



EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING

Claimant: Miss M Lackenby

Respondent: The Chief Constable of Cleveland Police

Heard at: Teesside

On: 19 December 2019

Before: Employment Judge Morris
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr A Webster of Counsel

RESERVED JUDGMENT

- 1 The judgment of the Tribunal is limited to the preliminary issue of the respondent's application that an order be made striking out the claims of the claimant relating to the matters referred to below as the Sergeant Promotion, the Inspector Duties and the Inspector Promotion.
- 2 The Tribunal is not satisfied that it can be said that any of those claims "has no reasonable prospect of success" and, as such, that application is refused.

REASONS

Representation and evidence

1. The claimant appeared in person. The respondent was represented by Mr A Webster of counsel who presented a witness statement of Mr JB Puech, a lawyer

within the respondent's Legal Services Unit. He tendered Mr Puech to give evidence formally but the claimant stated that she accepted what he said in his statement and did not want to question him. As such, Mr Puech's witness statement was admitted into evidence.

Context

2. At a Private Preliminary Hearing held on 15 November 2019 Employment Judge Aspden considered, amongst other things, the claimant's complaints of direct sex discrimination arising from the respondent's treatment of her in the following circumstances:

- 2.1 after the claimant passed the sergeant promotion process in June 2008, failing to promote the claimant to Sergeant until March 2009;
- 2.2 from April 2016, failing to provide the claimant with opportunities to carry out acting Inspector duties;
- 2.3 after the claimant passed the inspector promotion process in October 2017, failing to promote the claimant to Inspector until April 2018.

3. For simplicity, in this Judgment I shall refer to the above three matters, respectively, as the Sergeant Promotion, the Inspector Duties and the Inspector Promotion.

4. Amongst other things, Judge Aspden ordered that this preliminary hearing should determine the following:

- 4.1 Whether the three claims set out above "should be struck out under rule 37 of the Employment Tribunal Rules on the basis that they have no reasonable prospect of success (including because there is no reasonable prospect of the tribunal deciding that the claims are in time)."
- 4.2 "Alternatively, whether the tribunal should make an order under rule 39 requiring the claimant pay a deposit as a condition of continuing to advance any of the allegations" referred to above.

5 Judge Aspden declined to order that this preliminary hearing should also determine whether the tribunal lacks jurisdiction to determine the above three complaints because they were brought outside the relevant three-month time limit.

The Hearing

6 The witness statement of Mr Puech having been admitted, the hearing proceeded by way of Mr Webster making submissions by reference to an extremely detailed skeleton argument (which I took into account along with the statutory and case law referred to) following which the claimant made oral submissions.

7 I fully considered all the submissions made and took them into account in coming to my decision. It is not necessary for me to set them out in detail here

because they are a matter of record and the salient points will be obvious from my conclusions below. That said, I record the key aspects of the submissions below.

8 On behalf of the respondent, Mr Webster's submissions included as follows:

8.1 There were two reasons why the claimant's claims should be struck out.

Limitation

8.2 First, the historic claims are significantly out of time and the claimant has no reasonable prospect of successfully overcoming the time bar hurdle.

8.3 The claims had not been presented within three months of the act to which the complaints relate within the meaning of section 123(1) of the Equality Act 2010 ("the Act").

8.4 Further, they did not constitute conduct extending over a period within the meaning of section 123(3) of the Act. In this respect, different individuals were involved in the alleged incidents. More particularly, as to the Sergeant Promotion, the claimant had asserted that a Chief Superintendent had directly discriminated against her but had stated that other senior managers were encouraging her and a more senior officer intervened to support her; while, as to both the Inspector Duties and the Inspector Promotion, the claimant had stated that several individuals were the alleged perpetrators but those individuals were different to those referred to in the claimant's other allegations. None of these three aspects was consistent with her having a reasonably arguable basis for any contention that her various complaints were so linked as to be continuing acts or to constitute an ongoing state of affairs in which female officers were treated less favourably.

