in this case; it is my judgment that the allegations made in this claim are TWA.

45 In this claim the claimant made serious allegations against the respondent and against DS Murphy personally, which he had no evidence to prove. He did not refer to any evidence in this hearing which he would produce at a hearing to support his case and from which he would asked the tribunal to draw inferences. This case is brought on the

assumption that as DS Murphy works in the DPS – CST it is likely that she was influenced by inspector Connell to the claimant detriment. That assumption was not based on any evidence. One of the detriments that he relies on is unlikely to be considered a detriment. It is not clear how the respondent's decision not to investigate the contents of TCR is a personal detriment to the claimant. The claimant did not get his way but that in itself does not make a complaint of victimisation or detriment meritorious.

46 The tribunal has no knowledge of whether or not the matters set out in TCR are real or outlandish, as the respondent suggests but that is not a matter for the employment tribunal. That is not within the tribunal's remit. Based on the findings and judgment set out above, it is this Tribunal's judgment that this complaint was bound to fail.

47 On that basis, it is this Tribunal's judgment that the complaints that the Claimant brought to the employment tribunal of victimisation on grounds of race and detriments following the making of protected disclosures/protected act based on the way the Respondent dealt with TCR in September 2017, are totally without merit.

Employment Judge Jones

27 February 2018