



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Rakoczy

**Respondent:** Manchester University NHS Foundation Trust

## JUDGMENT

The complaint of race discrimination is struck out.

## REASONS

1. The claimant was ordered to pay a deposit of £250.00 if he wanted to pursue his race discrimination claim following a preliminary hearing held on 28 May 2019. The Order was sent to the claimant on 11 June 2019. The claimant has failed to pay this deposit. The complaint of direct race discrimination is therefore struck out under rule 39(4) of the Employment Tribunals Rules of Procedure 2013.
2. The list of complaints and issues to be determined at the final hearing is now as set out in the Annex to this Judgment. It is an amended version of the list which accompanied the Case Management Order sent to the parties on 11 June 2019, with any reference to direct race discrimination removed.
3. As previously notified, the case remains listed for a preliminary hearing by telephone conference call on **7 February 2020** at 10.00am, and for a final hearing between **2 March and 3 April 2020 inclusive**.

Employment Judge Franey

2 October 2019

JUDGMENT AND REASONS SENT TO THE  
PARTIES ON

15 October 2019

FOR THE TRIBUNAL OFFICE

## ANNEX

### Complaints and Issues

- “SS1” etc refers to the numbered paragraphs in the relevant Scott Schedule. They are out of order because this list of issues seeks to record matters in date order.
- “PD1” etc refers to Protected Disclosures.
- “D1” etc refers to Detriments because of a protected disclosure
- Some of the race discrimination complaints, and all of the age discrimination complaints, were struck out on 28 May 2019. The remaining race discrimination complaints were dismissed in October 2019 because the deposit ordered was not paid.

#### **Preliminary Issue: Protected Disclosures Part IVA Employment Rights Act 1996**

1. Did the claimant make a protected disclosure on any of the following occasions in that:

- (a) he disclosed information;
- (b) which he reasonably believed tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject, or that the health or safety of any individual had been, was being or was likely to be endangered;
- (c) the claimant reasonably believed his disclosure was made in the public interest; and
- (d) he made the disclosure to his employer or to another person falling within sections 43C-43G?

1.1 **PD1:** *struck out 28 May 2019*

1.2 **PD2:** On 15 September 2014 in the written response to the NCAS referral document. (SS3)

1.3 **PD3:** On 3 July 2015 in the complaint about the NCAS final report. (SS5)

1.4 **PD4:** On 7 May 2015 during a meeting with Mr Pearson and Dr Walker when the claimant verbally disclosed the problems with the NCAS assessment and the support received from colleagues. (SS4)

1.5 **PD5:** On 21 June 2015 in the claimant’s grievance. (SS12)

- 1.6 **PD6:** On 21 June 2015 in an appendix to his grievance complaint providing information about a range of clinical and other concerns. (SS2 and SS9)
- 1.7 **PD7:** On 30 July 2015 in the response to the NCAS draft final report. (SS4)
- 1.8 **PD8:** In December 2015 when the response to the NCAS draft final report was sent to the GMC. (SS4)
- 1.9 **PD9:** In December 2015 when the complaint about the NCAS final report was sent to the Parliamentary and Health Ombudsman. (SS5)
- 1.10 **PD10:** On 6 June 2016 when submitting the statements, comments and appeal request documents during the capability process. (SS11)
- 1.11 **PD11:** On 5 October 2016 in a letter to the Secretary of State copied to the Prime Minister. (SS10)
- 1.12 **PD12:** On 5 April 2017 in a letter about the unlawfulness of the language assessment disclosed to the Trust and the GMC. (SS6)
- 1.13 **PD13:** On 5 April 2017 in the complaint about the GMC assessment made to the GMC on that occasion. (SS8)
- 1.14 **PD14:** On various dates between 19 May 2017 and 29 October 2017 disclosing information to the respondent, the GMC and others about the IELST test and age discrimination. (SS7)

### **Detriment in Employment – section 47B Employment Rights Act 1996**

2. If the claimant made one or more protected disclosures, was he subjected to a detriment by any act or deliberate failure to act by the respondent (or for which the respondent is liable) in any of the following alleged respects:

- 2.1 **D1:** *struck out 28 May 2019*
- 2.2 **D2:** From 15 September 2014 the Trust completely disregarded the points made by the claimant in his response to the NCAS referral (SS3);
- 2.3 **D3:** After 21 June 2015 the Trust failed to investigate the 95 matters raised in the last eight pages of the claimant's grievance appendix (SS9);
- 2.4 **D4:** From 21 June 2015 the respondent unnecessarily prolonged the investigation of the claimant's grievance (SS12);

- 2.5 **D5:** From 3 July 2015 the respondent did not accept the main points of the claimant's response to the NCAS draft final report (SS4);
- 2.6 **D6:** From 3 July 2015 the respondent did not accept any of the concerns raised by the claimant about inaccuracies which were listed in his complaint about the NCAS final report (SS5);
- 2.7 **D7:** Between 6 April 2016 and 1 June 2017 the respondent failed to support the claimant, and disregarded his improvement and efforts, failed to review his restriction and expanded it without investigation (SS11 and SS12);
- 2.8 **D8:** From 5 April 2017 the respondent did not accept the content of the claimant's letter about the unfairness of the language assessment (SS6);
- 2.9 **D9:** From 5 April 2017 the respondent did not accept the content of the claimant's complaint about the GMC assessment (SS8)?

3. If so, bearing in mind the respondent's obligation to show the ground on which any act or deliberate failure to act was done, was the ground for any such act or deliberate failure to act that the claimant had made a protected disclosure?

4. Insofar as any of the matters for which the claimant seeks a remedy under section 47B occurred more than three months prior to the presentation of his claim form, allowing for the effect of early conciliation, can the claimant show:

- (a) that the act or failure to act was part of a series of similar such acts or failures ending within three months of presentation; or
- (b) that it was not reasonably practicable for him to present his complaint before the end of the three month period, and it was presented within such further period as the Tribunal considers reasonable?

**Remedy**

5. If any of the above complaints succeed, what is the appropriate remedy?