8.5 If the historic claims are out of time, it is for the claimant to convince the Tribunal that they were presented within such further time as the Tribunal thinks just and equitable within the meaning of section 123(1)(b) of the Act. In this respect the Tribunal is to consider the prejudice to each party having regard, amongst other things, to the factors set out in the decision in British Coal Corporation v Keeble [1997] IRLR 336. As to each of the three claims, the length of the delay is substantial, the reasons (if any) are weak, the claimant had failed to act promptly and had not said when, if at all, she sought to take professional advice. As to the Sergeant Promotion, as explained in Mr Puech's witness statement, the respondent would face considerable prejudice if the claimant were to proceed in that the respondent operates a seven-year retention policy in respect of documents, one of the named senior officers is currently suspended and may not return and another left several years ago. As to the Inspector Duties, three of the alleged perpetrators have left as have two of the alleged perpetrators in respect of the Inspector Promotion. Generally, difficulties will arise relating to fading memories/the cogency of the evidence.

No reasonable prospect of success

- 8.6 The second reason why the claimant's claims should be struck out is that the historic claims in respect of the Sergeant Promotion and the Inspector Promotion, at their high watermark on the face of the claimant's pleading (irrespective of the time bar), fail to advance facts upon which the claimant has a reasonable prospect of successfully prosecuting her case.
- 8.7 As to the Sergeant Promotion, in her claim form (ET1) the claimant makes no allegation of discrimination within the scope of the Act, refers to all other candidates rather than all male candidates being promoted, has been unable to provide the names of the other officers or when they were promoted and had failed to provide any basis for her assertion that the named senior officer was motivated by her sex.
- 8.8 As to the Inspector Promotion, in her claim form the claimant makes no allegation of discrimination within the scope of the Act, has only named one officer who had been promoted and had failed to provide any basis for her assertion that three senior officers were motivated by her sex.
- 8.9 In respect of each of the above two Promotions the claimant does not make a clear assertion of differential treatment in her pleadings (which in any event would not be enough) and, therefore, there is no reasonable prospect of the facts necessary to liability being established, no such facts being pleaded.

9 The claimant's submissions included as follows:

- 9.1 She accepted that her claims had been presented outside the three-month period but there had been ongoing discrimination against her since she started to seek promotion.
- 9.2 The main point was that the respondent had not followed its normal procedure. After she had passed the internal promotion process she had submitted an 'unregistered file' but had not been made temporary sergeant whereas a male colleague, who had failed the same promotion board and had not submitted an 'unregistered file', was made temporary sergeant the following January. She had approached the Police Federation for assistance but it was only when she approached an Assistant Chief Constable that he endorsed her temporary promotion.
- 9.3 There had been ongoing issues every time she requested promotion or development opportunities. Other qualified officers were men and they were given opportunities whereas she, the only female qualified officer, was overlooked and not given such opportunities. She believed that she had been directly discriminated against as a result of being female.
- 9.4 As to the Inspector Promotion she had provided a timescale. Of the 20 officers who had passed the 2017 promotion process (17 of whom were male and 3 female) 13 had been substantively promoted in July 2017.

She had qualified (examinations 1 and 2) within that timescale and unlike 6 other offices who had passed the 2017 promotion process she had not needed to undertake the 12 month work-based assessment. She did not know whether the 13 officers referred to were all male.

Consideration

10 I have given careful consideration all the relevant material before the Tribunal: Balls v Downham Market High School and College [2011] IRLR 217. I have thus had regard to the claim form, the response and the additional information provided by the claimant following the orders made at the previous preliminary hearing, the submissions made at this hearing and the relevant statutory and case law, notwithstanding the fact that, in the pursuit of some conciseness, every aspect might not be specifically mentioned below.

11 In relation to any assessment of whether a claim either has no reasonable prospect of success or little reasonable prospect of success, general principles in relation to a complaint of discrimination, particularly a complaint of direct discrimination, are relevant considerations. The first such general principle is the shifting of the burden of proof provided for in section 136(2) of the Act, which states, “If there are facts from which the court could decide, in the absence of any other explanation that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred.” It is well-established (e.g. Igen Ltd v Wong [2005] ICR 931) that this involves a two-stage approach. At the first stage the claimant is required to prove, on the balance of probabilities, facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. Thus the tribunal is required to make an assumption at this stage which may be contrary to reality. This first stage has been explained as the claimant establishing what has been referred to as a ‘prima facie case of discrimination’. Although the burden of proof is on the claimant at this stage and the standard of proof is the usual civil standard of balance of probabilities, the threshold of “could” decide/conclude is not particularly high; albeit something more is required than a difference in ‘status’ between the claimant and her comparators (i.e. in this case sex) and a difference in treatment between them: Madarassy v Nomura International plc [2007] ICR 867.

