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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 4110829/19 & 4114716/19

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Held on 18 June 2020

Employment Judge J M Hendry

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Mr. D R Dawson

**Claimant
In Person**

University of Aberdeen

**Respondent
Represented by:
Mr. N MacLean,
Solicitor**

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Judgment

The Tribunal finds as follows:

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- 1. The claimant's application for strike out, not being well founded is refused.**
- 2. The respondent's application for strike being in part being well founded is granted to the extent of dismissing all claims except as after mentioned.**
- 3. In relation to the claim for detriment arising from a protected disclosure in incidents 3 and 5 the claimant shall be ordered to pay a deposit to be afterwards fixed as a condition of proceeding.**
- 4. Reserving meantime the application for strike out in relation to (1) the claim for harassment in incident 1, (2) claim for detriment arising from incident 23 and 32, (3) claims for a failure to make reasonable adjustments contained in incidents 58,59,60 and 61 all without prejudice to any plea that such claims are time barred.**
- 5. Orders the claimant within 14 days of the date of issue of this Judgment to lodge Better and Further Particulars in respect to the claim for**

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5 harassment in incident 1, detriment in relation to incidents 23 and 32; in relation to paragraphs 58,59,60 and 61 setting out when and how he believes the respondent could reasonably have become aware of his disability, what that disability is, when he believes a duty arose to make a particular adjustment, the factual basis for any such claims relating to an alleged failure to make reasonable adjustments and what reasonable adjustments he believes should have been made, thereafter allowing the respondents 14 days after receipt of the Better and Further Particulars to adjust their pleadings in response, if so advised.

- 10 6. The case shall proceed to an Open PH to (1) further consider the respondents strike out application in the light of claimant's Better and Further Particulars and hear any further submissions from parties and (2) to consider the appropriate amount of any Deposit Order relating to incidents 3 and 5 and in relation to any other remaining claims.

15 REASONS

1. A Preliminary Hearing on strike-out took place on 18 June 2020 by the "CVP" system. The claimant acted in person and the respondent was represented by Mr N MacLean, Solicitor. The genesis of the hearing can be traced back some months but had been delayed because of the Corona Virus Pandemic. It is helpful to set out a little of that history.

Background history

2. The claimant lodged an ET1 in September 2019 making various claims against his employer, the respondent. These he said arose from a student occupation of a university building and the aftermath. The claimant had witnessed some of the events. He was at the time a trade union representative for the University College Union or "UCU".

3. The claims were resisted and an ET3 was lodged on 15 October 2019. The case was transferred to the Tribunal office in Aberdeen. Because the claimant had made reference to "whistleblowing" in his ET1 Judge Hosie made various orders on 27 October 2019 for the claimant to provide specification of all of the instances of whistleblowing on which he relied including the date of the disclosures, the means by which the disclosures

were made and so forth. A Preliminary Hearing in person was then arranged to discuss case management.

4. The claimant lodged a lengthy Agenda for that Preliminary Hearing (JBp.209-
5 231) indicating that he was making claims for direct discrimination, indirect discrimination, harassment, victimisation, discrimination arising from disability, a failure to make reasonable adjustments and “whistleblowing” complaints relating to various alleged disclosures made by him following events during the occupation on 14 March 2018, relating to the issue of car
10 parking in violation of university policy, the subsequent internal investigation and its handling and the handling of his grievances/appeals.
5. The claimant indicated that a disclosure was made on the 7 November 2018 to Professor George Boyne, Principal and Vice Chancellor of the University
15 of Aberdeen that there had been a further disclosure to him on 5 September 2019. The claimant provided considerable background information in the Agenda document. The claimant stated that his discrimination claims arose from two protected characteristics namely his religion, (Christianity) and his belief in Trade Union solidarity and collective activity. The claimant also
20 furnished answers to Judge Hosie’s Orders (JB233/234).
6. A Preliminary Hearing took place in person on 29 November 2019 following which I issued a Note to parties on 3 December 2019. More importantly for our purposes some time was spent on discussing the pleadings. Paragraphs
25 9,10,12,13,14 and 15 were in the following terms:

30 *“9. We then spent some time discussing the ET1 and the further information the claimant had included in the Agenda document. I pointed out that what is in the Agenda document is not strictly speaking pleadings. In order to become pleadings the claimant would have to prepare document headed Better and Further Particulars to augment what is in his ET1.*

35 *10. I observed that I struggled a little to see the basis of the claims made by the claimant and the nexus or connection between the facts that he sets out in some detail and any possible breach of the Equality Act or other statute. I took some time to explain what I meant by this. I noted that the*

5 respondent's Agenda document raised a number of preliminary issues. The
claimant advised me that the matter had started with a parking issue and
then he became involved events surrounding a student occupation. It
affected him badly. He believes that he has some form of PTSD and was
then off ill. He was upset that he was not interviewed as a witness as part
of the investigation that took place and feels that this for example was
disability discrimination. We explored this. I suggested that a failure to
interview the claimant whilst unwell might have an innocent explanation but
even if it didn't the fact that the employer had acted in some way
10 unreasonably did not answer the question of why there was a particular form
of discrimination at work or some detriment arising out of whistleblowing,
trade union activities or whatever.

12. Mr MacLean contributed to the discussion. From his point of view he
15 wanted a clear indication of what the claims were, what the facts supporting
those claims were and their legal basis. He stressed the claimant had to
come to a view on causation: what had caused what action. Mr Dawson
accepted that there were some matters he simply didn't know how/why
things happened. I explained that Employment Tribunals can draw
20 inferences from the facts but he has to suggest in the first place what those
inferences are going to be and have some reasonable basis for doing so.
We discussed various examples of more straightforward forms of
discrimination and what the Tribunal would be expected to. I indicated that
I would make Orders that the claimant address first of all his specific
25 statutory basis for his claims, the facts underpinning those claims and
detriments and less favourable treatment he believes resulted.

13. Whilst it is hoped that progress would be made quickly to obtain the
30 necessary medical information it was accepted that there would be likely to
be a delay over the Christmas and New Year period and accordingly the
claimant will have until the **17 January 2020** to prepare better and further
particulars. The respondents shall have 14 days thereafter to respond if so
advised.

35 14. Finally, I suggested to the claimant that once he had prepared his Better
and Further Particulars he looks over them as objectively as he can and also
considers carefully the points made by Mr MacLean at paragraph 4.2 where
he sets out the preliminary issues.

40 15. I accept that it is difficult for a party litigant to plead a discrimination case.
It is important, however, for the claimant to try and focus in on the specific
events that he believes breached the duties the respondents have towards
him. Without doing this the Tribunal will not know what the "issues" it has to
consider are. A distinction should, as we discussed, be drawn between
45 proper background matters and the facts which that are at the core of any
particular claim."

7. At that hearing Mr MacLean indicated that his clients were not in a position to concede that the claimant was a disabled person in terms of the Equality Act. It was agreed that there would be a further disclosure of medical information in that regard.

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8. Following the hearing the Order seeking further specification of the claims from the claimant was in these terms:

10 “a. full details in chronological order (set out in short numbered paragraphs), of all the events or incidents upon which he relies in support of the case, including in particular:

- 15 (i) the date of each event or incident;
- (ii) the persons involved and
- (iii) what happened and what was done or said in each case; and the specification of events or acts complained of which were said to amount to less favourable or unfavourable treatment to identify the person or persons with whom the claimant compares his treatment, and the basis for which the less favourable/unfavourable treatment is said to have occurred because of his disability for (or) Religion and Beliefs.

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The respondent, if so advised will send to the claimant, copied to the Tribunal a written response to those allegations within 14 days of receipt of them.”

25 9. The claimant was also ordered to set out in summary the religious or philosophical beliefs on which he intended founding.

10. The claimant lodged a detailed response setting out 65 incidents that he relied upon (JBp286). He later added to these.

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11. A second ET1 was submitted by the claimant in December 2019. The new ET1 lodged by him in essence sought to bring the existing claims up-to-date adding further events. The cases were ordered to be heard together. The claimant continued to be employed by the University and intended to recast the pleadings in the light of discussion at the Preliminary Hearing. The

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pleadings now extended to some 68 events in which the claimant alleged various forms of discrimination had arisen.

- 5 12. The respondents lodged an ET3 in which they set out their position. They had identified four broad heads of claim namely, whistleblowing, discrimination on the grounds of disability and belief (religion and trade union/collectivist views).
- 10 13. On 31 January 2020 the respondents lodged a strike-out application (JBP430/431). The claimant lodged a strike out application on the 3 February (JBp432/433) Both were initially set down to be heard on the 24 March 2020 but had to be postponed because of the Corona Virus emergency. Instead, a case management discussion took place by telephone conference call on that date.

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Hearing 18 June 2020

Strike Out Applications

- 20 14. At the outset, I explained to the claimant the purpose of the hearing which was to hear the two strike out applications. I had asked parties to exchange authorities and draft submissions prior to the hearing. It was apparent from the legal authorities lodged by the claimant (JB625-633) that he had carried out considerable research into the basis on which strike-out could be granted by the Tribunal. He made reference to the Burden of Proof Directive and to cases generally dealing with discrimination and the presumption that such cases should not be struck out except in exceptional circumstances. I explained to the claimant the focus was on his pleadings and that his pleadings would be taken as true (at their highest) for the sake of testing them.

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15. As both parties had lodged written submissions which had referred to various authorities I had read these submissions prior to the hearing and I explained that I did not require parties to make detailed reference to these unless they

wanted to do so. I would note that I am sorry that there was an unexpected break in the proceedings due to a Fire Alarm in the building in which the Tribunal Office was situated requiring me to temporarily stop the hearing and join a queue outside but on reconvening I was not told nor did I detect that the interruption had caused any discomfiture to parties.

Claimant's Application

Legal Submissions

16. As indicated earlier the claimant lodged legal submissions and made reference to a number of legal authorities. I will endeavour to summarise these at the outset. It is be fair to observe that there was considerable overlap between parties' citation of authorities and no dispute between them as to the general legal background that was applicable.

17. I was referred to the case of **Mbuisa v Cygnet Healthcare Limited** which confirmed that striking out a claim was a draconian step that should only be taken in exceptional cases and that particular caution is needed if the claim is badly pleaded, for example by a litigant in person or a complainant whose first language is not English. It suggested that particular caution was needed if the claim was badly pleaded, for example by a litigant in person or a complainant whose first language is not English. The correct course of action would be to ensure it was properly pleaded, and if it had little prospect of success, make a deposit order.

18. In the case of **Robinson v Fife Health Board** three opportunities were afforded to the claimant to adequately particularise her discrimination claims. The Tribunal had to look at the extent and magnitude of the claimant's non-compliance. The Tribunal had made allowance for the fact that the claimant was an unrepresented party and considerable time and care had been taken both by the respondent in the criticisms advanced by it and by the Tribunal, to explain to the claimant what was required to achieve compliance and why. That, as at the date of the Open Preliminary Hearing on strike out, there had

been three opportunities afforded to the claimant to adequately particularise her discrimination claims in compliance with the Rules of Procedure and with the Orders of the Tribunal.

- 5 19. Referring the Tribunal to the case of **Weir Valves and Control (UK) Limited v Armitage [2004] ICR 371** the claimant urged the Tribunal to consider all the circumstances when deciding whether to strike out and to consider whether a lesser remedy would be an appropriate sanction. It should consider the magnitude of default, what disruption, unfairness or prejudice has been
10 caused; and whether a fair hearing was still possible. The EAT set out the principles for Tribunals to apply when considering whether to strike out a claim for non-compliance with Tribunal orders. The guiding consideration should be the Overriding Objective to do justice between the parties. A Tribunal should therefore consider all the circumstances when deciding
15 whether to strike out or whether a lesser remedy would be an appropriate sanction.
20. The case of **Essombe v Nandos Chickenland Limited UKEAT/0550/06** was an example of a claim being struck out due to the claimant's wilful disobedience. **EB v BA UK EAT/0139/08 and UKEAT/0138/08** was a case
20 in which the claimant had failed to make their case slightly more manageable and accordingly she was found to have breached an order (an unless order), resulting in the striking out of her case. It recorded that although the claimant complied with a "literal construction" of the Tribunal's order but, having
25 understood the intention behind the order, was found to have "deliberately flouted" it. The EAT upheld the Tribunal's decision to strike out her claim. The claimant also referred the Tribunal to the case of **Caterham School Ltd v Rose [2019] UKEAT 0149 19 1406** This case discussed the prima facie test when applied to 'reasonable prospects' and how this test was insufficient
30 when considering a 'time point'. It was said there that the definitive determination of an issue which is factually disputed requires preparation and presentation of evidence so as to reach a definitive outcome on the point,

which cannot then be revisited at the full merits hearing of the case. The claimant pointed to the comments made by Justice Auerbach in that case.

21. The claimant then referred to the case of **Kwele-Siakam v The Co-operative Group Ltd UKEAT/0039/17/LA** A case in which the Employment Judge erred in determining the strike out application in a way that was a 'mini' trial and reaching his conclusion without hearing evidence from the respondents or enabling the claimant to test it. Where there is a dispute on facts the claim should not be struck out if determining the facts might affect the decision (**Ezsias v North Glamorgan NHS Trust [2007] IRLR 603**) **Igen Ltd & ors v Wong; Chamberlin Solicitors & ors v Emokpae; Brunel University v Webster**) requires the complainant to prove facts from which the tribunal could conclude in the absence of an adequate explanation that the respondent has, on a balance of probabilities, committed, or is to be treated as having committed, the unlawful act of discrimination. The second stage, which is only reached if the complainant has proved those facts, requires an inference of discrimination to be drawn if the respondent fails to prove, on a balance of probabilities, that he did not commit or is not to be treated as having committed the unlawful act.
22. The claimant then turned to proving discrimination cases referring to the burden of proof and to **Madarassy v Nomura International plc [2007] IRLR 246, Igen v Wong**. He pointed to the decision in the case of **Anyanwu v South Bank Students' Union [2001] IRLR 305** as authority for the proposition that as a general rule that discrimination issues of the kind which were been raised as a general rule be decided only after hearing the evidence as questions of law that have to be determined are often highly fact-sensitive. He referred to **Odukoya v Wandle Housing Association Ltd UKEAT/0093/15** in which it was held that it was not satisfactory for the Employment Judge to accept major parts of the respondent's case without a trial at which the Respondent's witnesses would be heard and cross-examined about it. **Qdos Consulting Ltd & Others v Swanson**

UKEAT/0495/11 was authority for the position that Applications to strike out on the basis that there was no reasonable prospect of success should only be made in the most obvious and plain cases in which there was no factual dispute. The claimant accepted that there was no blanket ban on striking out discrimination cases (**Chandhok v Tirkey [2015] IRLR 195**) and that there may still be occasions when a claim can properly be struck out where, for instance, there was a time bar to jurisdiction, and no evidence was advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there was really no more than an assertion of a difference of treatment and a difference of protected characteristic. This stops short of a blanket ban on strike-out applications succeeding in discrimination claims. (per Mummery LJ in paragraph 56 of his judgment in **Madarassy v Nomura International plc [2007] IRLR 246 CA.**) The claimant referred to **Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913** and **Rice v McEvoy [2011] NICA 9, 16 May 2011.** The latter case showed that if an employer acts in a wholly unreasonable way that may assist in drawing an inference that the employer's purported explanation for his actions was not in fact the true explanation and that he was covering up a discriminatory intent. He referred to **Miss C Liney v Department for Work and Pensions,** to **Chapman v Simon [1994] IRLR 124, CA. 113,** and to **Qureshi v Victoria University of Manchester and another [2001] ICR 863.**

23. The claimant's submissions accepted that discrimination cannot be inferred from unreasonable conduct alone (**Glasgow City Council v Zafar [1998] IRLR 120** **Bahl v Law Society [2004] IRLR 799, CA. 117.**) The claimant then referred to time limits and Section 123 (3) which provides that conduct extending over a period is to be treated as done at the end of the period.

