EMPLOYMENT TRIBUNALS

Claimant: Mr R Bryce

Respondent: AMS Securities Limited

RESERVED JUDGMENT ON A PRELIMINARY HEARING

Held At: Birmingham **On** 19 July 2019

Before: Employment Judge Connolly (sitting alone)

Representation

Claimant: In Person

Respondent: Mrs N Simpson (Owner / Director)

JUDGMENT

1. No part of the claimant's claims is struck out.

2. Deposit orders are made in the terms set out in the formal deposit order below in respect of the claims identified therein. No deposit orders are made in respect of any other parts of the claims.

3. A case management order accompanies this Judgment.

DEPOSIT ORDER

The Employment Judge considers that the claimant's allegations / claims that:

a) The claimant was subject to detriment by the respondent on the ground he made a protected disclosure in that Mr Anderson changed the venues at which the claimant worked with greater frequency after he made the disclosures than before (as set out in the Annex List of Issues paragraph 1.5 and

b) The claimant was subject to a detriment by the respondent because he actioned or raised health and safety issues in that Mr Anderson changed the venues at which the claimant worked with greater frequency after the health and safety issues than before (as set out in the Annex List of Issues paragraph 2.3 and

c) The claimant was treated unfavourably by the respondent because of something arising in consequence of his disability in that Mr Anderson changed the venues at which the claimant worked with greater frequency after the claimant began wearing PPE and after the claimant informed him of his disability in September 2017 (as set out in the Annex List of Issues paragraph 5.1.1)

have little reasonable prospect of success. The claimant is ORDERED to pay a deposit of **£100.00** in respect of **each** of the above allegations / claims no later than **22 August 2019** as a condition of being permitted to continue to advance those allegations or claims. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

REASONS

Introduction

1. By Notice dated 11 July 2019, REJ Findlay ordered that the final hearing of these claims be postponed and the first day of the hearing be converted to a preliminary hearing to determine

1.1 whether to strike out some or all of the claimant's claims because they have no reasonable prospect of success

1.2 whether to strike out some or all of the claimant's claims because the conduct of the claims has been vexatious or unreasonable and/or the claimant has failed to comply with tribunal orders

1.3 whether to order the claimant to pay a deposit if it seemed any of the contentions put forward by the claimant have little reasonable prospect of success

1.4 time permitting, whether video evidence relied upon by the claimant be admitted into evidence at any final hearing

2. These claims were case managed and a List of Issues identified by Employment Judge Broughton on 15 August 2018. This preliminary hearing was prompted, in part, by the failure of both parties to complete the List of Issues in the format required by the order of EJ Broughton such that the detail and viability of significant parts of the case remained unclear. I accept that they each misunderstood what was required: the claimant submitted a revised Particulars of Claim and the respondent simply re-sent its Grounds of Resistance rather than each completing the 'blanks' identified in the

List of Issues relevant to their case. In the circumstances, I spent some time at the outset of the hearing further clarifying the claims which the claimant brings. I have incorporated that clarification into the List of Issues compiled by EJ Broughton which I have attached as an Annex to these Reasons. I have used this List of Claims and Issues as the framework for my consideration whether to strike out or order a deposit in respect of any of the claims.

The Claim

3. The claimant was employed by the respondent as a door supervisor at various venues within Staffordshire and Cheshire from 8 July 2016 until his dismissal by letter dated 30 January 2018. It is agreed between the parties that the claimant is a disabled person by reason of dyslexia and Asperger's Syndrome. Central to the claimant's case is his contention that, as a matter of good or best safe working practice and as an adjustment to reduce the effects of his disability, he should be permitted to wear a stab vest and body camera and carry and use handcuffs and UV spray during the course of his work as a doorman.