12 Within this first general principle there is the second, which is also referred to in Igen Ltd, that at this first stage it is appropriate for the tribunal to draw inferences from primary facts and, in doing so, must assume that there is no adequate explanation for those facts. If the burden of proof thus shifts to the respondent it is then for the respondent to prove that its treatment of the claimant was in no sense whatsoever on the ground of sex. I bring these general principles of the reverse burden of proof and the drawing of inferences into account in my consideration of whether the three claims of the claimant as set out above have either no reasonable prospect or little reasonable prospect of success.

13 In accordance with Rule 1(3) of the Employment Tribunals Rules of Procedure 2013, the decision of this Tribunal regarding the respondent’s strike-out application is a judgment, which must be registered, whereas its decision regarding the respondent’s application for a deposit order is obviously an Order. These reasons therefore relate primarily to that Judgment as to the strikeout application even though the separation of the two decisions is somewhat artificial given that, despite the

different thresholds, similar principles apply to any consideration of whether all or part of a claim should be struck out under rule 37 of the Rules of Procedure on the basis that there is “no reasonable prospect of success” or whether a deposit order should be made under rule 39 on the basis that an allegation “has little reasonable prospect of success”. Thus, in these Reasons I address, principally, the application that the claimant’s claims in respect of the three matters of the Sergeant Promotion, the Inspector Duties and the Inspector Promotion should be struck out.

14 In relation to the issue of striking out a claim of discrimination on this ground of no reasonable prospect of success, the House of Lords in Anyanwu v South Bank Students’ Union [2001] ICR 391 highlighted the importance of not striking out discrimination claims thus:

“..... vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.

15 This general approach has been consistently followed. In this regard I note and accept Mr Webster’s written submissions in which he refers to the decision in Tayside Public Transport Company Ltd (T/a Travel Dundee) v Riley [2012] CSIH 46 stating that strike out on this ground should only be exercised in rare circumstances while in Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330 the Court of Appeal stressing that it will only be in an exceptional case that a claim will be struck out as having no reasonable prospect of success where the central facts are in dispute, and submits that the correct approach is to take the claimant’s case at its highest: Ukegheson v London Borough of Haringey [2017] EWCA Civ 1140. Mr Webster also refers to the decision in Ahir v British Airways plc [2017] EWCA Civ 1392 in which it is stated that the employment tribunal should not be deterred from striking out claims including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established but “the hurdle is high”.

16 More particularly, Mr Webster cites the decision in Chandhok v Tirkey [2015] IRLR 195 in which mention is made of it being rare for a strike out application to succeed before the full facts of the case have been established in evidence. That said, “This stops short of a blanket ban on strike-out applications succeeding in discrimination claims. There may still be occasions when a claim can properly be struck out – where, for instance, there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in Madarassy v Nomura [2007] ICR 867):

“...only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.””

17 Mr Webster relied heavily upon the inadequacy of the claimant's claim form in that at least in relation to the Sergeant Promotion and the Inspector Promotion, the claimant makes no reference to the alleged treatment being on the ground of sex. I accept that this is important. This is clear from the decision in Chandhok that the claim is something which has an element of formality about it:

"The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely on their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a respondent is required to respond. A respondent is not required to answer a witness statement, nor a document, but the claims made - meaning, under the Employment Tribunals Rules of Procedure 2013, the claim as set out in the ET1."