24. Finally, he referred to the case of **Mr R Yewdall v The Secretary of State for Work and Pensions** which held that in where an employee was not, in fact, carrying out trade union activities his claim to have suffered a detriment as a result of trade union activities must fail. However, it contains useful guidance on how a tribunal should approach such claims and, in particular,

that it is for the employee to establish a prima facie case so as to shift the burden of proof to the employer.

Submissions at Hearing

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25. As the claimant had lodged his own application for strike-out I invited him to proceed first. Mr Dawson expressed some unhappiness at the actions of the respondent's solicitors and felt that the application by the respondents for strike-out was ill advised and made while he was trying to co-operate with them to establish his disability status. The tenor of his remarks was that he regarded the behaviour as intimidating.

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26. The basis of his application was that the respondents were in breach of the Tribunal order to respond to his better and further particulars. He accepted that the Order dated 3 December was not a "Unless Order" nevertheless he indicated that the respondent's agents, and this was accepted by Mr MacLean, had not issued a response to his better and further particulars within 14 days as envisaged by the Order (JBp.432). The second ground for the strike-out application related to the manner in which the proceedings were conducted which he suggested were scandalous, unreasonable and vexatious. The respondent's officers and lawyers were aware he was a party litigant. His application was set out thus:

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"The respondent's representative has made numerous applications for strike-out, expenses and multiple Deposit Orders. These applications are predicated upon the respondent's representative judging me by the standards of a fellow distinguished legal professional. The Tribunal should not do so, consistent with the overriding objective (Rule 2) 2, so far as practicable, to ensure that parties are on an equal footing. I submit that making these applications at this point in the proceedings as unreasonable and vexatious."

27. He then suggested that the University should now conclude the internal grievance he had made into the whistleblowing processes that he had instigated. He also pointed to the lack of action from the respondent's agents in cooperating with him to establish disability status. He also wrote:

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5 *"I submit, that as litigant in person, if the judgment of the Tribunal is that I have been unable to articulate, to the required standard, any allegation or argument in my claim then I am given further opportunity to do so, including via discussion at a Hearing."*

28. Mr MacLean's response was that he meant no disrespect to the claimant in not following up the suggestions made by him in relation to establishing disability status. His client's position was that disability status was irrelevant as no proper articulated claims had been made. He accepted that his e-mail of 31 January (JBp.434-436) was a response in turn to the claimant's response to the Order to provide Better and Further Particulars. That Order only required the respondents to lodge factual responses "if so advised". Their response was 'only' seven days late and their position was that they did not require to make one. Mr Dawson interjected that he was disabled and that a delay of 7 days was a significant period for him. Mr MacLean reiterated that considering documents that the claimant had lodged, his two ET1s and the response to Judge Hosie's Orders his conclusion had been that no stateable case had been made.

20 **Respondent's Application**

Legal Submissions

29. As instructed by the Tribunal the respondent's agents had lodged written submissions prior to the hearing (JBp637-648). The respondent's solicitor accepted that in relation to the first part of the application based on non-compliance with the Order dated 3 December (promulgated by the Note of even date JBp241-247) that strike out was not a foregone conclusion and that the various factors set out in the **Weir Valves** case to which they referred had to be considered. Nevertheless, he submitted that the claimant had failed to provide proper details of his claim despite guidance given to him at the Preliminary Hearing and was in breach of the order in that he had failed to set out his claims properly.

30. The second ground was that the claims were vexatious in terms of Rule 37 (1)(a) referring the Tribunal to the cases of **Bennett v London Borough of Southwark (2002) IRLR 407** and **Attorney General v Barker [2000] EWHC 453**, and the definition of vexatious and scandalous discussed. The claimant's claims fell into the definition of vexatious as being claims that had no basis in law which were being pursued to harass the claimant's employers and to cause them inconvenience and expense out of proportion to any gain and thus amount to an abuse of process.
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- 10 31. The respondents also founded on the terms of the second part of Rule 37(1)(a) that the claim had no reasonable prospects of success. It was accepted that the threshold was a high one for the respondents to meet (**Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330**). The power to strike out a claim before evidence is heard has been described as a 'draconian power' (**Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684**). Caution should be exercised where a party litigant could not be expected to articulate complex arguments in written form (**Mbuisa v Cygnet Healthcare Ltd UKEAT/0119/18**). The House of Lords has said that discrimination cases should only be struck out on the plainest and most obvious circumstances (**WKH Anyanwu and another v South Bank Students' Union and South Bank University [2001] IRLR 305**). The same principles apply to 'whistleblowing' claims (**Pillay v INC Research UK UKEAT/0182/11**). The case of **Croke v Leeds City Council UKEAT/0512/07** was one where strike out was upheld when there was no material before the Tribunal to show causal links between the protected disclosure and the employers conduct. The two main case authorities (**Anyanwu and Ezsias**) were applied in the relatively recent case of **Mechkarov v Citibank NA [2016] ICR 1121**.
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- 30 32. Mr MacLean summarised that there were two principal parts to his argument. The background was that his position was that the claimant had failed to establish any justiciable legal claims and secondly failed to set out his claims with sufficient clarity and was therefore in breach of the Tribunal order. The

claimant had lodged substantial details. He had been given the opportunity to do so following the Preliminary Hearing on 29 November.

5 33. The Order dated 3 December contained a standard warning that breach of the Order could lead to strike-out of whole or part of the claim. His submission was that the claimant had failed to comply with the Order as he has still not specified his claim. Mr MacLean accepted that he was in error in his e-mail of 31 January 2020 when seeking strike out as he had mistakenly made reference to an “Unless Order” but nevertheless there was a breach and the
10 claimant’s claim had not been properly set out.

15 34. The second basis of his application was that the claim should be struck out in terms of Rule 37(1)(a). In relation to the claims being “scandalous and vexatious” it was not the claimant’s intention here that was the issue. The matter should be looked at objectively. It was the effect of the claimant’s actions which put and will continue to put the University to considerable trouble and expense. In his view the claim had no reasonable prospect of success and he touched on the law in relation to these matters.

20 35. Mr Mclean submitted that this was an exceptional case. He accepted that the claimant was genuinely aggrieved at the actions of the University but this was not enough. The claimant has simply set out many “incidents” and applied labels to them suggesting that they supported claims for different types of discrimination. The claimant had failed in all the claims to point to a “linkage”
25 between the facts and the particular types of discrimination. Mr MacLean indicated that the claimant had tried to “construct” claims. Mr MacLean then clarified that he did not mean that claimant had invented incidents but he had set out numerous events and had not tied those incidents to a legal framework. He was not suggesting that the claimant wasn’t genuine in his
30 perception of events but there was what he described as a “disconnect”. There was no “joining of the dots”.

36. He continued that his secondary position was that a Deposit Order should be applied to any remaining issues if the Tribunal did not see fit to strike-out the claims out. It was clear that the claimant was focussed on the events around the student occupation and its aftermath and it was clear from his pleadings and the list of documents he sought to have disclosed (JB616-920).

37. Mr MacLean gave as an example the first incident referred to by the claimant (JB286) that there had been interaction between him and a staff member. The incident seemed to be minor and unable to support the claims advanced.

38. The pleadings made reference to the Agenda (JB227). The claimant stated:

"I believe that I have been put at a particular disadvantage to what I can only describe as psychological abuse to my protective characteristics; religious beliefs; philosophical beliefs and likely disability so I think anyone with conditions affecting their psychological wellbeing would be put at a disadvantage by the way the respondent's chooses to operate its employment policies, processes and procedures."

39. In response Mr Dawson made reference to the events at the University and his role as a trade union activist and how the excision from a report on the occupation of his input had impacted badly on him. He spoke about the influence of Sir Ian Diamond in these events. He stated that only once the Tribunal had examined all of these events together would it be able to see various forms of discrimination being perpetrated. The University he said wanted to suppress his views and that was why it was prepared without reference to his evidence. They wanted to hide circumstances that they found embarrassing. I asked the claimant at this stage that if the respondents had acted in a particular way to suppress his evidence because they felt it would reflect badly on them (as the claimant's position seemed to be) then the reason for their actions (and consequence impact on him) related to that reason and not because of a protected characteristic namely being a trade union activist or disabled or whatever. The claimant then said that he didn't know why the respondents had acted in such a way and that as the facts are to be established first in his view there was sufficient material before the Tribunal to allow that enquiry. Mr MacLean responded that if the claimant this

as evidence at a merits hearing his case would be bound to fail because the reason he attributes to the respondent's actions does not relate to a protected characteristic.

5 Discussion and Decision

The Legal Principles

40. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that:

"37. Striking out

10 *(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds -*

(a) that it is scandalous or vexatious or has no reasonable prospect of success;.....

15 *(c) for non-compliance with any of these Rules or with an order of the Tribunal ..."*

41. In applying the Rules the Tribunal must have regard to the overriding objective in Rule 2:

"Overriding objective

20 *2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable— (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and*
 25 *in particular shall co-operate generally with each other and with the Tribunal."*
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42. It has been recognised that striking out is a draconian power that must be exercised carefully. If exercised it would prevent a party from having their claim determined by a Tribunal. The legal principles applicable in relation to the striking out of discrimination complaints pursuant to this Rule are well-
 35 established. In the House of Lords case of **Anyanwu & Ano v South Bank Student's Union and Ano 2001 ICR 391**, Lord Steyn said as follows:

5 "24. ... *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. Against this background it is necessary to explain why on the allegations made by the appellants it would be wrong to strike out their claims against the university.*"

At paragraph 39 in the judgment of Lord Hope of Craighead, said as follows:

10 "*Nevertheless, I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to [be] taken up by having to hear evidence in cases that are bound to fail.*"

43. In **Ezsias v North Glamorgan NHS Trust 2017 ICR 1126,CA**, a case referred to by both sides, the Court of Appeal was considering a case involving public interest disclosure and held that a claim should not ordinarily
15 be struck out where there was a:

20 "*29. ... crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. ... It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the applicant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. ...*"

44. In the more recent case of **Ahir v British Airways plc [2017] EWCA Civ 1392**,
25 Underhill LJ said as follows:

30 "*16. ... Employment tribunals 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, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment, and I am not sure that that exercise is assisted by attempting to gloss the well-understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between 'exceptional' and 'most exceptional' circumstances or other such phrases as may be found in the authorities. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be ' little reasonable
35
40 prospect of success'.*"

45. The Tribunal also had to consider the legal basis on which the claimant mounted his claims for discrimination when considering the pleadings. This was not a particularly easy task at times but the principal Sections of the Equality Act that he sought to engage appeared to be Section 4
5 (Discrimination on grounds of Disability and separately discrimination on the grounds of Religion and Belief), Section 13 (Direct Discrimination), Section 19 (Indirect Discrimination), Section 20 (Discrimination arising from disability) and Section 26 (Harassment).

Claimant's Application

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46. I will deal firstly with the claimant's application. In doing so I recognise that being involved in Tribunal proceedings as a party litigant must be stressful especially when faced by a respondent with considerable resources and the assistance of an experienced professional solicitor. I do not minimise these
15 difficulties when approaching this matter. I would comment that it should be borne in mind that within appropriate professional restraints it is the task of the respondent's solicitor to act in their client's best interests.

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47. The claimant is clearly an intelligent and articulate person who has prepared through his researches detailed written representations: references to appropriate legal authorities (JBp625-632) and argument/submissions (JBp644-646) as recorded earlier.

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48. The first ground that the claimant relies on is a breach of the Order dated 3 December 2019. The difficulty he has is that the order was not compulsory in its terms but permissive. The claimant was, I think, rather misled by the respondent's error in characterising the order that they say he had breached, namely the order to give proper details of his claim as being an 'Unless Order' This error was corrected. The Order in question was to provide a mechanism
30 to allow the respondents to answer the claimant's new pleadings if wanted to. There was no breach or at least there would have been if no response had been tendered. A response that was finally made (some seven days outwith

the terms of the order), when the respondents advisers reconsidered their position. That change of heart could not be said to have prejudiced the claimant or made a fair trial impossible. My view is that there was in fact no breach of the order although perhaps a breach of it's spirit. It should be remembered that a party is free to seek to lodge such better particulars at any point. As the respondents submitted in their own application even if a breach of an order occurs that does not necessarily lead to the claim being struck out (**Weir Valves & Control (UK) Ltd v Armitage [2004] ICR 371**) and even if the order had required a response within this period the delay was minor and would not be sufficient to warrant strike out of the response.

49. The second ground was more generally the conduct of the case by the respondent's agents which perturbed the claimant. In short, the tenor of his position was that he felt bullied by their actions and he felt that this was deliberate. The claimant raised in particular their failure to respond to his suggestions about how to resolve the issue of whether he was disabled or not. There is an obligation on parties to cooperate with each other in terms of the overriding objective but that obligation must be seen in context. The respondent's position was, and I understand this was communicated to the claimant, that they believed the claims were misconceived and that the issue of disability status could wait meantime. While I can understand the claimant's frustration, the respondents are entitled to wait until their strike out application was determined before expending additional time and expense in trying to resolve the issue of disability status. It remains in dispute. I can accept that the claimant felt this was unhelpful but I have detected nothing untoward in the manner in which the agents have acted having considered the file of correspondence. In particular they were entitled to seek strike out if, as they saw it, there were material deficiencies in the pleadings rather than proceed to what would otherwise be a lengthy and costly merits hearing with those problems unaddressed. Indeed, it was there professional duty to act as they did. In reviewing the respondent's agents' actions there was nothing untoward in their conduct of the case and accordingly no basis for the claimant's strike out application on this or any other basis and it is rejected.

Respondent's Application

50. Bearing in mind that the claimant is not an expert pleader I have read his pleadings both as a whole and considered the issues raised individually. I have tried to see where specific incidents might support others. I will now go through the various incidents/events he pleads and the claims advanced in order. The claimant has helpfully set out at length the facts he relies on and the claims he says arise. There are, unfortunately, common flaws throughout these passages but it is only fair to set out the issues incident by incident and consider each in turn judging whether any stateable claims arise. Some claims pled are not within the jurisdiction of the Tribunal such as 'maladministration' and I shall not attempt to analyse these and treat them as part of the alleged background.
51. I considered firstly the primary approach that should be taken to the application. Mr MacLean had argued that the claimant was in breach of the Order dated 3 December 2019 in that he had failed to give details of his claims. That submission founded on Rule 37(c) (compliance with an order). In approaching these matters I must bear in mind that the claimant is not an expert pleader and has from a layperson's point of view tried to comply with the order by setting out in considerable detail both the 'events or incidents' on which he relies and specification of what he regards the unfavourable treatment to be.
52. It is unfortunate that the claimant does not seem to have paid more attention to the discussion narrated in the Note that was prepared following the first preliminary hearing in December 2019 (JBp241-247) where there was a discussion at paragraphs 10,11 and 12 where it was made clear that the claimant had to go further than just relate unreasonable treatment but show why this treatment related to the Protected Characteristics or Whistleblowing. Mr MacLean put it succinctly in paragraph 12 when he said that the respondents just wanted to know what the claims were, the facts supporting them and their legal basis. Working back from the legal basis an examination of say Sections 26 or 27 of the Equality Act tells the reader what is needed to

invoke the section in question. It must have been clear to the claimant, who is an intelligent and able person, that he would have to state, for example, with regards to direct discrimination, why his employers acted as they did. Section 13 of the Equality Act reads: “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.” (my emphasis). The claimant also quoted a number of cases all of which featured the need to plead causation for example in **Madarassy**.

53. However, returning to Rule 37(1)(c) even if the claimant is in breach of the order by failing to specify his claims correctly I would be very hesitant in considering strike out for a failure to plead a case sufficiently without giving a claimant a further opportunity to do so if the facts pled showed that claims could be properly identified. In other words what could be described as a ‘technical’ breach caused by a party’s misunderstanding or ignorance of the requirements of pleadings would be insufficient to lead to strike out without another opportunity being given to rectify the deficiencies.