4. By 2 claim forms, the first presented on 6 December 2017 and accepted on 30 January 2018 and the second presented on 31 January 2018 he brings the specific claims / complaints set out in the Annex and summarised as follows:

4.1 he was subject to a detriment because he made a protected disclosure(s)
4.2 he was unfairly dismissed because he made a protected disclosure(s)
4.3 he was subject to the same detriment because he brought a health or safety issue to his employers attention (s.44(c) ERA) or took appropriate steps to protect himself from a danger he believed to be serious or imminent (s.44(e) ERA)
4.4 he was unfairly dismissed for health and safety reasons (s.100)
4.5 he was unfairly dismissed because he brought proceedings against the respondent to enforce a relevant statutory right (s.104)
4.6 he was subject to unfavourable treatment (the same treatment as identified as a detriment in §4.1 and §4.3) because of something arising in consequence of his disability
4.7 he was dismissed because of something arising in consequence of his disability
4.8 the respondent breached its duty to make reasonable adjustments in respect of the claimant's disability
4.9 he was underpaid holiday pay
4.10 breach of contract
4.11 the respondent failed to provide him with a statement of terms and conditions of employment.

The Relevant Law - Strike out or Deposit on Prospects of Success

5. Rules 37 and 39 of the Tribunal Procedure Rules provide me with the power to strike out all or part of a claim or make a deposit order. The relevant parts are as follows:

37 Striking Out

(1) *At an stage of the proceedings…on the application of a party, a tribunal may strike out all or part of a claim…on any of the following grounds -*

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

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant… has been scandalous, unreasonable or vexatious;

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

39 Deposit orders

(1) *Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ('the paying party') to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

6. The test to be applied in respect of striking out is not whether the claim is likely to fail but whether it has no reasonable prospect of success such that it cannot be said that the prospects are more than fanciful. It is well established that it is inappropriate to strike out claims which are fact sensitive and where there are central disputes of fact. This applies particularly to discrimination and public interest disclosure claims (*Anyanwu v South Bank Student Union and another [2001] UKHL 14; [2001] 1 WLR 638* and *Ezsias v North Glamorgan NHS Trust 2007 ICR 1126, CA).*

7. In relation to deposit orders, in *Tree v South East Coast Ambulance Service NHS Foundation Trust UKEAT/0043/17 §18-24* HHJ Eady QC summarised the relevant caselaw and principles as follows:

18. In Jansen van Rensberg v Royal London Borough of Kingston-upon-Thames UKEAT/0096/07, a case determined under the previous ET Rules, the EAT (The Honourable Mr Justice Elias (as he then was) presiding), observed:

"27. ... the test of little prospect of success ... is plainly not as rigorous as the test that the claim has no reasonable prospect of success ... It follows that a tribunal has a greater leeway when considering whether or not to order a deposit. Needless to say, it must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response."

See, to similar effect under the 2013 Rules, Wright v Nipponkoa Insurance (Europe) Ltd UKEAT/0113/14 at paragraph 33.

19. The effect of a Deposit Order is also plainly different to that of a Strike-out Order under Rule 37: it does not dispose of the claim, or any part of the claim; it does not, of itself, summarily determine the claim. That said, a Deposit Order remains an important and significant deterrent to the pursuit of a claim: if not paid, the effect of a Deposit Order will be the same as a Strike-out, as Rule 39(4) takes effect. This potential outcome led Simler J, in Hemdan v Ishmail [2017] ICR 486 EAT, to characterise a Deposit Order as being "rather like a sword of Damocles hanging over the paying party" (paragraph 10). She then went on to observe that "Such orders have the potential to restrict rights of access to a fair trial" (paragraph 16). See, to similar effect, Sharma v New College Nottingham UKEAT/0287/11 paragraph 21, where The Honourable Mr Justice Wilkie referred to a Deposit Order being "potentially fatal" and thus comparable to a Strike-out Order.

20. Where there is, thus, a risk that the making of a Deposit Order will result in the striking out of a claim, I can see that similar considerations will arise in the ET's exercise of its judicial discretion as for the making of a Strike-out Order under Rule 37(1), specifically, as to whether such an Order should be made given the factual disputes arising on the claim. The particular risks that can arise in this regard have been the subject of considerable appellate guidance in respect of discrimination claims, albeit in strike-out cases but potentially of relevance in respect of Deposit Orders for the reasons I have already referenced; see the well-known injunctions against the making out of Strike-out Orders in discrimination cases, as laid down, for example, in Anyanwu v South Bank Students' Union [2001] IRLR 305 HL per Lord Steyn at paragraph 24 and per Lord Hope at paragraph 37.