18 I obviously accept that general proposition but, while a party cannot simply choose to add to the case as set out in the claim form, I consider that that does not apply in circumstances where a claimant has been granted leave to amend the claim or, as in the case before me, further information has been provided pursuant to orders of the Tribunal. As such, as indicated above, I have brought into account both the specific information provided by the claimant in response to paragraph 3.1 of the orders made at the previous Preliminary Hearing and the additional information also provided by her by way of context for that specific information; albeit I focus principally on the former. Although I acknowledge the point made by the respondent's solicitors in their email to the Tribunal, dated 10 December 2019 that the claimant has provided information going far beyond what she was required to provide, I am satisfied that my approach of giving careful consideration to all the relevant material before the Tribunal accords with the decision in Balls in which Lady Smith stated as follows:

"I would add that it seems only proper that the Employment Tribunal should have regard not only to material specifically relied on by parties but to the Employment Tribunal file. There may, as in the present case, be correspondence or other documentation which contains material that is relevant to the issue of whether it can be concluded that the claim has no reasonable prospects of success. There may be material which assists in determining whether it is fair to strike out the claim."

19 In the above context it is convenient, and I hope helpful to the parties, that I should address in turn the two reasons by reference to which the respondent makes its applications.

Limitation

20 A preliminary issue in this connection is that, as indicated above, at the previous Preliminary Hearing for the reasons she gave (with specific reference to the decision in Caterham School Ltd v Rose UKEAT/0149/19), Employment Judge Aspden refused the application on behalf of the respondent that this Preliminary Hearing should determine whether the tribunal lacks jurisdiction to determine the three complaints detailed above because they were brought outside the relevant three-month time limit. With respect, I consider that refusal to be the correct decision to make in the circumstances. It is important, therefore, that although my

consideration of the question of whether those three complaints should be struck out is to include “because there is no reasonable prospect of the tribunal deciding that the claims are in time”, I should not stray into a determination of whether the tribunal lacks jurisdiction because they were brought out of time. To do so would be to admit the jurisdiction point ‘by the back door’ contrary to the decision of Judge Aspden. I consider this general delineation of my function to be of relevance to my consideration of Mr Webster’s submissions regarding the primary three-month time limit and conduct extending over a period and, perhaps particularly so, to his submissions as to whether the claimant’s claims were presented within such further time as the tribunal thinks just and equitable within the meaning of section 123(1)(b) of the Act. I return to this point below.

21 Moving on from that preliminary issue, as indicated above the claimant accepted that the claims were not presented within the primary three-month time period but she maintained that there had been what she termed ongoing discrimination against her since she started to seek promotion. The claimant is not represented but that is clearly akin to stating, with reference to section 123(3) of the Act, that she was subjected to “conduct extending over a period”. If that is established, such conduct would fall to be treated as if done at the end of that period. I acknowledge the submission made by Mr Webster, relying upon the decision in Hendricks v Metropolitan Police Commissioner [2003] IRLR 96, that a tribunal needs to consider the question of whether there is such conduct extending over a period as distinct from a succession of unconnected isolated or specific acts. It is important, however, to have in mind that different approaches apply depending upon whether that question is being asked at a substantive hearing or at a preliminary hearing in relation to a strike-out application. As Mr Webster highlighted, in Aziz v First Division Association (FDA) [2010] EWCA Civ 304 it is stated (referring to the decision in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548) that “the test to be applied at the pre-hearing review was to consider whether the claimant had established a prima facie case” and the tribunal “must ask itself whether the complaints were capable of being part of an act extending over a period”; put another way, “the claimant must have a reasonably arguable basis for the contention that the various complaints are so linked as to be continuing acts or to constitute an ongoing state of affairs: see Ma v Merck Sharpe and Dohme Ltd [2008] EWCA Civ 1426.”

22 I repeat that I have given careful consideration to the information and submissions before me as detailed above. I acknowledge the submission made by Mr Webster as to different individuals being involved in the alleged incidents, in respect of which he relies upon the decision in Aziz, but that is said to be, “one relevant but not conclusive factor”, and it is perfectly possible (at least sufficiently for the purposes of my consideration of the strike-out application at this preliminary hearing) that there could be an ongoing state of affairs notwithstanding the involvement of different individuals. More particularly, I note that in addressing the several paragraphs of the respondent’s grounds of resistance (as she was ordered to do at the previous Preliminary Hearing), the claimant has set out events, conduct, acts and failures to act, which she has described as being ongoing discrimination against her since she started to seek promotion. These include the following: as to the Sergeant Promotion, the named Chief Superintendent failing to promote her to Temporary Sergeant and failing to provide her with any reason why he did not authorise that promotion while male officers were promoted; as to the Inspector