54. I did not regard the case as being similar the quoted case of **EB v BAUKEAT/0139/08 and UKEAT/0138/08**. It could be argued that in relation to some events the claimant has been honest by not speculating on the reasons for some of his employer’s actions rather than superficially complying, albeit wrongly, by simply asserting a particular form of discrimination applied. That, however, does not assist his submission that the matter should proceed to a full and detailed examination of the facts. In the case cited case the situation was markedly different as the claimant there had been told to make their case more manageable. It was noted that although the claimant had complied with a “literal construction” of the Tribunal’s order (she had understood the intention behind the order) she was found to have “deliberately flouted” it. I am content that the claimant has not deliberately flouted the order to specify his case. I am, with some reservations, reluctantly prepared to accept that he has been unable to do so.

55. Mr Mclean also argued that the proceedings were being conducted in a scandalous, unreasonable and vexatious manner (Rule 37(1)(a)) and I will deal with that submission. He referred me to the Court of Appeal decision in **Bennett** in which the Court of Appeal examined this part of the rule and the circumstances in which it could be properly applied. In that case the comments made by an agent that were critical of a Tribunal were held to be scandalous and the case struck out. A tribunal was held to have been wrong to strike out the claim for scandalous conduct of proceedings. The Court of Appeal defined scandalous as meaning, "*the misuse of the privilege of legal process in order to vilify others [or] giving gratuitous insult to the court*". They said that when deciding whether to strike out on this ground, the Tribunal must look at the conduct of the entire proceedings, not just one incident that had occurred during a hearing. The case also suggested that a party in this position should be given an opportunity of apologising for the behaviour at issue.

56. Mr McLean also examined whether the claimant's behavior was "vexatious" pointing to the number of claims that were said to have arisen some of which seemed very minor and out of all proportion to any likely gain even if successful. I was referred to the case of **Barker** which dealt with an application against a 'vexatious litigant. Mr Barker had raised eight claims which were essentially the same. The then Lord Chief Justice Lord Bingham wrote at paragraph 22:

"From extensive experience of dealing with applications under section 42 the court has become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give any effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop."

57. I had noted that there were a number of indications in the pleadings such as adverse comments made about Mrs Kinmond, Mr Sharp, Sir Ian Diamond and others that might have pointed to the claimant using the proceedings to get back at these people in some way rather than to advance proper claims against the respondents. Mr McLean did not seem to rely on these instances. It was also noticeable that there was considerable repetition in the pleadings of certain issues which led to what seemed essentially the same complaint being made more than once. I was a little surprised that Mr Mclean readily discounted what might be called bad faith or some untoward motivation on the part of the claimant in framing his pleadings, considering the number of claims he has made and given the comments he has committed to writing but this was not his position. He accepted that the claimant was genuine in his beliefs although misconceived.

58. Mr McLean relied on the submission that the claims being made were objectively burdensome to the respondent and accordingly vexatious. I am not sure if there is anything to be gained in over analysing the terms of the Rule rather than looking at the claimant's actions broadly and in doing so there is insufficient to my mind to engage these parts of the Rule and label the conduct of the case scandalous or vexatious. The claimant has not exhibited some of the other common signs of a litigant intent on causing his employer expenses by for example lodging multiple and unjustified applications or raising numerous separate proceedings although there are some aspects of his conduct that are concerning particularly the comments made about those involved that I have mentioned earlier. Considering these matters in the round I prefer to approach the application, at this stage in the proceedings, by considering whether the claims made have any reasonable prospects of success in terms of Rule 37(1)(a)

59. The first incident from which claims are said to flow is the one that was discussed during the preliminary hearing (JBp286). I will set it out what is pled in full. The claimant writes:

5 *“1. a. Date: On or around 5th March 2018 b. People: Mrs Debbie Dyker, Mrs Fiona Smith, Mr Derek Dawson c. What happened: I met Mrs Debbie Dyker and Mrs Fiona Smith unexpectedly on the pavement of St Machar Drive and Mrs Debbie Dyker entered into conversation with me. She enquired if I thought that she woke up every day thinking "whose life am I going to ruin today" and accused me of deliberately causing damage to her mental health.*
 10 *Later in the conversation she asserted that she was not the evil one. I told her she was being ridiculous. She also described her aggrievement that I had been sending emails to Professor Sir Ian Diamond, Mrs Caroline Inglis and Professor Mike Greaves but had not included her.”*

15 The claimant contends that the following claims arise from this incident.

“d. The act or acts complained of
i. I was victimised as a trade union representative.
ii. I was the subject of harassment.
 20 *iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimant's preliminary agenda, schedule one, S.5.*
iv. I was discriminated against indirectly, see "Psychological Abuse" within claimant's preliminary agenda, schedule one, S.5.
v. My feelings were injured.
 25 *e. Comparator person: I am unaware of anybody else being subject to such unfavourable treatment.*
f. Basis of less favourable/unfavourable treatment: i. I was then president/chair (most senior elected officer) of the Aberdeen Branch of the University & College Union. ii. An ongoing bitter industrial dispute. iii. Poor Industrial relations with UCU. iv. The contents of an email chain between
 30 *Aberdeen UCU (principally myself) and Management (principally Mrs Debbie Dyker) were shared with UCU members in May 2017, with names/identities removed. The content highlighted poor management behaviours and bad faith negotiations. Mrs Debbie Dyker took umbrage (ie. huff/sulk) at this and refused to communicate or meet with me for many months afterward. v. An email sent to me by Mrs Debbie Dyker on 20th September 2017 advising "It is not helpful to get into these types of exchanges with you as you will continue to have an entrenched position.", which I interpreted as an offensive remark.*
 35 *vi. I have it on good authority from other UCU trade union representatives, what I would interpret as public harassment (or to use their words "open hostility") by Mrs Debbie Dyker during various meetings taking place over the years. However, what I faced on the pavement was vicious and only possible because I was isolated.”*

- 45 60. There are four possible headings under which these various claims are being advanced namely Disability, Religion and Belief (Trade Union)) and “Whistleblowing”. The first point raised relates to the claimant’s role as a

Trade Unionist. Crucially he does not write he was victimised because of his trade union activity but he was victimised 'as' a Trade Unionist. This is a common thread in many of the passages. It was put to him at the hearing that he was looking at the upsetting effect their actions had on him because they
5 affronted his sensibilities as a trade unionist. He believes that his employers alleged actions caused him hurt or distress which he feels was aggravated because he is a dedicated Trade Unionist, Christian etc rather than these protected characteristics being the reason for those actions. Nor does he set out the necessary basis for a claim under Section 27 or state the Protected
10 Act that invokes such protection. Indeed, the claimant does not say which statutory protection he is invoking at all.

61. One of the cases the claimant referred to related to the protections Trade Unionists have under Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 92). This section protects them from
15 being subjected to detriment related to their trade union membership or taking part in trade union activities. The terms of Section 146 (1)(b) is to protect someone from acts of their employer 'for the sole or main purpose' of 'preventing or deterring him from making use of trade union services ..or penalising him from doing so'. That does not seem to be the foundation of the
20 claimant's claim here or later in his pleadings.

62. The claimant does broadly indicate that he felt 'harassed' as his Trade Union role brought him into conflict with Mrs Dyker and others in management. However, he fails to refer to any statutory basis for this claim. We must assume from his pleadings that he founds the claim on the Equality Act 2010.
25 His belief in Trade Unions (and collective activity) could possibly amount to a protected characteristic. That has yet to be determined by the Tribunal so for the purposes of examining the pleadings I will treat the matter as amounting to a protected characteristic. I have considerable reservations that if what was said to have occurred could be said to amount to a detriment or harassment under the Equality Act. To invoke Section 26(1)(b)(ii) the
30 behaviour must create: "*an intimidating, hostile, degrading, humiliating or offensive environment*" The claimant does not say for example how this could amount to his public humiliation (who could/did overhear the exchange?) or whether the tone of voice used was loud or sarcastic or angry.

63. It is not clear which protected characteristic is at play (Disability/Religion/Belief) but reading the paragraph as a whole I will focus on 'Belief'. A claimant alleging discrimination of any sort does not need to show that the protected characteristic is the only reason for their treatment but it must be a substantial reason and connected to that treatment. A complaint for direct discrimination can only succeed if the claimant demonstrates to the Tribunal that the protected characteristic was the reason (or one of the reasons) for the unfavourable treatment. The principal difficulty with the claimant's pleadings, and this is common to all the claims for direct discrimination he is making, is that he does not say that he was treated in a certain way because of a protected characteristic. Indeed, as noted earlier at the preliminary hearing the claimant said that he believed that the reason his contribution to the report on the investigation into the student occupation was omitted was to save the University embarrassment and by inference not because any of the protected characteristics he cited as being in play. The nearest he comes to saying that a protected characteristic was involved at all is when he states that he knows of no other person treated in the way he was treated but that hardly narrows the field.

64. The claimant also raises issues of indirect discrimination but does not set out in his pleadings (except by reference to the Agenda) the provision, criterion and practice of his employers that puts him at a particular disadvantage compared to an employee who does not share the Protected Characteristic. Nor does he set out facts or circumstances that go to show what it is. He makes reference to the Agenda document he lodged (JBp226) and writes as follows:

"(i) The provision, criterion or practice is for the respondent to participate in trade union consultation and negotiation in bad faith with a distinct lack of openness, transparency and trust. The respondent seems particularly intolerant of the University and College Union (UCU), possibly because of the specialised focus of the UCU and the disruption caused by UCU industrial action. UCU is a member-led union which binds the leadership (in the case

of Aberdeen, volunteers representatives) to representing the democratically expressed will (via general meetings including discussion, debate, motions and votes) of its members. This is in contrast with the respondents' managements' approach of top-down leadership and a lack of checks and balances at the institutional level".

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65. Referring once more to the Agenda the claimant makes reference to particular disadvantage thus:

“(iii) I believe that I have been put at a particular disadvantage and subject to what I can only describe as psychological abuse due to my protected characteristics: religious belief; philosophical beliefs and likely disability. I think anybody with conditions affecting their psychological wellbeing would be put at a disadvantage by the way the respondent chooses to operate its employment policies, processes and procedures. (iv) Yes, I have endured a tortuous process, which has been to the detriment of my health and wellbeing.”

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66. The PCP is said to be participating in “*trade union consultation and negotiation in bad faith with a distinct lack of openness, transparency and trust*” In essence the particular disadvantage is said to be that because of the claimant’s strongly held beliefs he is disadvantaged in effect because this alleged behaviour was upsetting to him. It should be borne in mind that an employer’s unreasonable behaviour is not sufficient to show discrimination of any particular type (**Glasgow City Council v Zafar [1998] IRLR 120 Bahl v Law Society [2004] IRLR 799, CA. 117**).

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67. Again I must observe that it is not directly stated that the claimant is treated the way he alleges because of any protected characteristics. We are left to guess. It seems much more plausible that rather than the University acting in the way alleged i.e. because of his disability or beliefs it acted, as he himself stated in furtherance of its own self- interest which inadvertently brought them into conflict with him because his role as a Trade Union representative and that he then found this upsetting.

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68. The next paragraph contains details of the claimant’s view of what happened during and after the occupation. He also refers to his involvement in earlier industrial disputes with the University. It’s helpful to set this out as background to the claims. It is also important to know that the claimant raised grievances

against the University and it is against this background various claims are said to arise. He asserts that:

5 *“i. I was victimised as a trade union representative. ii. I was discriminated against directly, for my religion. iii. I was discriminated against directly, for my philosophical beliefs. iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was victimised in the context of the Equality Act 2010, having spoken out against the abuse of disabled parking spaces. vii. I was victimised in the context of the Equality Act 2010, having previously spoken out against concerns of racial discrimination. viii. The employer failed in its duty of care toward me. ix. I was psychologically injured. x. I was the subject of harassment. xi. My feelings were injured.”*

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69. The suggestion that the claimant was victimised ‘in the context’ of expressed ‘concerns’ about racial discrimination falls far short of setting out sufficient facts that show a protected disclosure was made (when, how and to whom?) that in turn could activate the protection against detriment let alone what the victimisation he suffered comprised. The claimant uses the same formula as he has in the first two paragraphs (setting out numbered claims for discrimination relating to his beliefs (trade unionism) disability etc) in succeeding paragraphs. He makes principally the same claims arising out of incidents (on occasion adding in ‘whistleblowing’ and ‘maladministration’) and setting out factual averments as before with no clear connection to the protected characteristics advanced or showing how the actions complained of related to those characteristics. He continues with this through the following paragraphs to paragraph 68 except where no claim is stated as in paragraphs 2,4,16,17,29,32,40,41,48,50 and 54 which presumably he intended as solely background information.

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70. The claimant should be aware from the many cases he has cited and from the preliminary hearing in December 2019 that he must show why he says the actions complained of relate to a particular protected characteristic. The Order asks him to set out the: *“basis for which the less favourable/unfavourable treatment is said to have occurred because of”* it then refers to disability and religion and belief.

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71. In summary this first paragraph/incident contains no material which would support claims for direct or indirect disability discrimination or discrimination on the grounds of Belief or detriment arising from Whistleblowing. There are no averments to support a claim for victimisation under s.27 of the Equality Act. Any and all such claims or purported claims are struck out as having no reasonable prospects of success. The claim that the claimant was the subject of harassment related to the possible protected characteristic of his religious belief is unsupported by relevant averments and has no reasonable prospects of success and is struck out. I struggled with the claim for harassment given the facts pled. There is so little basis for such a claim but there may be a history of antagonism that lends weight to or other relevant circumstances. I will reluctantly allow the claimant an opportunity to recast his pleadings on this issue alone and will reserve the issue of strike out/deposit order meantime.

15 **2. Incident 13 March**

72. No claims are said to arise from these events.

3. Incident 14 March 2018

73. This incident was the demonstration that seems to be the genesis of the difficulties the claimant had with University management. Because of its importance I will set it out in full. The claimant writes:

“Student demonstrators invited staff, other students and members of the public to attend a demonstration at 2pm. I attended, learning by email shortly before 2pm, that it was likely a meeting would take place at 3pm involving student occupiers, senior managers and UCU representatives. Ugly scenes unfolded. Mr Angus Donaldson was observed manhandling (assaulting) students; as a consequence, a security guard fell to the ground and reported injury. I bore direct witness to elements of these events, there is material evidence to support this claim. Colleagues became concerned for the welfare of the students who had been taken out of view and requested I call the Police. I did so, reporting concerns that students were being manhandled by security staff, there is material evidence to support this claim. Whilst waiting for the Police to arrive, Mrs Caroline Inglis and Professor Mike Greaves exited the building from the main entrance and approached the group. I was stood at the back of the group waiting to direct the Police to the scene. Mrs Caroline Inglis walked directly toward to me, and spoke to me in private. She said that she was upset in relation to the social media post. I said that I was upset

5 *having just called the Police. She then walked away and engaged in conversation with Dr Dannette Marie and Professor Mike Greaves. Mrs Caroline Inglis, shadowed by Professor Mike Greaves and Dr Dannette Marie, came back over to me and asked me to enter the building and meet the students. Mrs Caroline Inglis was my boss's boss's boss and one of the most senior and powerful (if in reality not the most senior and powerful) person in the University, therefore I did as I was ordered (without argument) and was taken into the building by Mrs Caroline Inglis, Professor Mike Greaves, accompanied by Dr Dannette Marie. I was then taken to the occupied corridor without any meaningful foresight or forewarning as to of the state of the student occupiers and their environment. Dr Dannette Marie and myself were left alone with the students and left to care for their welfare. I remained in the building for several hours, participating in various exchanges with Mrs Caroline Inglis, Professor Mike Greaves, Mr Angus Donaldson, and staff acting in a security capacity."*

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74. The claimant believes the following claims arise:

20 *"The act or acts complained of: i. I was victimised as a trade union representative. ii. I was discriminated against directly, for my religion. iii. I was discriminated against directly, for my philosophical beliefs. iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was victimised in the context of the Equality Act 2010, having spoken out against the abuse of disabled parking spaces. vii. I was victimised in the context of the Equality Act 2010, having previously spoken out against concerns of racial discrimination. viii. The employer failed in its duty of care toward me. ix. I was psychologically injured. x. I was the subject of harassment. xi. My feelings were injured."*

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75. I can accept that the claimant found these events upsetting but it is not clear how such a multitude of differing claims can arise or be inferred from the narrative. There is no reference to causation or an attempt to set down the elements of each statutory claim. The claims are unsupported by relevant averments. In so far as they purport to support claims for direct or indirect discrimination in relation to the claimant's religion or belief they are struck out having no reasonable prospect of success. With considerable hesitation the claims that the claimant was "victimised" having made a protected disclosure in relation to the alleged abuse of disabled parking spaces shall be allowed to proceed subject to a deposit order. The claims that the claimant was victimised because of his beliefs (either religious or otherwise) being

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unsupported by relevant averments and having no reasonable prospects of success are struck out. Similarly, the claim that the claimant was subject to harassment (s.26 of the Equality Act) being unsupported by relevant averments and having no reasonable prospects of success are struck out.