21. In making these points, however, I bear in mind - as will an ET exercising its discretion in this regard - that the potential risk of a Deposit Order resulting in the summary disposal of a claim should be mitigated by the express requirement - see Rule 39(2) - that the ET shall "make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit". An ET will, thus, need to show that it has taken into account the party's ability to pay and a Deposit Order should not be used as a backdoor means of striking out a claim, so as to prevent the party in question seeking justice at all; see Hemdan at paragraph 11.

22. Although an ET will thus wish to proceed with caution before making a Deposit Order, it can be a legitimate course where it enables the ET to discourage the pursuit of claims identified as having little reasonable prospect of success at an early stage, thus avoiding unnecessary wasted time and resource on the part of the parties and, of course, by the ET itself.

23. Moreover, the broader scope for a Deposit Order - as compared to the striking out of a claim - gives the ET a wide discretion not restricted to considering purely legal questions: it is entitled to have regard to the likelihood of the party

establishing the facts essential to their claim, not just the legal argument that would need to underpin it; see Wright at paragraph 34.

24. That said, and returning to the warnings provided in cases such as Anyanwu and Ezsias v North Glamorgan NHS Trust [2007] ICR 1126:

"... a mini-trial of the facts is to be avoided, just as it is to be avoided on a strikeout application, because it defeats the object of the exercise. ... If there is a core factual conflict, it should properly be resolved at a full merits hearing where evidence is heard and tested." (That is per Simler J, at paragraph 13 of Hemdan v Ishmail)

8. I find that summary particularly helpful.

The Parties' Positions on Strike Out / Deposit Prospects Of Success

9. The respondent clarified various dates and matters as follows:

- the claimant first started wearing PPE in/about December 2016 (a few months after a text in September 2016 by which he informed the respondent he had gained a certificate in the use of handcuffs);
- the claimant first informed the respondent of his disability in September 2017 (not November 2017 as thought at the hearing before EJ Broughton)
- the respondent did not object to the claimant wearing a stab vest provided it was under his shirt nor to the claimant wearing a body camera and,
- contrary to what was set out in the order of EJ Broughton at paragraph 12, the reason for the claimant's dismissal was not his refusal or availability to work on New Year's Eve 17/18 but a breakdown in trust and confidence based on a catalogue of issues including his refusal to stop carrying and using handcuffs and UV spray and complaints from venues. The issue in respect of NYE is now said by the respondent to have been a catalyst to consider the claimant's position not the reason for his dismissal.

10. The respondent maintained that its approach to the use of handcuffs and spray was obviously reasonable / objectively justifiable in light of the industry advice which it had received. It made a broad submission that it had acted reasonably in its treatment of the claimant and did not know of his disability prior to September 2017. It did not contend that the claims listed at 4.9-4.11 should be struck out on this basis.

11. The claimant clarified his claims as set out in the Annex. I was careful to particularly clarify with the claimant what he said the main or principal reason for his dismissal was. He maintained his position that the principal or main reason he had been dismissed was because he declined / was not available to work on New Years Eve 2017/18 as he did before EJ Broughton. It was his case that the respondent failed to provide him with work after that and that the decision to dismiss him had effectively been taken before the decision conveyed by letter dated 30 January 2018. He took the view that the health and safety issues, his insistence on carrying handcuffs and spray and his disclosures were "secondary reasons" for his dismissal - these were his words.

12. Overall the claimant contended it was a case where there were lots of facts to be considered and this should be done at a full hearing.

13. I heard evidence from the claimant as to his means: he is earning £23,500 p.a. which he expects to rise to £25,500 in the next couple of months as a result of securing a different job. In addition he earns £120 gross most weekends working in security which would yield approximately £5,500 gross p.a. He has perhaps £600 pcm available after his fixed expenditure which he uses for food and to pay back a credit card debt of £3,500 and to pay his parents back £15,000. He makes these payments as and when he can and uses his credit card to fund additional expenditure which he cannot afford out of his earnings.