Duties, the named senior officers failing to offer her opportunities to undertake Acting Inspector duties or, indeed, preventing her from undertaking such opportunities while male officers were given these opportunities, and her pursuing these matters with them and other senior officers; as to the Inspector Promotion what the claimant considers to be delays in her promotion for which no lawful reason had been provided and, to the contrary, discriminatory motives are suspected and no senior officer being prepared to become involved at an earlier stage so as to resolve this aspect. In these respects I repeat that relevant considerations for me in determining the respondent's application include the above general principles of the reverse burden of proof and the Tribunal at the substantive hearing drawing inferences from primary facts.

23 In the circumstances (while it is not to be inferred from my decision that I am satisfied that the claimant will in fact be able to establish a prima facie case of discrimination) I am satisfied that the claimant's complaints are "capable" of being part of conduct extending over a period and that the claimant has "a reasonably arguable basis" for contending that her various complaints are so linked as to be continuing acts or constitute an ongoing state of affairs. Those are both fairly low thresholds and, stressing that they apply in the context of considering a strike-out application in which the 'test' is that the claim has no reasonable prospect of success, I am satisfied that the claimant has satisfied each of them in this case. I make that point as, applying the lower 'test' for a deposit order that an allegation or argument has little reasonable prospect of success, I am not so satisfied. I address this aspect in the Orders sent to the parties at the same time as this Judgment.

24 Had my conclusion in relation to making a strike-out of order been to the contrary I would have turned to consider the issue of whether the claimant's claims were presented within such further time as the tribunal thinks just and equitable within the meaning of section 123(1)(b) of the Act. As mentioned above, however, given the earlier decision of Employment Judge Aspden, the focus of my consideration of that issue is to be upon whether there is no reasonable prospect of the tribunal deciding that the claims are in time and I must not stray into a determination of whether the tribunal lacks jurisdiction because the claims were brought out of time.

25 Simply put, my function is not to determine the question of just and equitable extension but whether there is no reasonable prospect of the Tribunal at the substantive hearing being satisfied that on that or any other basis the claimant's claims were presented in time. In this regard, Mr Webster relied upon the well-known decision in Robertson v Bexley Community Centre [2003] IRLR 434 and I accept that time limits are to be exercised strictly, it is for the claimant to convince the tribunal that it is just and equitable to extend time and the exercise of discretion is the exception rather than the rule. He also relied upon the decision in Keeble that a tribunal has to consider the prejudice that each party would suffer as a result of its decision having regard to, amongst other things, the length and reasons for the delay, the extent to which the cogency of the evidence is like to be affected, the promptness with which the claimant acted once she knew of the facts giving rise to her claim and the steps she took to obtain appropriate professional advice.

26 In addressing those points in Keeble, I have also brought into account the evidence of Mr Puech. Within the further information that the claimant has provided, she has given her reasons as to why she did not present her claims earlier (being

primarily that she had little confidence that submitting a grievance would be productive and that for her to take action would have been the end of her career with the respondent) and although those reasons may or may not satisfy the Tribunal at the substantive hearing, I consider that they are at least arguable; it is a fact that there may well be difficulties with evidence from approaching 12 years ago but it may nevertheless be just and equitable to extend time; at the preliminary hearing before me the claimant explained that she had sought professional advice from the Police Federation at various times but that, by her account, that Federation had withdrawn its support due to financial reasons only two days before the expiry of the three-month period at a very late stage indeed; which was one of the reasons why her claim form was limited in detail.

27 In conclusion of this particular aspect, given my somewhat limited function as described above I am not satisfied that there is no reasonable prospect of the Tribunal at the substantive hearing not being satisfied, whether by reference to the issue of just and equitable extension or on any other basis, that the claimant's claims were not presented in time.