5 **4. Incident 19 March**

76. No claims are said to arise from these events.

5. Incident 20 March 2018

10 77. The claimant narrates the following circumstances and says that various claims arise:

15 *“In response to an unexpected and out of character angry/emotional outburst made in email towards a colleague, I brought to the attention of senior managers that I recognised I was developing symptoms associated with post-traumatic stress disorder in response to the events of 14th March 2018. This was my first communication to the employer regarding my symptoms, symptoms that suggested I had likely been injured, although I did not appreciate the full extent at the time. d. The act or acts complained of i. The employer failed in its duty of care toward me. ii. I was victimised in the context of the Equality Act 2010, having spoken out against the abuse of disabled parking spaces. iii. I was victimised as a trade union representative. iv. I was discriminated against directly, for my philosophical beliefs. v. I was discriminated against directly, for my likely disability. vi. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. vii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. viii. My feelings were injured.”*

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30 78. The same flaws apparent in paragraph 1 of the pleadings exist here and throughout the following paragraphs. The claimant does not say why he believes the protected characteristics were the reason or cause why these actions occurred. The claims for direct and indirect discrimination arising from the claimant’s alleged disability, religion and belief not being supported by relevant averments and are struck out having no reasonable prospects of success. The claim in relation to the claimant having been victimised in

35 relation to the alleged protected disclosure relating to the alleged abuse of disabled parking spaces and “victimisation” (harassment of a trade union

representative) shall be treated as a claim for detriment and shall be allowed to proceed subject to a deposit order.

6. Incident on 21 March 2018

5 79. The claimant narrates:

10 *"At the trade union bargain meeting ("Partnership Negotiation and Consultative Committee", PNCC), I exhibited further unexpected and out of character angry/emotional outbursts. This was later described in the official minute: "During the discussion of this item Mr Dawson was requested to moderate his comment and tone by two members of management present". These minutes were then later unexpectedly made publicly available on the University website. d. The act or acts complained of: i. The employer failed in its duty of care toward me. ii. I was victimised in the context of the Equality Act 2010, having spoken out against the abuse of disabled parking spaces.*
15 *iii. I was victimised as a trade union representative. iv. I was discriminated against directly, for my religion. v. I was discriminated against directly, for my philosophical beliefs. vi. I was discriminated against directly, for my likely disability. vii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. viii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. ix. I was the subject of harassment. x. My feelings were injured."*

25 80. As observed previously there are some matters raised that are outside the Tribunal's jurisdiction such as the respondents alleged failing in a duty of care and thereby causing injury although there could be some overlap with injury to feelings and any claims made under the Equality Act. The incident narrated by the claimant namely, that he exhibited unexpected an out of character angry and emotional outburst and was then subject to reprimand is wholly
30 insufficient to found the various claims for discrimination made by him here. The passage seems to suggest that the reprimand related to his conduct and not to any protected characteristic. It is impossible to understand how any of the protected characteristics are in play during these events except as the claimant argues earlier that he is more affected by events because he is an
35 dedicated trade unionist etc. These claims are not supported by relevant averments. As with earlier claims they do not say that the actions of the employers arose because of the various protected characteristic. The claims

made namely for victimisation (s.27 victimisation) (harassment because of the claimant's religion, beliefs and disability including indirect discrimination are struck out as having no reasonable prospects of success.

5 **7. Incident on 26 March 2018**

81. The claimant narrates the incident he relies on as: *"I brought to the attention of my recently appointed temporary line manager and head of section that I had removed myself from the workplace, in relation to developing symptoms associated with post-traumatic stress disorder in response to the events of 14*
10 *March 2018. I advised I would see my G.P. and complains that no referral to Occupational Health was made and that the employer had failed in his duty of care."*

The claimant believes the following claims arise:

15 *"The employer failed in its duty of care toward me. ii. No referral to Occupational Health Service or any other such tangible or meaningful intervention was made. xi. I was victimised as a trade union representative. xii. I was discriminated against directly, for my philosophical beliefs. xiii. I was the subject of harassment. xiv. I was discriminated against indirectly, see*
20 *"Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. xv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5."*

82. The first two matters do not found any competent claims. There is nothing in
25 this paragraph that would factually justify the claims of victimisation under the Equality Act (on the grounds of Belief) or discrimination direct or indirect or that could be regarded as harassment. The claims purportedly arising from the incident not being supported by relevant averments and having no reasonable prospect of success are struck out.

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8. Incident 4 April 2018

83. The complaint made here appears to arise from the claimant being excluded from University court briefing meetings whereby previously he had access to these papers. He writes: *“instead only the two trade union nominees on the court (Dr. David Watson, Mr Brian Paterson) would receive briefings and papers on a strictly confidential basis.”*

He makes the following claims:

“I was victimised as a trade union representative. ii. I was discriminated against directly, for my philosophical beliefs. iii. I was the subject of harassment. iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimant's preliminary agenda, schedule one, S.5.”

84. The same flaws with regards to causation appear. As before the bald facts seem uncontentious. The claimant says he was victimised ‘as’ a Trade Union representative not because of his belief in collective action/trade union activity. He does not specify the Protected Disclosure (perhaps the Disabled Parking Bay incident?) he relies on or what the harassment actually was (Employee Relations Culture?). He also claims that he was discriminated against directly because of his beliefs. He makes a claim for indirect discrimination but does not say which protected characteristic is in play although he makes reference to his Agenda document (schedule 1 paragraph 5).

85. These claims are neither sufficiently pled with reference to the any possible applicable statutory basis, causation is unclear nor is it clear how they are founded or interact with the events described. The claims being unsupported by relevant averments and having have no reasonable prospects of success are struck out.

86. The factual background is that the claimant alleges there was a delay in providing him with a copy of the investigation report into the student occupation. The basis of his complaint, however, appears to be that although he was mentioned in the report he was not interviewed. He writes that the inclusion of his name in the report is unjustified and unjustifiable and that he was a key witness. A host of claims seem to arise including maladministration, discrimination both direct and indirect. He writes:

"Maladministration ii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. iv. I was victimised in the context of the Equality Act 2010, having spoken out against concerns of racial discrimination. v. I was the subject of harassment. vi. My psychological injury was exacerbated. vii. My feelings were injured. viii. I was deliberately excluded from a health and safety investigation. ix. The health and safety investigation was not conducted to any reasonable standard. x. The employer failed to uphold its health and safety obligations. xi. The employer failed in its duty of care toward me."

87. As with earlier claims it there is nothing to explain why the claimant believes that not interviewing him or mentioning his evidence as a witness was less favourable treatment because of a particular protected characteristic. The actions complained of seem minor and even if they were in the circumstances unreasonable in some way that does not assist in identifying a particular type of discrimination. There is no specification as to when and in what circumstances the claimant made Protected Disclosures about racial discrimination or how he believes that this then motivated someone to victimise him in some way. These claims are not supported by relevant averments and have no reasonable prospect of success given the factual basis averred and accordingly are struck out. It is noteworthy that the claimant makes a number of unsavoury allegations against Mr Peter Sharp, the University's solicitor which seemed to have little or no bearing to his claims but discloses some antipathy towards him. He writes at paragraph X that Mr Sharp was "left humiliated" and that he had earlier harassed someone on the basis of their ethnicity. The claimant volunteers that in other documents "*I have seen and read*" they were likely or could have been altered

by Mr Sharp to include, as he puts it, racist undertones, in both language and phrases akin to extracts from “Mein Kampf”. There seems to be no reason whatsoever for these comments to be added to the pleadings as they do not support the claims being made. They are gratuitous, ill-advised and unnecessary.

10. Incident on 11 May 2018

88. The claimant narrates that he attended a meeting of the health and safety committee as a trade union representative at which the student occupation was discussed. It appears to have been a discussion as to whether or not an investigation report into the matter should be disclosed to the committee. At some point in the meeting the claimant writes that an attendee was asked if they should not declare an interest in relation to the discussion about the student occupation due to a possible conflict of interest. The attendee is said to have pointed at the claimant and said “*UCU do too*”. This was a reference to the claimant’s Trade Union. The outcome was that the Principal was going to be asked if the committee should be allowed to read the report. The claimant believes that the following complaints arise:

“Maladministration ii. I was victimised as a trade union representative. iii. I was discriminated against directly, for my philosophical beliefs. iv. I was the subject of harassment. v. I was discriminated against indirectly, see “Employee Relations Culture” within claimants preliminary agenda, schedule one, S.5. vi. I was discriminated against indirectly, see “Psychological Abuse” within claimants preliminary agenda, schedule one, S.5.”

89. There is simply no factual basis set out by the claimant that might support any of these claims or any speculation as to how what happened amounted to less favourable treatment on the grounds of a protected characteristic or victimisation or harassment in terms of the EA by the respondents. The incident appears trivial. As pled, these claims have no reasonable prospect of success and are struck out.

11. Incident 13 May

90. The claimant writes:

5 *"In an email [obtained via a later subject access request] my referral to the Occupational Health Service is discussed. Mr Richard Lynch advises "Whilst he mentions stress he was also adamant that his absence was not due to stress related to his work" and "The referral still stands but whether we want to or need to do an OH referral or not now is possibly up for question. Is there a cost incurred when we do this? Is there an element of discretion or should we be referring anyway".*

The claimant says the following claims arise:

10 *"I was victimised as a trade union representative. ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one,*
 15 *S.5. v. My psychological injury was exacerbated. vi. The employer failed to uphold its health and safety obligations vii. The employer failed in its duty of care toward me."*

91. The claimant complains that he had made it clear that his absence related to
 20 the events of 14 March and symptoms of post-traumatic stress disorder. He queries why Mr Lynch his line manager raises the issue of cost. The referral was not ultimately actioned. There appears to be no nexus set out between this email and the claims being made. It is completely unclear how this matter
 25 founds the various claims being made. The averments do set out how these events can possibly give rise to the claims being made and provide no fair notice of what the claimant's position is. The claims said to arise from this matter accordingly have no reasonable prospects of success and are struck out.

Incident late May early June

30 92. The claimant complains that the University Principal at the time Professor Sir Ian Diamond circulated the report on the student occupation to selected colleagues and parties. The claimant was not provided with a copy despite requesting it. The claimant believes the following claims arise:

35 *"Maladministration ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, for my likely disability. iv. I was the subject of harassment. v. My feelings were injured. vi. The investigation*

report contained special category personal data (including my own) and was distributed to third parties, contrary to data protection law.”

93. He does not indicate how the failure to provide him with a copy of the report amounts to less favourable treatment on the grounds of his beliefs or disability or how it would be regarded as harassment. How does it create an intimidating, hostile, degrading, humiliating or offensive environment? The claimant complains of maladministration and of potentially a data protection breach: neither of which the Tribunal has jurisdiction to entertain. These claims are unsupported by relevant averments and having no reasonable prospects of success are struck out.

13. Incident on 30 May 2018

94. The claimant states that a UCU Scotland official asked why the claimant had not been interviewed as a witness during the investigation into the occupation. She was told by the claimant’s employers that he had not been interviewed because he was unwell. The claimant accepts that he did have periods of ill health but believes he was not interviewed because his version of events would contradict a preferred version. He writes:

“If I had not been interviewed because I was "unwell", this raises the question of whom advised Mr Qamar (or the panel) that I was unwell, and therefore could not be interviewed as a witness, but my name anyway included in the report. This suggests a process referred to as "gaslighting". I recall being informed around this time that Mrs Caroline Inglis was seeking to portray Dr Dannette Marie as "bad" and myself as "mad".

He believes the following claims are arise:

“I was discriminated against directly, for my likely disability. ii. I was the subject of harassment iii. My feelings were injured. iv. My psychologically injury was exacerbated v. The employer failed in its duty of care toward me.”

The claimant also states:

“If I had not been interviewed because I was unwell this raises the question of why no referral to occupational health service was made, my ‘unwillingness’ was not in scope of the investigation.”

5 95. The claimant either was or was not disabled at this point and even if he was
it seems wholly unclear how that would motivate the actions complained
about. The claimant himself provides a cogent reason for the actions namely
that his version might contradict the preferred version. It is difficult to
envisage how not being interviewed, especially if the claimant is correct as to
10 the employer’s motives, could amount to disability discrimination or
harassment. There is no basis for the claims set out in the pleadings and the
only competent claims which are for disability discrimination and harassment
have no reasonable prospect of success and are struck out.

15 **14. Incident 7 June 2018**

96. The claimant writes:

20 *“On 1 June 2018, a UCU representative had been invited to join the short-
life lessons learned working group into the student occupation incident. I was
nominated by my trade union to participate in the process. Professor Stephen
Diamond agreed to my inclusion. I was then told by Mrs Heather Crabb on 7
June 2018 that I could not participate. The reason given was it had been
reported I was conflicted by virtue of my participation in meetings with
management during the student occupation.”* The claimant believes the
25 following claims arise:

30 *“I was victimised as a trade union representative. ii. I was discriminated
against directly, for my philosophical beliefs. iii. I was discriminated against
directly, for my likely disability. iv. I was the subject of harassment. v. My
feelings were injured.”*

35 97. The claimant was concerned that there was a conflict due to not being
interviewed as a witness in the investigation yet being *“too conflicted to sit on
the group.”* He narrates *“its understanding was that Mrs Ingles objected to
him on the group because of presumably relating to covering up the parking
incident and my own injury arising from their actions.”* He says that the reason
lacked any real substance. There is no basis pled to suggest that the actions

amount to less favourable treatment on the grounds of a Protected Characteristic indeed what is complained about appears a rehash of the earlier complaint about not being interviewed. These pleadings do not support the claims being advanced and do not found a claim for victimisation, harassment or for direct or indirect discrimination on the grounds of the claimant's beliefs or disability and having no reasonable prospects of success are struck out.

15. Incident 11 June 2018

98. The claimant asked Professor Sir Ian Diamond why he had not been interviewed as a witness. His response, as noted by the claimant, was that he didn't know but he had instructed someone to provide an explanation. The explanation finally given to the claimant was: "*there was nothing highlighted that suggested we should be talking to you as a witness*" and "*there is nothing in that (his voluntary witness report) that causes us to read the report.*" The claimant believes the following claims arise:

"Maladministration ii. I was discriminated against indirectly, see "Employee Relations Culture" within claimant's preliminary agenda, schedule one, S.5. [[298]] 14 iii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. iv. I was the subject of harassment. v. My feelings were injured. vi. I was deliberately excluded from a health and safety investigation vii. The health and safety investigation was not full, proper or impartial - and deliberately so. viii. The employer failed to uphold its health and safety obligations ix. The employer failed in its duty of care toward me."

99. No claim can arise for "Maladministration" or in the circumstances averred for being excluded from an investigation but that appears to be the real nub of the complaint. It is difficult to understand how this issue of discrimination related to any protected characteristic from the circumstances narrated. The claimant does not connect these events to either direct or indirect discrimination nor can any connection or causal link be inferred. The averments are insufficient to found the foregoing claims and such claims having no reasonable prospects of success are struck out.

18. Incident 25 June 2018

100. The claimant narrates Professor Sir Ian Diamond left office as Principal and had agreed to include in the draft of a 'lessons learned' report presented at a meeting at the University Court on 25 June some key statements. The claimant alleges that the report was significantly abridged. The claimant makes the following complaints.

"Maladministration. ii. The employer failed to uphold its health and safety obligations. iii. The employer failed in its duty of care toward me. iv. I was the subject of harassment. v. My feelings were injured. i. My psychologically injury was exacerbated."

101. The Tribunal would only have jurisdiction in relation to claim iv (harassment). It is difficult to envisage how abridging a report or acting in this way could amount to harassment. The protected characteristic(s) in play is/are not stated. The pleadings do not disclose any stateable claims. There is no nexus between the events pled and discrimination claims. Causation remains unaddressed. The claimant's averments do not disclose relevant claims and as advanced the claims made have no reasonable prospect of success and are struck out.

19. Incident 27 June 2018

102. This matter revolves around the University Court accepting the report on the occupation which the claimant believed to be 'flawed'. The claimant makes the following claims:

"Maladministration. ii. I was discriminated against indirectly, see "Employee Relations Culture" within claimant's preliminary agenda, schedule one, S.5. iii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. iv. The employer failed to uphold it's health and safety obligations. v. The employer failed in its duty of care toward me. vi. I was the subject of harassment. vii. My feelings were injured. ii. My psychologically injury was exacerbated."

103. Claims numbered i, iv and v relate to matters where the Tribunal has no jurisdiction. The claims vii and viii relate to consequences rather than stand-alone claims. The claimant believes the less favourable treatment was the fact that the report was put on record and was inaccurate and the claimant's name was linked to it. As pled these factual averments do not found any relevant claims and the claims made having no reasonable prospect of success are struck out.

20. Incident 5 September 2018

104. The claimant narrates that a student newspaper commenced a series of articles making it clear that they had obtained leaked copies of an investigation report and other related confidential reports about the occupation. The claimant believes the following claims arise:

“Maladministration. ii. I was the subject of harassment. iii. My feelings were injured. iv. My psychologically injury was exacerbated.”

105. The first claim is not competent and claims iii and iv relate to possible consequences arising from a claim rather than a claim itself. The only extant claim is harassment. It is difficult to see how the claimant believes that the matter narrated by him could amount to harassment. He doesn't specify the protected characteristic at play or the nexus between any such protected characteristic and his employer's alleged actions in leaking the report. The sole purpose of these and some of the foregoing paragraphs seem to be an attempt to introduce the events around the student occupation, the investigation and aftermath for no other reason than the claimant feeling aggrieved and wishing to highlight them for his own purposes rather than advancing any proper Tribunal claims. The claimant has gone into some considerable detail without being clear at all as to how or why these events could be regarded as being discriminatory. The case as pled has no reasonable prospect of success and the claims are struck out.

21. Incident September/October 2018

106. The claimant explains that he had undertaken specialist Health and Safety training and he attempted to carry out an investigation as a safety representative using the Safety Committee Regulations 1977. The employer refused to co-operate sending him a “cease and desist” type letter. The letter was from the University Solicitor Mr Peter Sharp. The claimant believes that the following complaints arise:

“Maladministration. ii. I was victimised as a trade union representative. iii. I was discriminated against directly, by virtue of my disability iv. I was discriminated against directly, by virtue of my philosophical beliefs v. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. vi. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vii. The employer failed to uphold it's health and safety obligations. viii. The employer failed to cooperate in a legitimate investigation via the SRSC regulations. ix. I was the subject of harassment. x. My feelings were injured. x. My psychologically injury was exacerbated.”

107. The claims at i, vii, viii, ix and x are not competent claims to bring before a Tribunal. The claimant states he was not aware of anyone else being treated in a similar way or being blocked or thwarted from progressing what he regarded as legitimate health and concerns. It is not made clear how the employer’s actions related to the claimant’s Protected Characteristics. These averments do not support the claims made and having no reasonable prospect of success are struck out.

22. Incident 2 November 2018

108. The claimant narrates that he stood down as elected president of the Aberdeen branch of the University College Union (UCU). He believes the following complaints arise:

“The act or acts complained of: i. I was discriminated against directly, by virtue of my religion ii. I was discriminated against directly, by virtue of my psychological beliefs iii. I was discriminated against directly, by virtue of my

5 *disability iv. I was victimised as a trade union representative. v. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. vi. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vii. The employer failed in its duty of care toward me. viii. I was the subject of harassment. ix. My feelings were injured. x. My psychologically injury was exacerbated."*

109. After reading these paragraphs on a couple of occasions I am left puzzling
10 how the claimant can think that these claims can arise. The claimant indicates that his employer's alleged acts/omissions/behaviours made it impossible for him to continue. He does not say which acts omissions and behaviours but we can assume they are the ones referred to in earlier incidents. He writes of one University member of staff (Mrs Ingles) that she:

15 *"exhibited all the classic symptoms of a personality disorder: impaired empathy and remorse, and **disinhibited and egotistical traits**; and exhibited symptoms that absolute power corrupts absolutely. An unfavourable treatment of me, and the risk to my health, safety and wellbeing is foreseeable to the respondent. It was not foreseeable to myself."* He continues: *"as a Christian, my qualities include an ability to give and receive love, to trust others and to believe in the goodness of others, and I am empowered by my faith. This love and care extended to the trade union members I represented, my colleagues and friends and I was very effective in my trade union role. This was met with Mrs Caroline Ingles' motives of envy, spite and contempt."*
20 At a later point he writes: *"victims of psychopathic abuse or psychopathic like abuse, often experience symptoms of post-traumatic stress disorder (PTSD) and complex PTSD"*. He describes Mrs Ingles as his abuser and Mrs Debbie Dyker as her *"henchwoman"*.
25

30 It is not narrated how these matters are connected to the claimant's protected characteristic(s) or what the causal link could be to the employer's actions. The averments do not set out a colourable case, give no fair notice and having no reasonable prospects of success are accordingly are struck out."

35 **23. 2 November 2018**

110. In November the claimant made what he regarded as a number of Protected Disclosures which the University decided should be investigated by a solicitor in private practice, Mrs Kinmond. The facts are stated thus: *I made a*

protected disclosure (blew the whistle). Although not explicitly stated at the time, this covered exposing a danger to health and safety; wrongdoing had been covered up; miscarriage of justice; criminal activity.

111. Looking at the whole of the pleadings here the claimant alleges that he made
5 a Protected disclosure in relation to a health and safety matter. We will accept that a Protected Disclosure was made. He believed the following complaints arise:

10 *“i. The employer failed in its duty of care toward me. ii. My psychologically injury was exacerbated. iii. I was victimised as a trade union representative. iv. I was discriminated against directly, for my philosophical beliefs. v. I was discriminated against directly, in relation to my disability vi. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. vii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. viii. I was the subject of harassment. ix. My feelings were injured.”*

112. Claims i, ii, and ix are not competent claims. A claim arising from a Protected
20 Disclosure is a detriment. It is a wide concept. The less favourable treatment he alleges was the failure to refer him to Occupational Health or make any “meaningful” intervention. The pleadings are confusing and difficult to follow. It is certainly not clear how various claims interact with the claimant’s disclosures or protected characteristics. He is clearly unhappy that Mrs Kinmond is appointed to carry this task but that in itself seems to be a neutral
25 act. At its highest it appears to be an allegation that the claimant made a Protected Disclosure and as a consequence was not referred to Occupational Health. The claimant does not set out what his disclosure was but presumably he is referring to events after the occupation and his expressed wish for health and safety issues to be addressed. In the circumstances as pled the
30 various claims made are unsupported by relevant averments. I would observe that it seems a little implausible to suggest that a disclosure about a health and safety matter might lead to a failure to refer him to Occupational Health although that failure could amount to a ‘detriment’ in some circumstances. The pleadings do not give fair notice of the claimant’s position and even read
35 with the foregoing paragraphs it is difficult to see the basis for such claims.

Nevertheless, it might be that the pleadings could be recast and I am reluctant to strike out the claims here without giving the claimant a chance to argue he should be allowed to do so despite the claim not being listed by him as a detriment. I will reserve the question of strike out meantime and allow the claimant to lodge better and further particulars setting out his claim for detriment, if that indeed is what he meant to do. Any other claims having no reasonable prospects of success are struck out.

24. Incident 26 November 2018

113. The claimant states that during a senior management meeting a member of management, Mrs Ingles, made reference to the fact that the claimant had posted a photograph of her on social media during the strike. This does not appear disputed. There are no other details provided. The claimant believes the following claims arise:

"I was victimised in the context of the Equality Act 2010, having spoken out against the abuse of disabled parking spaces ii. I was the subject of harassment. iii. My feelings were injured. iv. Detriment for whistleblowing."

Even if we accept that Mrs Inglis was not well disposed to the claimant because of the disabled parking space matter referred to earlier and that this is treated as a Protected Disclosure then referring, as she does, to something the claimant had in fact actually done (posting a photograph) I cannot accept that this incident as narrated could amount to either victimisation or harassment in term of the Equality Act. Such claims having no reasonable prospect of success are struck out.

25. 30 November 2018

114. Mrs Kinmond, a solicitor from private practice, was tasked with carrying out an internal investigation into the claimant's alleged disclosure. She wanted to meet him urgently. The claimant was unaware of this type of process being used before. He believes the following claims arise:

5 *"I was victimised as a former trade union representative. ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, in relation to my disability. iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was subject to detriment as a whistleblower."*

115. The claimant states that the less favourable treatment was that Mrs Kinmond
10 was appointed without his knowledge or consent and was given documents to commence the investigation before he was informed of her appointment. Mrs Kinmond he said had a conflict of interest. This was not accepted by the employer. There is nothing in this narration that properly founds such claims or explains why carrying out an investigation in this manner prejudiced the
15 claimant in any way. The averments do not support the claims made. At best there is a suggestion that he has suffered a detriment by having his claims investigated in this way. On the face of it that is very hard to understand. He does not say why this actually amounts to a detriment and what disadvantage or difficulty the suggested process imposes on him. These claims are not
20 supported by relevant averments and having no reasonable prospect of success are struck out.

26. Incident 4 December 2018

116. The claimant returned to work from a period of illness absence. He believes
25 the following claims arise:

30 *"I was victimised as a former trade union representative. ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, in relation to my disability iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was the subject of harassment. vii. My feelings were injured. viii. The employer failed in its duty of care toward me. ix. I was subject to detriment as a whistleblower."*

35 The claimant adds some more detail at a later point. He writes:

5 *“i. Mr Richard Lynch continued to refuse to refer me to the Occupational Health Service ii. Mr Richard Lynch voiced his opinion that my issues arose on a strike day, and were the liability of the trade union, not his responsibility. iii. I was probably unfit to return to work, but felt pressured to do so to participate in the investigation of my disclosure.”*

117. The pleadings are difficult to follow. Is the refusal to refer the claimant to Occupational Health related to disclosures or the claimant’s disability? Is he claiming a detriment arising from a Protected Disclosure in which case which particular disclosure is he referring to? How does the failure put him at a substantial disadvantage because of his disability? What is the less favourable treatment? How were the actions complained because of his beliefs? As before the pleadings raise more questions than they answer.

15 118. A referral to Occupational Health is a means to an end and if the claimant is saying that the referral would have been likely to have led to some reasonable adjustment in his working environment that would have assisted him overcome a substantial disadvantage then the claim is not for the refusal to refer but for the failure to make such a reasonable adjustment at that point in time. That is not what is pled. The claims being pursued are not supported by relevant factual averments and having no reasonable prospect of success are struck out.

27. Incident 6 December 2018

25 119. The claimant makes reference to two investigation meetings regarding is disclosure. He believes the following complaints arise:

30 *“I was victimised as a former trade union representative. ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, in relation to my disability iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was the subject of harassment. vii. My psychiatric injury was exacerbated viii. My feelings were injured. ix. The*

employer failed in its duty of care toward me. x. I was subject to detriment as a whistleblower."

120. It is only in the Comparator section that matters become slightly clearer. He
5 writes: *"Other than Dr Marie subsequently, I am unaware of any other member of staff who has had a self-initiated process (eg. grievance/whistleblowing) investigated by an external solicitor as the first stage investigation."*

121. The claimant sets out what he regards as the less favourable treatment which
10 seems to be having the matter investigated independently. This is a repetition of incident 25. It is difficult see any nexus between these events and the protected characteristics or "Whistleblowing" and none is clearly stated. One might ask in what way, even if true, did Mrs Kinmond not declaring some continuing interest Mr Sharp's had with her law firm amount to unfavourable
15 treatment on the basis say of the claimant's philosophical/religious beliefs or any other basis? Is the claimant really saying that she had some regard to his beliefs or some other protected characteristic when taking a decision not to disclose something about Mr Sharp? These averments do not support the claims made and having no reasonable prospect of success are struck out.

20

28. Incident 17 December 2018

122. The claimant writes that he was unhappy with a Minute of a meeting prepared
by Mrs Kinmond. The claimant denied making statements recorded in the Minute including: *"I have trust and confidence issues and I see this as a
25 serious industrial action related incident"* referring to the events of 14 March. The claimant believes the following claims arise:

30 *"I was victimised as a former trade union representative. ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, in relation to my disability. iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. The employer failed in its duty of care toward me. vii. My psychologically injury was exacerbated. [[307]] 23 viii. I was the*

subject of harassment. ix. My feelings were injured. x. I was subject to detriment as a whistleblower.”

The claimant sets out the less favourable treatment as follows:

5 *“Length of time taken to produce the minute ii. The setting of expectations regarding when I would receive the minute, and the time it was sent iii. The misrepresentative nature of the minute and false statements attributed to me iv. That during our meeting of 6th December 2018, Mrs Erica Kinmond suggested her investigation would be wrapped up before Christmas. v. To find a legally sound way to dismiss me.”*

10

123. The underlying complaint seems once more to be the investigation (by an outside solicitor) was unique in the claimant’s knowledge. However, even armed with this information it is difficult to understand the relationship between the events and the claims made. How the claimant was subject to detriment here as a “Whistleblower” or on account of his protected characteristics is not articulated although looking at the matter broadly the claimant may be suggesting that the respondent’s somehow “loaded the dice” against him using Mrs Kinmond to carry out the investigation with the insinuation that as she worked in the same legal firm that Mr Sharp had previously worked in that this would influence her conclusions in favour of a former colleague’s employer. There is no proper basis set out for these serious suggestions.

15

20

124. The claimant also complains that there was an inordinate delay in the length of time it took to produce a Minute. This seems hard to sustain given that investigation meeting seemed to have only taken place in December. Looking at all the claims advanced here and their supposed basis the averments do not support the various claims and having no reasonable prospect of success are struck out.

25

30. Incident 17 December 2018

30

125. This incident is not relied on to find any claims.

31. 17th January 2019

126. This incident is not relied on to find any claims.

32. Incident 16 January 2019

127. This matter relates to the second and final meeting the claimant had with Mrs Kinmond and the claimant's attempts to go over the full history of the matters raised by him, to show her documents and a video. The claimant believes the following claims arise:

"The employer failed in its duty of care toward me. ii. My psychologically injury was exacerbated. iii. I was victimised as a trade union representative. iv. I was discriminated against directly, for my philosophical beliefs. v. I was discriminated against directly, in relation to my disability [[308]] 24 vi. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. vii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. viii. I was the subject of harassment. ix. My feelings were injured. x. I was subject to detriment as a whistleblower."

128. I will set out what the claimant writes about the meeting:

"The second and final meeting took place with Mrs Erica Kinmond, at the offices of Pinsent Masons LLP. Ms Emily Thomson was listed on the meeting invite but was not present. The invite set the duration at 2 hours, and this time was utilised by Mrs Erica Kinmond as follows: i. I made an attempt to show Mrs Erica Kinmond all the photographs included as thumbnails within my disclosure of 7th November 2018. I showed her the first photograph and pointed out myself within the photograph, detail that could not be seen in the thumbnail. Mrs Erica Kinmond advised she did not wish to see the photographs, and wanted to see the videos. ii. I showed Mrs Erica Kinmond four videos. Three were directly from smartphone footage taken outside the building, and the fourth was a composite which I had made, of the footage shared by the student of social media taken inside the building, and the smartphone footage taken outside the building. Mrs Erica Kinmond studied the videos for approximately one hour, taking extensive notes. iii. Mrs Erica Kinmond handed me a printed sheet containing a section titled "Whistleblowing Complaints" and "Grievances" and her categorisation and interpretation of my disclosure. iv. Mrs Erica Kinmond referred to the numerous documents I had shared with her, and worked through the summary timeline document, asking various questions, which I answered. v. When I enquired about agreement of the minute of the meeting of 6th December 2018, Mrs Erica Kinmond advised there was no need for agreement, and instead she would retain both my note and her note."