No reasonable prospect of success

28 As to this second basis for the respondent's applications, as detailed above, Mr Webster relied upon the claimant in her claim form not having made any allegation of sex discrimination in relation to the matters of the Sergeant Promotion and the Inspector Promotion (he accepted that such an allegation was made in relation to the matter of the Inspector Duties), having failed sufficiently to particularise her claims (including with regard to the Sergeant Promotion having been unable to provide names of the other officers and, as to the Inspector Promotion, having only named one officer), having not provided any basis for her assertion that the named senior officer was motivated by her sex, and having not made a clear assertion of differential treatment in her pleadings.

29 As indicated above, I accept that inadequacies in a claim form are important and a claim, or indeed a response, cannot become 'a moving feast'. In this case, however, as explained above the claimant has provided further information not as a matter of choice or merely on her "say-so" (Chandhok) but in response to paragraph 3.1 of the orders made at the previous Preliminary Hearing, and in so doing has provided additional information by way of context. As I have explained, I am satisfied that the information provided contains material that is relevant to the issues before me and, in accordance with the decision in Balls, I consider it right that I should bring all that information into account in deciding whether the claimant's claim has no reasonable prospects of success.

30 Having done so, I am satisfied that the claimant's position has been clarified: in respect of all three matters of the Sergeant Promotion, the Inspector Duties and the Inspector Promotion, the claimant is clearly asserting direct discrimination because of sex; and as to the specific point about naming other officers, it is common in proceedings such as this for a tribunal to construct a hypothetical comparator. While work remains to be done on her part to evidence her claims (at least to the first stage of proving, on the balance of probabilities, facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination (Igen Ltd)) on the basis of the full particulars now provided by the claimant (and bearing in mind once more the above

general principles of the reverse burden of proof and the Tribunal at the substantive hearing drawing inferences from primary facts) I am not satisfied that it can be said that the claimant's claims have no reasonable prospect of success. Self-evidently, however, that does not mean that she will succeed as to the lesser threshold in relation to the making of a deposit order of little reasonable prospect of success, which I address in the Orders sent to the parties at the same time as this Judgment.

31 In summary, therefore, I first remind myself of the general context within which I am to consider the respondent's application for a strike-out order, which is provided in the case precedents referred to above: namely, the importance of not striking out discrimination claims (Anyanwu); striking out on this ground should only be exercised in rare circumstances (Tayside Public Transport Company Ltd) and in an exceptional case where the central facts are in dispute (Ezsias); while employment tribunals should not be deterred from striking out claims in appropriate cases "the hurdle is high" (Ahir); yet, this stops short of a blanket ban on strike-out applications succeeding in discrimination claims (Chandhok); more is required than an assertion of a difference of treatment and a difference of protected characteristic (Madarassy).

32 More particularly, in the decision in Balls, Lady Smith stated as follows:

".... the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has *no* reasonable prospects of success. I stress the word "no" because it shows that the test is not whether the claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be *no* reasonable prospects."

33 Applying the above and other relevant case precedents to the facts and circumstances before me, for the above reasons I am not satisfied, on either of the bases (what Mr Webster refers to as "limitation" and "no reasonable prospect of success") upon which the respondent has applied for an order that the three claims of the claimant relating to the matters of the Sergeant Promotion, the Inspector Duties and the Inspector Promotion should be struck out, that it can be said that any of those claims "has no reasonable prospect of success" and I refuse those applications.

34 In conclusion I would only add that as submitted by Mr Webster, a two-stage test applies in respect of the respondent's application for a strike-out order: first, does the claim have no reasonable prospect of success and, if so, secondly, does the tribunal in the exercise of its discretion consider it appropriate to strike out the claim? Thus, even if I had been satisfied that the claimant's claims have no reasonable prospect of success, I would then also need to have considered whether, even if so satisfied, it is appropriate to strike out one or more of her claims, which includes a consideration of whether there are alternatives to striking out that might be pursued. In this case, I am satisfied that the alternative of making one or more deposit orders would have been (and, indeed, as I have determined elsewhere, are) appropriate alternatives such that it would not have been appropriate exercise of discretion to make a strike-out order in this case.

35 For the above reasons, I am not satisfied that it can be said that any of the claimants claims in respect of the Sergeant Promotion, the Inspector Duties or the Inspector Promotion “has no reasonable prospect of success” and, as such, the respondent’s application in that regard is refused.

EMPLOYMENT JUDGE MORRIS

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 11 January 2020**

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