129. Essentially the claimant was unhappy at the way the meeting was conducted although after reading this paragraph a number of times why exactly he was unhappy is not particularly clear to me and the way in which these events are

said to support the various claims he believes arise frankly escapes me. The claimant's own pleadings describe what appears to have been a thorough investigation and one that is otherwise unremarkable. The claimant does not say what should have happened or what the shortcomings were, let alone ascribe these matters to his disclosures or protected characteristics. Put shortly the claimant believes that his disclosures were not treated properly and were misconstrued. If that is his position then that might possibly constitute a detriment. I will reserve the question of strike out meantime to allow the claimant to consider this matter. He needs to set out which disclosure is at issue and what he says was the detriment. Any other claims as pled have no reasonable prospect of success and are struck out.

33. Incident 23 January 2019

130. The claimant states that Mr Richard Lynch states in an e-mail that PTSD has been mentioned by the claimant. The claimant believes the following claims arise and sets out the unfavourable treatment as follow:

"The employer failed in its duty of care toward me. ii. My psychologically injury was exacerbated. iii. I was victimised as a trade union representative. iv. I was discriminated against directly, for my philosophical beliefs. v. I was discriminated against directly, in relation to my disability vi. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. vii. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. viii. I was the subject of harassment. ix. My feelings were injured. x. I was subject to detriment as a whistleblower."

The claimant adds:

"Mr Richard Lynch acknowledges awareness of my reported symptoms extending over a period of time ii. Mr Richard Lynch acknowledges his failure to take any actions."

131. We are not concerned with i,ii and ix which are not valid claims. We are left with claims that are said to arise from disability, philosophical beliefs, 'as a trade unionist' and "Whistleblowing". We are left with six claims. As before

the claimant does not say why he thinks Mr Lynch acted as he does or the relationship those actions have with the various statutory protections he invokes. What Mr Lynch is said to have done, acknowledge that the claimant has PTSD, does not in itself amount to discrimination on any basis and it is difficult to envisage circumstances where such a comment could without much more. From the papers it seems that the claimant was suffering from an adverse psychological reaction to the events of the occupation referring in his own Agenda (p357) to telling his line managers about his subsequent symptoms of 'post-traumatic stress disorder' following the occupation. These claims as pled having no reasonable prospects of success are struck out.

34. Incident 29 January 2019

132. The claimant indicates that in February 2019 he was approached by Mr Brian Henderson, his manager, and told of a plan for a temporary reorganisation of staffing. The temporary arrangement continued for some time. The claimant was told it would last for six months. After complaining to Mr Lynch a further contract variation was issued on 18 December. It proposed that a further temporary arrangement would be continued until 31 July. A contract variation of 24 January 2019 required the claimant to report to Mr Henderson and a further variation on 29 January advised that he would report to Mr Lynch. The claimant believes the following complaints arise:

"I was the subject of harassment. ii. My feelings were injured. iii. I was subject to detriment as a whistleblower."

133. He narrates that the changes were made without any consultation required according to the University's change management procedure. The averments appear to describe events that are completely anodyne. I struggle to see any connection being made either to the protected characteristics or Protected Disclosure or even if there was such a connection how any such claims can arise. As pled these claims have no reasonable prospect of success and are struck out.

35. 30 January 2019

134. The claimant narrates that Mrs Kinmond sent him some questions by e-mail one of which related to whether he was suffering from PTSD. On the same
5 day the University referred the claimant to Occupational Health for a medical assessment referring to PTSD. The claimant makes the following complaints arise:

10 *“I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings were injured. vii. I was subject to detriment as a whistleblower.”*

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135. The first claim is said to relate to the claimant’s beliefs. It is difficult to understand how the facts stated could found these various claims or in particular amount to discrimination on the grounds of the claimant’s beliefs or indeed constitute harassment or indirect discrimination or finally a detriment.
20 The factual basis set out by the claimant does not support any of the claims he is making here. As pled these averments have no reasonable prospect of success and are struck out.

36. 8 February 2019

25 136. The claimant says he wanted a meeting between himself, Mr Lynch and two others to clear up, as he puts it, any misunderstanding between them and to get the referral to Occupational Health ‘on a more supportive footing’. He said he had objections attending Occupational Health meantime. He says that he had found out more about what he describes as the “surreptitious”
30 Occupational Health referral and had said to My Lynch that he preferred to have a meeting with various named people about the referral. My Lynch called him into his office and spoke about the referral despite the claimant’s “expressed wishes”. He told the claimant to stop thinking of this as ‘a

conspiracy theory' . He was later warned that not attending Occupational Health appointments was a breach of his contract . The following claims are said to arise:

5 *"i. I was discriminated against directly, for my philosophical beliefs/[[311]] 27. ii. I was discriminated against directly, in relation to my disability. iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings were injured. vii. I was subject to detriment as a whistleblower"*.

10

137. Asking the claimant to attend Occupational Health especially given the claimant's own pleadings which indicate that he had various psychological difficulties/bouts of illness appears wholly uncontroversial as does warning him about failure to attend. None of this is connected by the claimant to the various protected characteristics. As pled these averments have no reasonable prospect of success and are struck out.

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37. 4 March 2019

20 138. The claimant writes that he made a request some time earlier to Mr Lynch for CCTV work to be reallocated. He was told on 4 March that the claimant's colleague was unable to progress the work and it was reallocated back to the claimant to cause a subordinate to do the work and to support them doing so. The claimant makes the following claims:

25 *"i. I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. Failure to make reasonable adjustments iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimant's preliminary agenda, schedule one, S.5. vi. I was the subject of harassment. vii. My feelings were injured. viii. I was subject to detriment as a whistleblower"*.

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139. The averments do not support the various claims made. The events narrated appear wholly unconnected to the protected characteristic, beliefs and

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Protected Disclosure(s). As pled these averments have no reasonable prospect of success and are struck out.

38.29 March 2019

140. No claims made.

5 39. 20 May 2019

141. The claimant writes that he attended a meeting and was told that the meeting was to advise him about the outcome of his grievance and that someone would summarise the findings and provide him with a copy of these in writing. This is what seems to have happened. He was given the findings in a sealed envelope at the end of the meeting. The claimant believes the following claims arise:

15 *“i) I was discriminated against directly, for my philosophical beliefs. ii) I was discriminated against directly, in relation to my disability iii) I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv) I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v) I was the subject of harassment. vi) My feelings were injured. vii) I was subject to detriment as a whistleblower.”*

20 142. He states that the unfavourable treatment was that the University didn't properly follow their grievance procedure as they were unable to explain his case to him. This seems to ignore the fact that the hearing appears to have been arranged to give the claimant the findings of the grievance in writing rather than to provide him another opportunity to argue or reiterate his position as appears to be the concern. As before it is difficult to envisage that these facts could found the claims made or relate to the Protected Characteristics etc. As pled these averments have no reasonable prospect of success and are struck out.

40. 5th June 2019

30 143. No claim made.

41. 20th June 2019

144. No claim made.

42. 21 June 2019

145. The claimant writes that he wanted to meet a Professor Mr Leydecker. He says he did so at short notice. He wanted to explain his complaints about the student occupation report to Professor Leydecker. Professor Leydecker explained that he would be likely to be involved in the process “*further down the line*” and so he couldn’t get involved. The claimant notes that it was an unproductive and unsatisfactory meeting. The claimant indicates that the ET3 claims that he had presented a list of demands to Professor Leydecker and that this was a misrepresentation of events in his view. The claimant believes the following complaints arise:

“i) I was discriminated against directly, for my philosophical beliefs. ii) I was discriminated against directly, in relation to my disability iii) I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv) I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. [[314]] 30 v) I was the subject of harassment. vi) My feelings were injured. vii) I was subject to detriment as a whistleblower. viii) Failure to make reasonable adjustments”.

146. It is impossible to understand how a meeting that was at worst unsatisfactory or unfruitful for the claimant could give rise to these complaints. The complaints are not connected by the claimant to the protected characteristics or how they might interact with Protected Disclosures. The crucial question is how do claims arise against the respondents? There is no reference to the sort of reasonable adjustments the claimant contends for or how disability (direct or indirect) disadvantages him in some way or why these have any bearing on what happened. There is no PCP stated in relation to indirect discrimination. If the complaint relates solely to what is said in the ET3 ,i.e. an unjustified allegation, then this is not articulated. As pled the averments do not support such claims nor is there any indication how they could do so. These claims have no reasonable prospect of success and are struck out.

43. 24 June 2019

147. The claimant writes that he became unwell and contacted his line manager to say that he would be absent from work. The basis given for less favourable treatment seems to be the outcome of the meeting with Professor Leydecker which was disappointing to him. The claimant also objected to a visit to the University Nursery and Mr Angus Donaldson a senior manager who was involved in the student occupation. He writes that he did not consider his child who attended there (or other children) were safe in his presence. Mr Donaldson was subject to adverse comment by the claimant in relation to his role in the occupation. The claimant indicates that he felt he had to remove his child from the nursery and that she missed out on the nursery celebrations that day. The claimant was also concerned that he received an e-mail from Brian Henderson on 23 June indicating that someone from Estates and Facilities would require access to his office. He says the following claims arise:

15 *“i) I was discriminated against directly, for my philosophical beliefs. ii) I was discriminated against directly, in relation to my disability iii) I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv) I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v) I was the subject of harassment. vi) My feelings were injured. vii) I was subject to detriment as a whistleblower. viii) Failure to make reasonable adjustments. ix) My psychological injury was exacerbated. x) The employer failed in its duty of care toward me.”*

25 148. None of these averments appear connected to the various broad heads of claim made by the claimant namely Disability, Belief, Protected Disclosure nor do they amount to the sort of circumstances that would support such claims. The suggestion that Mr Donaldson posed a threat to the children because of an alleged incident some time earlier involving what must have been difficult circumstances arising from the occupation is frankly fanciful. Once more the pleadings do not support any of the claims made which claims have no reasonable prospect of success and are struck out.

149. The claimant received an e-mail from Professor Leydecker which made reference to the claimant's alleged express desire for a "exit from the University". The Professor sent an e-mail suggesting the claimant should take advice and gain consent of participants to a video the claimant intended to show. The claimant believes the following complaints arise:

"I was discriminated against directly, for my philosophical beliefs. ii) I was discriminated against directly, in relation to my disability iii) I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv) I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v) I was the subject of harassment. vi) My feelings were injured. vii) I was subject to detriment as a whistleblower. viii) Failure to make reasonable adjustments. ix) My psychological injury was exacerbated. x) The employer failed in its duty of care toward me".

150. The claimant suggests that Professor Leydecker had "misrepresented or misunderstood" his position at their meeting. This he says was also misrepresented in the ET3. The averments appear background and unable to support stand-alone claims. The claims advanced here in this passage have no reasonable prospect of success and are struck out.

45. 20 June 2019

151. The claimant indicates that press articles suggested that a fraudulent health and safety investigation was purportedly leaked to the press. The claimant believes the following complaints arise:

"I was discriminated against directly, for my philosophical beliefs. [[316]] 32 ii) I was discriminated against directly, in relation to my disability iii) I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv) I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v) I was the subject of harassment. vi) My feelings were injured. vii) I was subject to detriment as a whistleblower. viii) Failure to make reasonable adjustments. ix) My psychological injury was exacerbated. x) The employer failed in its duty of care toward me".

152. The claimant believes that the report was initially leaked by Professor Stephen Diamond. Again, these averments appear to be part of the narrative but do not support the claims advanced either as stand-alone claims nor more widely. There is no connection made to the protected characteristics or
5 Protected Disclosure(s). As pled, there is no reasonable prospect of success and these claims are struck out.

46. 26 June 2019

153. The claimant writes that having moved his personal belongings from his office he was is accused by Mr Lynch of theft of University equipment. The
10 accusation was withdrawn. The claimant believes the following complaints arise:

15 *“I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. False accusation of theft. vii. My feelings were injured. viii. I was subject to detriment as a whistleblower. ix. My psychological injury was exacerbated. x. The employer failed in its duty of care toward me”.*

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154. These averments mirror earlier paragraphs and it is not clear if the alleged incident was said to support the more general or wider claims as part of say
25 a continuing act or a stand-alone or ‘set’ of claims arising out of this incident. The same criticisms apply as in earlier paragraphs as to causation. Is Mr Henderson acting as alleged because of any one of the protected characteristics or particular disclosure or if indirect discrimination what is the PCP? As pled, there is no reasonable prospect of success and these claims
30 are struck out.

47. 30th August 2019

155. No claims arise.

48. 2nd September 2019

156. No claims arise.

49. 5 September 2019

157. The claimant indicates here that his stage 2 grievance appeal outcome was not upheld. He believes the following claims arise:

5 *"I was discriminated against directly, for my philosophical beliefs. ii. I was*
discriminated against directly, in relation to my disability iii. I was
discriminated against indirectly, see "Employee Relations Culture" within
claimants preliminary agenda, schedule one, S.5. iv. I was discriminated
10 *against indirectly, see "Psychological Abuse" within claimants preliminary*
agenda, schedule one, S.5. v. I was victimised in the context of the Equality
Act 2010, having spoken out against concerns of racial discrimination. vi. I
was the subject of harassment. vii. False accusation of theft. viii. My feelings
were injured. ix. I was subject to detriment as a whistleblower. x. My
15 *psychological injury was exacerbated. xi. The employer failed in its duty of*
care toward me."

158. The familiar list of claims is repeated (with the addition of victimisation under the Equality Act and a possible Protected Disclosure relating to concerns of racial discrimination) with no clear connection to the particular events averred or likely causation. The claimant goes on to make reference to an employment claim made by a Mr Nakamoto against the University of Aberdeen. The claimant refers to the fact that he and a colleague were involved supporting Mr Nakamoto in their Trade Union capacity at the earlier grievance stage. It was heard by a Professor McGeorge who did not uphold
20 it. He writes that Professor McGeorge was biased against him and his
25 colleague. He believes his stage 2 grievance appeal ,heard by Professor
McGeorge, was predetermined. There is no analysis of how the refusal of
the appeal by Professor McGeorge interacts with the Protected
Characteristics etc etc. The pleadings do not support the claims made and
30 accordingly there is no reasonable prospect of success and the issues are
struck out.

50. 5th September 2019

159. No claim advanced. The claimant narrates that:

5 *“I submitted a further disclosure to Professor George Boyne. Within the disclosure I included my responses to the investigation questions posed to me on 30th August 2019 by Professor Speight. I also informed Mrs Debbie Dyker that my disclosure would form my detailed grounds of appeal for the second stage appeal process.”*

51. 11 September 2019

160. The claimant writes:

10 *“What happened: In response to a recommendation within my Occupational Health Service report of 22nd August 2019, I met with Mr Richard Lynch on 11th September 2019. He advised that rather than use the recommended tool, he felt an alternative would be better. He had two printouts of a blank questionnaire sitting on the table. I offered to complete and return the questionnaire document. Mr Richard Lynch insisted he wished to talk through*
15 *it and that he would take notes and be the one who typed these up.*

20 *d. The act or acts complained of: i) Failure to make reasonable adjustments ii) I was discriminated against directly, for my philosophical beliefs. iii) I was discriminated against directly, in relation to my disability iv) I was discriminated against indirectly, by virtue of being a former UCU representative. v) I was the subject of harassment. vi) My feelings were injured. vii) I was subject to detriment as a whistleblower.*

25 *e. Comparator person: Unknown/without precedent”*

161. The complaint appears to focus around the failure he saw it to use what he
25 regarded as the recommended HSE risk assessment tool for stress. The claimant also complains that Mr Lynch didn't provide him with advance notice of the questions he asked. How Mr Lynch's actions, even if true, can amount to a justiciable claim in these circumstances is impossible to discern. As before these events are not linked to the various protected characteristics, Protected Disclosures and so forth. Being a former UCU representative is in
30 itself not a protected characteristic as we have discussed nor is the matter linked to earlier events and seems to stand alone. In summary, the pleadings do not support the various claims being made. What happened at the meeting seems on the face of it wholly unremarkable. These claims have no
35 reasonable prospects of success and are struck out.

52. 20 September 2019

162. I will set the matter out as the claimant has:

5 *"I received a letter from Mrs Debbie Dyker. Within the letter, Mrs Debbie Dyker advised Professor George Boyne had passed my disclosure for action. g. The act or acts complained of: i. I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was victimised in the context of the Equality Act 2010, having spoken out against concerns of racial discrimination. vi. I was the subject of harassment. vii. My feelings were injured. viii. I was subject to detriment as a whistleblower. ix. My psychological injury was exacerbated. x. The employer failed in its duty of care toward me. g. Comparator person: Unknown/without precedent h. Basis of less favourable/unfavourable treatment: i. The letter included that "the matters that you disclose will be considered as part of the ongoing Grievance process. A separate investigation process will not commence to deal with this protected disclosure whilst the grievance process and your appeal are still ongoing". ii. The University refused to invoke its internal whistleblowing process. iii. As my grievance had been heard, appealed at stage one, it would be impossible to deal with the matters I disclosed as part of my ongoing Grievance process. iv. As I understand it, the report of the investigation of the data breach is misrepresentative as regards my contribution to the investigation."*

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163. The essence of this appears to be the fact that the claimant objected to the way in which the University chose to investigate it along with the ongoing grievance process. He complains that the University refused to invoke its internal whistleblowing process. It is not stated how the University's decision to proceed in this way is caused by or interacts with the Protected Characteristics or Disclosures. As pled the pleadings do not support the claims made and they have no reasonable prospect of success and are struck out.

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35 **53. 24 September 2019**

164. The claimant indicates that he received a letter from a Mrs Fiona Smith with a note of a meeting he had attended on 2 September. He has numerous

complaints about the content which he lists. The claimant believes the following claims arise:

5 “i) I was discriminated against directly, for my philosophical beliefs. ii) I was discriminated against directly, in relation to my disability iii) I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. [[320]] 36 iv) I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v) I was victimised in the context of the Equality Act 2010, having spoken out against concerns of racial discrimination. vi) I was the subject of harassment. vii) False accusation of theft. viii) My feelings were injured. ix) I was subject to detriment as a whistleblower. x) My psychological injury was exacerbated. xi) The employer failed in its duty of care toward me.”

15 165. He writes adding to the allegations:

20 “Basis of less favourable/unfavourable treatment: i. Bias arising from the pavement meeting with Mrs Dyker (point #1 above) ii. The note was misrepresentative, particularly with regard to the responses given by Mrs Erica Kinmond during the hearing. iii. I was not invited to review the note or suggest any corrections, Mrs Fiona Smith later clarifying there was no need to, as both notes would be held on file. iv. The length of time in production of the note suggests a review and alteration process took place. The bulk of the minute comprised the three statements I had made and shared with Mrs Fiona Smith to facilitate a quick turnaround. v. The length of time in production of the note suggests Professor Peter McGeorge arrived at his decision on my appeal without reference to any official note, and the official note had to be altered to be aligned in support of his decision, rather than the facts of what actually happened at the hearing. vi. The note was out of sequence, for example point 16 in Mrs Fiona Smith's note ("PM asked if based on what he said in his statement if DD was fit to continue with the hearing") occurred before point 11, my opening statement. However, as supported by my contemporaneous note, Professor McGeorge advised he was aware I was off sick before I made any statement, or mentioned this fact. I can only conclude the various tweaks such as these are to counter the obvious bias, and lack of preparation on behalf of the University and Mrs Erica Kinmond. vii. Other misrepresentations include who would produce the "tracked changes" version of the meeting of 6th December 2018. Point 67 has Mrs Erica Kinmond providing this, point 108 simply did not take place at the meeting. I did however, volunteer a "tracked changes" document later that evening (without being asked to do so, or having made any commitment to do so). viii. Review and alteration of meeting notes/minutes by superiors of those taking the notes/minutes, or by a solicitor, possibly Mrs Kinmond, who admitted at the appeal meeting having been given sight of my detailed grounds of appeal. See also 21st March 2018.”

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166. It is very difficult to disentangle the various allegations and criticisms made or see how they relate to the claims being advanced or to protected characteristics. The 'reason why' is not addressed. The claimant refers back to issue 1 with his interaction with Mrs Dyker. He says the note is misrepresentative of what was said and that he was not invited to review the note and so forth. He suggests the official note had to be altered to be aligned to the decision rather than the facts of what actually happened at the hearing. It is disturbing that the claimant imputes bias or some improper motive involving almost everyone he seems to interact with. In his Agenda document (p212) he writes of Mrs Kinmond that she had been given "improper" instructions by the respondents and that "*Mrs Kinmond was unable to be impartial, possibly as a result of cronyism, conflict of interests and confirmation bias*". The pleadings do not support the claims made and they have no reasonable prospect of success and are struck out.

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55. 30 September 2019

167. The claimant indicates that he had a scheduled catch-up meeting with Mr Lynch his line manager. He told the claimant that he felt the claimant had included "*a lot in his revision which hadn't been discussed.*" He expressed the view the claimant was re-stating his case for the purpose of bringing an Employment Tribunal claim. What the claimant had produced he said was "*not helpful*" and that the claimant was "*looking back in the past and looking for reasons to throw at problems*". The claimant believes the following claims arise:

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"The act or acts complained of: i. Failure to make reasonable adjustments ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, in relation to my disability iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was the subject of harassment. vii. My feelings were injured. viii. I was subject to detriment as a whistleblower."

168. Other than the issue of reasonable adjustments now topping the list the claims are familiar to the preceding paragraphs. It is significant that the claimant writes that the unfavourable treatment consisted of: “ *Mr Richard Lynch's behaviour and unwelcome comments*” but as before no effort is made to look at causation in relation to direct discrimination or detriment or how indirect discrimination arises. The averments do not support the claims made and have no reasonable prospects of success and are struck out.

56. 1 October 2019

169. The claimant makes reference to a meeting of the University Court.

He notes:

“Meeting of the University Court, the minutes from the previous meeting of 2nd July 2019 are approved and subsequently released. The minutes advise of “ the Court's position was that the report had no status”. Soon after, a statement appeared in (and was subsequently removed from) the news section of the University website: “ The University Court and the Senior Management Team agree that the initial report into the Student Occupation (the 'leaked' report) has no standing and has therefore not been progressed by the Senior Management Team.”

170. The claimant complains firstly about the “*The vague nature of the statements*”

He then changes tack completely writing:

“Continued failure to make reasonable adjustments: a. Stress Risk Assessment: not undertaken. A questionnaire completed instead. Dispute over the content of the questionnaire. No managerial solutions considered, to my knowledge. b. Referral to counselling: not completed. My concerns regarding confidentiality ignored. c. Weekly meetings with somebody informed: did not take place. d. Weekly meetings discontinued by mutual agreement: discontinued unilaterally by Mr Richard Lynch e. Strongly discouraged from sending explanatory email to colleagues prior to my return f. Undue delay to processes and prolonged uncertainty: persisted.”

171. These sort of matters might be the basis for a claim for a failure to make reasonable adjustments but not on the facts founded upon. When the duty to make a particular adjustment arose is not stated nor is any connection to the minutes apparent. As we have seen before there is no indication how the

protected characteristics or Disclosures interact with the factual circumstances in this case with the University Court's actions. The claims here have no reasonable prospects of success and are struck out. However the claimant should be given an opportunity of recasting his pleadings with regards to the duty to make reasonable adjustments as there is arguably just enough information or material before me to see the possibility of such a claim being advanced (although there may be issues of time bar) although to do so means looking at these the circumstances pled and not the "headline" incident.

10 **57. 2nd October 2019**

172. The claimant writes that it was announced in an email to staff that Mrs Caroline Inglis was to leave the University on 1st November 2019. No claims advanced.

15 **58 and 59. 4 October and 4 November 2019**

173. These two issues require to be read together. The claimant indicated on 4 October to Mr Henderson that he should consider a change in his line manager and other matters. Mr Henderson apparently agreed to think about the matters raised. The claimant avers that on 4 November Mr Henderson responded to him but took no action in relation to the claimant's complaint or more generally to the matters he had raised earlier. The claimant believes the following complaints arise:

25 *"I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings were injured. vii. I was subject to detriment as a whistleblower. viii. My psychological injury was exacerbated."*

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174. For some reason discrimination on the grounds of 'philosophical belief' has risen to the top as a claim and the one for the making of reasonable

adjustments disappeared. It is not particularly clear what issue other than a change of line manager the claimant was seeking as a reasonable adjustment. Other claims made are not connected to the facts nor is it clear why the other protected characteristics other than disability are at play. The claimant writes:

"I met privately with Mr Brian Henderson. I advised I made no demands and it was for him to apply the University's processes and procedures and consider solutions. I recommended that he give consideration to changing my line manager. I also advised of concerns regarding the apparent inability for the OHS recommendations and reasonable adjustments to be implemented. Mr Henderson advised he would reflect on matters and get back to me."

175. It seems that read together the claimant may have a claim or claims for the making of reasonable adjustments. I would mention once more that time bar issues may arise. There is no reasonable prospect of success in relation to the other claims and accordingly they are struck out under exception of the claim regarding reasonable adjustments. That failure is not particularly well articulated. I considered whether it had little prospects of success with some hesitation I am not prepared to go that far at this stage. The claimant should be given an opportunity of recasting his pleadings and focussing the failure to make reasonable adjustments which is somewhat buried here amongst other claims and the issue of strike out reserved meantime.

60. 7 November 2019

176. The claimant indicates here that the University agreed that his concerns could not be encompassed in an ongoing grievance process. The claimant notes the appeal was lodged on 5 September 2019 and that it took 63 days to make this admission. The claimant believes the following claims arise:

"Failure to make reasonable adjustments ii. I was discriminated against directly, for my philosophical beliefs. iii. I was discriminated against directly, in relation to my disability iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was the subject of harassment. vii. My feelings were injured. viii. I was subject to detriment as

a whistleblower. ix. My psychological injury was exacerbated. x. The employer failed in its duty of care toward me”.

177. It seems that the claimant believes that a reasonable adjustment would have
5 been to deal with the process more quickly. He doesn't go on to say how the
failure impacted on his health or more generally how the duty to make this
adjustment arose. He does make reference to the University's Policy which
in turn he says indicates that such matters should be dealt with as quickly as
10 practicable and without reasonable delay. Once more it is not clear how the
claims interact with the protected characteristics (except disability) or with
“Whistleblowing”. The pleadings do not support claims which the claimant
makes here. These have no reasonable prospect of success and are struck
out excepting the claim for disability discrimination which is wide enough to
15 encompass a claim for a failure to make reasonable adjustments. I would
comment that although the Employment Tribunal does not deal with personal
injury claims if the claimant was successful in a claim for failures to make
reasonable adjustments he would be able to advance a claim in relation to
injury to feelings.

20 **61. 22 November 2019**

178. The claimant writes:

*“Mr Brian Henderson confirmed he was now prepared to action the complaint
I raised under the "Grievance procedure" and "Staffing Policy against
25 Discrimination, Harassment and Bullying in the Workplace", some 52 days
later. In response I advised that I concluded there was no point continuing
with internal processes. d. The act or acts complained of: i. I was
discriminated against directly, for my philosophical beliefs. ii. I was
discriminated against directly, in relation to my disability iii. I was
discriminated against indirectly, see "Employee Relations Culture" within
30 claimants preliminary agenda, schedule one, S.5. iv. I was discriminated
against indirectly, see "Psychological Abuse" within claimants preliminary
agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings
were injured. vii. I was subject to detriment as a whistleblower. viii. My
psychological injury was exacerbated. ix. The employer failed in its duty of
35 care toward me.”*

179. The real complaint appears to have arisen earlier unless the claimant is saying that Mr Henderson deliberately delayed making this decision for some reason but it is not at all clear. It is a mystery why philosophical belief appears as the first claim or how such a claim could in fact arise from these facts unless the suggestion is that the delay was deliberate because of some antipathy towards the claimant arising from say his being an active trade unionist. That itself would be insufficient as Mr Henderson could legitimately take issue with the claimant's conduct rather than his beliefs *per se*. However, without speculating I cannot say. The pleadings simply do not support the claims made other than perhaps a poorly articulated claim for making reasonable adjustments as before and the same caveats apply. The claimant will have an opportunity to recast his pleadings in relation to any claim from failure to make reasonable adjustments or disability discrimination arising from these events but the other claims having no reasonable prospects of success are struck out.

62. 10 December 2019

180. The claimant indicates that:

"As requested to do so by Dr Dannette Marie (as appellant), I attended a grievance appeal meeting as an appellant witness. I raised a complaint with Mrs Tracey White and Mr Brian Henderson about the meeting".

He believes the following claims arise:

"Failure to make reasonable adjustments ii. I was victimised as a former trade union representative. iii. I was discriminated against directly, for my philosophical beliefs. iv. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. v. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. vi. I was the subject of harassment. vii. My feelings were injured. viii. My psychological injury was exacerbated. ix. The employer failed in its duty of care toward me".

181. He explains that he was not provided with an invitation, list of participants or agenda. When the meeting commenced he asked who would be present. He found that Mrs Kinmond would be present and was in a different waiting room. The claimant indicated that he told Mrs White that he would be likely to experience (unspecified) difficulty being in the presence of Mrs Kinmond. He also narrated that Mrs White who works in HR should not have been involved as she was privy to the claimant's health issues and occupational reports and therefore could not be impartial as a clerk.
182. The claimant says he was not introduced at the start of the meeting. The participants and the claimant were later "confronted" by Mrs Kinmond at some point when he was leaving the meeting. This appears to be that he saw her and not an allegation of being abused by her. The claimant when being asked questions asked if he could read a pre-prepared statement. He was told he could not. When asked if he could read excerpts and was again told no. He believes that Dr. Paton was biased against him because he had previously represented a union member in a successful appeal against a decision of DR Paton.
183. There are a whole bundle of issues rolled into these events with no individual claim being articulated as flowing from them. Being a 'former trade union representative' is not a protected characteristic and no claim for victimisation seems to arise from the facts. No claim for reasonable adjustments or direct disability discrimination seems to arise and it is wholly unclear how indirect claims could arise. It may be that the claimant is using the words victimisation or harassment in their common lay meaning but no discrete employment claims seem to spring from the facts pleaded. The pleadings do not support the claims made and as such they have no reasonable prospects of success and are struck out.

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184. The claimant narrates that he contacted the University's Occupational Health Service to request a referral and was told it wasn't possible and he would only accept a management referral. He believes the following claims arise:

5 *"The employer failed in its duty of care toward me. ii. I was discriminated against (see "Basis..." below)*

e. Comparator person: Unknown

10 *f. Basis of less favourable/unfavourable treatment: i. The employers Sickness Absence Management Policy, and documentation on the University website, advises that self-referral should be possible. Having to refer through management breaches confidentiality in terms of the referral and any report arising. ii. I was unable to self-refer to the Occupational Health Service. iii. If self-referral is not possible for myself as an individual this is direct discrimination. iv. If self-referral is not possible, this is indirect discrimination against anybody with a likely disability, who wishes to self-refer to the Occupational Health Service as a form of support."*

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185. The claimant's complaint here really relates to an ability to make a self-referral and the respondent's internal policy on this matter. The first complaint is one over which the Tribunal has no jurisdiction. It is not clear how the protected characteristics or Whistleblowing interact with these circumstances at all or what type of discrimination is in play. The facts pled do not readily lend themselves any potential claim under the broad headings we are considering. There are no reasonable prospects of success and these claims are struck out.

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64. 16 December 2019

186. The claimant writes:

30 *"Mrs Tracey White sent an email advising that my grievance appeal stage two would be postponed; and proposed the meeting suggested by Mr Henderson in response to the complaint I made against Mr Richard Lynch be postponed.*

35 *d. The act or acts complained of: i. I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within*

5 *claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings were injured. vii. Detriment as a whistleblower. viii. My psychological injury was exacerbated. ix. The employer failed in its duty of care toward me. x. Undue pressure to accept a settlement agreement.”*

187. The claimant sets out some further backgrounds:

10 *“Mrs Tracey White suggested that, rather than the employer, somehow Dr Dannette Marie had a duty of care for me in relation to my health, safety and wellbeing at work in relation to the meeting on 10th December. [[327]] 43 ii. Mrs Tracey White broke the confidentiality of Acas early conciliation and a without prejudice conversation between Mr Neil Maclean and myself immediately following the preliminary hearing on 29th November 2019. She disseminated her view, in a clear breach of confidentiality, that I had requested a settlement agreement. I consider this view misleading. iii. Mrs*
15 *Mrs Tracey White misrepresented my request for special leave on 10th December 2019, a request I later withdrew, before it had been approved. iv. The early stage of settlement discussions, with no draft settlement agreement even having been presented when Mrs White sent her email. However, a draft agreement was sent to my personal email address directly (albeit copied to Acas) by the respondent's representative, Mr Neil Maclean, just over one hour later. v. The unilateral pausing of ongoing processes, against my clearly and consistently expressed wishes vi. Undue pressure being applied with regard to accepting/progressing a settlement agreement. further facts as he sees*
20 *them.”*
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188. The first claim mentioned related to the claimant's philosophical beliefs yet he does not explain how the behaviour complained of (a series of what could be described as some unsatisfactory events from his point of view) is
30 connected to that matter or indeed to Whistleblowing or Disability. He does not speculate on the cause of this treatment. He mentions harassment but not which protected characteristic he relies on or how these various incidents constituted harassment. There is a lack of specification generally and the relevance of the issue relating to a 'settlement agreement' is unclear, which
35 protections are being invoked etc, where there is a breach of a particular duty and so forth. The factual position set out by the claimant does not adequately support any of the claims made. It could be that the claimant's position is that the postponements amount to harassment in the common usage of the word but legal claims based on the statutory protection are not articulated. The

case as pled has no reasonable prospect of success and the claims are struck out.

65. 17 December 2019

5 189. The factual basis relied upon for these claims is “*what happened; all of the above*”. The claims are stated as:

10 *“Failure to make reasonable adjustments ii. I was victimised as a former trade union representative. iii. I was discriminated against directly, for my religious beliefs. iv. I was discriminated against directly, for my philosophical beliefs. v. I was discriminated against indirectly, see “Employee Relations Culture” within claimants preliminary agenda, schedule one, S.5. vi. I was discriminated against indirectly, see “Psychological Abuse” within claimants preliminary agenda, schedule one, S.5. vii. I was the subject of harassment. viii. My feelings were injured. ix. I was psychologically injured, and this injury has been exacerbated. x. The employer failed in its duty of care toward me. xi. Detriment.”*

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190. I have commented earlier that being a Trade Union representative is not a protected characteristic. The use of such a ‘catch all ’ does not provide the Tribunal or the respondents with fair notice of what exactly the claims are and crucially when they arise and which statutory duty is said to be breached. It hints (and no more than that) at there being continuing acts but does not connect those acts or clearly label those acts as being discrimination on a particular basis.

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25 191. The claimant will recall that at the hearing it was raised that stating an employer is acting unreasonably is not sufficient to show a particular type of discrimination. The claimant indicates that the University has not concluded his internal grievance policy and procedures and it has failed to follow internal process and procedures. Other than a possible claim for reasonable adjustments these claims (Philosophical and Religious belief and Whistleblowing) are not supported by relevant pleadings. The claims arising from these facts are struck out as having no reasonable prospect of success. If relevant and if permitted through amendment the claimant might not be

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barred from referring to some of these particular circumstances as being a basis for a specific claim.

66. 7-10 January 2020

5 192. The claimant states that on the 7 January 2020 he was contacted by Mr
Matthews who advised him that he had been asked by a senior person at the
University to give his professional opinion about possible malicious activity on
the part of the claimant who might have been the cause of a recent IT
problem. On 10 January the claimant e-mailed Mr Brian Henderson, Mr
10 Matthew's line manager asking if Mr Henderson was aware of the allegations.
Mr Henderson responded to confirm that he had discussions regarding the IT
issue covering all the potential causes. He said that at no point did he raise
the claimant's name or have any concern about the claimant's behaviour.
The claimant believes the following claims arise:

15 *"i. I was discriminated against directly, for my philosophical beliefs. ii. I was
discriminated against directly, in relation to my disability iii. I was
discriminated against indirectly, see "Employee Relations Culture" within
claimants preliminary agenda, schedule one, S.5. iv. I was discriminated
20 against indirectly, see "Psychological Abuse" within claimants preliminary
agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings
were injured. vii. Detriment as a whistleblower. viii. My psychological injury
was exacerbated. ix. The employer failed in its duty of care toward me. e.
Comparator person: None f. Basis of less favourable/unfavourable treatment:
25 i. The wholly unfair accusations levelled against me ii. The way in which these
accusations were reported to me iii. I am unaware of any meaningful action
having been taken as a consequence of raising my concerns in this regard."*

193. At no point does the claimant tell us why he believes that the investigation
that involved Mr Matthews contacting him about this matter was related to his
30 protected characteristics or even more generally how they interact with these
facts. At no point is the Tribunal told why this amounts to discrimination on
the grounds of his beliefs or his disability or how it could relate to earlier
"Whistleblowing". At no point does he allege an improper reason for the
investigation. As pled these various claims have no reasonable prospect of
35 success and are struck out.

67. 13 January 2020

194. The claimant writes that he contacted Mr Henderson. He sets out his position thus:

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“Having reflected upon the events over the weekend I sent Mr Henderson an email which: i. outlined my concern, and that of others, about Mr Matthews health and wellbeing. ii. outlined my concern that Mr Matthews may have unwittingly or wittingly played a not insignificant part in the problems that have been affecting my own health and wellbeing over the last two years iii. pointed out that Mr Matthews and myself both became infrastructure managers around the same time in 2016, with the interview panel including Mrs Debbie Dyker [then Head of Human Resources]. Mrs Dyker made Mr Matthews appointment conditional on undertaking a mentoring programme, with her. [This was at a time when I was becoming increasingly active within the University & College Union] iv. pointed out that Mr Matthews advised me that his relationship with Mrs Dyker continues to the present via regular workplace catch up meetings. v. pointed out that I had previously asserted to Mr Matthews that I am not a quidnunc and did not want to be a part of Mr Matthews busybodying. vi. raised concern that, like me, Mr Matthews had been a victim of psychological abuse [by Mrs Dyker] vii. raised concern that Mr Matthews had previously told me: i. Mrs Dyker had told him, in the aftermath of the student occupation, that a UCU member was responsible for letting students into the building at the time of the disturbance [this would have been in April or May 2018] ii. Mr Qamar had [prior to his departure in 2018] told Mr Matthews that he had been instructed by his superiors to knowingly author a fraudulent investigation report of that incident iii. Of his conversations with Mrs Dyker regarding my alleged theft of University equipment iv. That Mrs Dyker had made enquiries with him about me being "drunk and dancing" at the wedding of a colleague whilst I was on sickness absence leave, an absurd allegation which I refute. v. That Mrs Dyker had [frequently] engaged Mr Matthews in discussion regarding matters pertaining to my former trade union role [also, not included in the email was a conversation between Mrs Dyker and Mr Matthews regarding the sudden death of my father, something I find deeply intrusive] viii. raised concern the file loss allegations were a chilling parallel to my concerns about the missing CCTV footage ix. included as an attachment the content of various text messages between Mr Matthews and myself in support of the above Within minutes of sending the email, Mr Matthews knocked at my office door. The door was closed, and whenever the door closes, it automatically locks. Through the panel of glass in the door it looked to me as though Mr Matthews had been crying. I did not know how to respond and pointed at my computer to gesture I was busy with something and to go away. I then left the office and returned home, emailing Mr Lynch and Mr Henderson outlining my concerns regarding the health, safety and wellbeing of colleagues and I in the

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workplace and to ask how my absence from the office should be handled. Mr Henderson advised I should work from home. d. The act or acts complained of: i. I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings were injured. vii. Detriment as a whistleblower. viii. My psychological injury was exacerbated. ix. The employer failed in its duty of care toward me."

195. It is not clear how these events could possibly support the claims made. There is no indication of how these factual circumstances interact with the claimant's protected characteristics, Whistleblowing nor is causation addressed. It is difficult to understand how in raising these matters with Mr Henderson claims for discrimination, detriment and so forth on any grounds could arise against the respondents. These claims have no reasonable prospect of success and are struck out.

20 **68. 22 January 2020**

196. The claimant narrates the last set of incidents and claims as follows:

"Mr Matthews took the opportunity to speak with me about my situation immediately before and after a scheduled meeting (between Mr Henderson, Mr Lynch, Mr Matthews and myself, which I attended from home via video conference). Mr Matthews advised me he had been given a management referral to the Occupational Health Service with regard to his workplace stress. Mr Matthews appeared to have no knowledge of recent events outlined above. After a discussion about his workplace stress, I felt obliged to advise Mr Matthews that going forward he should not tell me anything unless he was comfortable with this being shared upward and that, with deep regret and out of concern for his safety, and my safety, I had felt it necessary to apply this stance retrospectively. His immediate response was to say that I should have sought his permission first, and to question what information I had divulged. My response was to advise him I felt like I had no other choice and to ask him what I thought I might have divulged. He then asked "Was it what I said about Naveed". I said it was that and other things, told him to look after himself, and drew the conversation to a close. Later in the day, I informed Mr Henderson, in outline, of this interaction. Mr Henderson advised I am to continue working from home until "we complete the process to uncover the nature and mitigation in respect of the danger you feel at your place of work". I responded by asking Mr Henderson to confirm the process to which

he referred, advising my email of 13th January may amount to a protected disclosure for which the Whistleblowing procedure was relevant; may amount to a grievance for which the Grievance procedure was relevant; may be relevant for the Staffing Policy against Discrimination, Harassment and Bullying in the Workplace. I enquired which, if any, of these policies and procedures (or any others) have been considered or invoked? d. The act or acts complained of: At the time of writing, 2nd February 2020: i. I am unaware of any meaningful action having been taken as a consequence of raising my concerns ii. I have yet to receive a response as to which process(s) are being applied iii. The respondent seemingly refuses to apply its internal processes and procedures as they apply to me iv. I continue to work from home as instructed by Mr Henderson, this has now been for a period of 3 weeks.”

197. The claimant says the following claims arise:

“d. The act or acts complained of: At the time of writing, 2nd February 2020: i. I am unaware of any meaningful action having been taken as a consequence of raising my concerns ii. I have yet to receive a response as to which process(s) are being applied iii. The respondent seemingly refuses to apply its internal processes and procedures as they apply to me iv. I continue to work from home as instructed by Mr Henderson, this has now been for a period of 3 weeks. e. Comparator person: I am unaware of anybody else being treated in a similar way.

f. Basis of less favourable/unfavourable treatment: i. I was discriminated against directly, for my philosophical beliefs. ii. I was discriminated against directly, in relation to my disability iii. I was discriminated against indirectly, see "Employee Relations Culture" within claimants preliminary agenda, schedule one, S.5. iv. I was discriminated against indirectly, see "Psychological Abuse" within claimants preliminary agenda, schedule one, S.5. v. I was the subject of harassment. vi. My feelings were injured. vii. Detriment as a whistleblower. viii. My psychological injury was exacerbated. ix. The employer failed in its duty of care toward me.”

198. The claims made are confusing. They do not seem grounded in the facts set out in this section but seem to serve two purposes. The first is to bring interactions with the employers up to date and secondly to reiterate earlier claims. The facts set out here in this paragraph cannot on their own found the claims being made nor do they add anything to earlier ones. These claims suffer from all the same faults that we have seen in earlier paragraphs. There is no attempt to analyse the situation and to relate events to breaches of duty and Protected Characteristics. What is striking here is the difficulty in discerning what the employers have done wrong from the particular facts set

out in this paragraph. The claims made here are unsupported by relevant facts and have no reasonable prospects of success and accordingly are struck out.

Conclusion

5 199. I accept that striking out is a draconian step and that it should be done in limited circumstances. I considered this case to be exceptional on the basis firstly that the various incidents pled did not seem to justify the multitude of claims made even when read together with other incidents and reading those pleadings liberally and in a non-technical way. After reading the pleadings it
10 is not clear, in general, why the claimant believes any particular type of discrimination arises. He fails to set out why he thinks his employers are in breach of their legal obligations. He employs a large cast list of individuals and a multitude of incidents but despite his labours the same criticism applies to all the claims namely the nexus between the facts and the claims made is not apparent. The reasons “why” actions are taken and in what way those
15 actions are therefore discriminatory are not even speculated upon. The second exceptional matter is that the claimant himself provides explanations for decisions taken which are perfectly plausible and yet not discriminatory. After every narrative incident the reader is left wondering how the facts pled amount could possibly amount to this or that type of discrimination. It is
20 worse than a scatter gun approach as there seems to be no answer to the query why this particular type of discrimination and not another arises when we are given a multiple choice of several possibilities.

25 200. It should have been clear after the Note issued in December 2019 which asked the claimant to consider these issues and asked him to look at the statutory basis of his claims that he had to say why these protections applied. The claimant should be aware that unreasonable behaviour is not enough to suggest a particular form of discrimination has taken place. He himself
30 referred the Tribunal to two well-known cases on this matter which are **Glasgow City Council v Zafar [1998] IRLR 120** and **Bahl v Law Society**

[2004] IRLR 799, CA. 117). He has researched the burden of proof and must be aware of the need to set up a *prima facie* case of discrimination.

201. At the close of the hearing Mr. McLean pointed out that if the case proceeded
5 to a lengthy hearing and the claimant's evidence reflected what he had said
at the preliminary hearing namely that he didn't know why managers had
acted as they had or that the University had excised his contribution to the
report on the occupation to avoid embarrassment that this was simply
insufficient to succeed in claims for particular forms of discrimination or
10 detriment.

202. Indeed, if the claimant had considered the case of **Mr. R Yewdall v The
Secretary of State for Work and Pensions** to which he referred the Tribunal
he might have reconsidered the numerous claims he has made for 'detriment'
15 arising from his trade union activities or discrimination on the rounds of belief
(his belief in the importance of trade union activity/collectivism). In that case
Yewdall was judged not to have been taking part in "trade union activities"
when he had been acting as a health and safety officer on behalf of the
employer. Although during this he was also a trade union member and had
20 and raised his concerns in that capacity. This was held to be insufficient to
bring a claim within s.146. The case also made clear that to succeed the
claimant had to show a *prima facie* case so as to shift the burden of proof to
an employer. Taken simply the claimant in that case had to show that the
behavior he complained about from his employer came about because he
25 was carrying out trade union activities. In other words, in the claimant's case
he would have to show that the behavior he complained about occurred
because of his trade union beliefs or religion.

203. The claimant was also referred to the case of **McEleny v MOD** at the
30 preliminary hearing in December. In that case the Tribunal that finally heard
the merits of a claim while accepting that the claimant held certain qualifying

beliefs (determined at an earlier hearing) did not accept that he had been discriminated against because of those beliefs rather they preferred other explanations of the employers that non-discriminatory reasons were behind their actions.

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204. A Tribunal must consider all the circumstances when deciding whether to strike out or whether some other action should taken. In this case what is significant is that the facts stated by the claimant do not support the claims he is making and the Tribunal. I cannot leave the deficiencies in the pleadings to one side and help the claimant extract valid claims from the facts pled because the facts pled do not allow me to do so. I will allow him to try and recast his pleadings before considering the strike out further but only in relation to the limited circumstances and incidents I have referred to.

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205. In relation to the bulk of the claims as I have recorded is difficult to envisage how these matters even if true could amount to valid claims of any description. In these circumstances having considered the pleadings and other documentation I have am of the view that this is an appropriate case to strike under Rule 37(1)(c) on the grounds that those claims identified have no reasonable prospects of success.

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Employment Judge

James Hendry

Date of Judgement

14 August 2020

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Date sent to parties

17 August 2020