Conclusions on Strike Out / Deposit - Prospects of Success

All Claims of Detriment or Unfavourable Treatment Prior to Dismissal

14. I considered the claims of detriment or unfavourable treatment prior to dismissal as set out in the Annex at paragraphs 1.5, 2.3, and 5.1.1, and 5.2 together. In my judgment, the claimant has little reasonable prospect of establishing, as a fact, that he suffered detrimental treatment or was treated unfavourably prior to his dismissal (whether because he made disclosures or raised health and safety issues or persisted in in carrying and using handcuffs or UV spray). I take this view because the claimant has been unable to particularise the detriment/ treatment he complains of despite 2 Claim Forms and 2 hearings where he has been asked to do so. In the hearing before me, he changed the detriment complained of from a change in shifts or loss of hours identified at the previous preliminary hearing to changes in venue. This change in his case comes after exchange of witness statements where the respondents sought to address the previously identified detriment(s)/ treatment. In respect of the now-identified detriment, he remains unable to to specify in what way his pattern of working changed before and after the disclosures / health and safety issues and/or from when he started wearing PPE / informed the respondent of his disability. In addition, he is unable to specify when this alleged change occurred. In light of these factors, I take the view that the claimant has little reasonable prospect of establishing that he suffered the detriment / treatment complained of. This seems to me to fall within the description in paragraphs 18, 22 and 23 of *Tree* as set out above.

All Claims Where the Claimant must establish the Principal Reason for his Dismissal

15. I considered the claims where the claimant must establish the principal reason for his dismissal as listed in the Annex paragraphs 1.7, 2.5, and 3.2 together, specifically, that the principal reason for his dismissal was the alleged protected disclosures or health and safety issues or his assertion of a statutory right by his first tribunal claim. I noted EJ Broughton's doubts as to the viability of these claims in light of the agreement between the claimant and the respondent that, in fact, the principal or main reason for his dismissal was his unavailability or refusal to work NYE. I also noted that the case for the respondent had changed since EJ Broughton's hearing. The respondent asserted before me that the claimant's unavailability on NYE did not form part of the reason for dismissal and accepted that the claimant's insistence on carrying and using handcuffs and UV spray formed part of the reason for dismissal.

16. The reason for dismissal will be an issue for the tribunal at final hearing in relation to the disability claims (referred to below). It is a factual issue. It is not a straightforward factual issue in light of the different contentions put forward by each of the parties as to precisely when and why the decision was taken. It is possible that, after hearing the evidence, a tribunal will accept the respondent's case as to the reason for dismissal

and form its own view as to whether this is a proscribed reason and how significant it was in the decision to dismiss. In those circumstances, it seemed to me I could not say the claimant's case had no reasonable prospect of success.

17. Nonetheless, in light of the fact that the claimant does not have 2 years service, the burden of proving that the principal reason for his dismissal was the alleged protected disclosures or health and safety issues or his assertion of a statutory right lies on the claimant. He is insistent that these were, in fact, secondary reasons for his dismissal; he is clear that he does not think they were the main reason for his dismissal. I must take a view on the claimant's case as it is put and, because he puts it in this way, it seems to me that he has little reasonable prospect of satisfying the statutory test that one of these reasons was the principal reason for his dismissal.

All Disability Claims

18. There are difficult factual issues in this case as to whether the claimant's need or desire to carry and use handcuffs and UV spray is a consequence of his disability, whether his suffers a substantial disadvantage compared to those who are not disabled if he is not permitted this equipment, whether the respondent knew or could reasonably be expected to know of this disadvantage even after it knew of the claimant's disabilities in September 2017. There is also a significant issue between the claimant and the respondent as to whether carrying and using handcuffs and UV spray is appropriate in the context of door security at social venues. Each party maintains that they have specialist knowledge or advice on the issue. In all the circumstances, it seemed to me that these are exactly the sort of issues of disputed fact which can only be safely determined / assessed at a full hearing after hearing all the evidence. For that reason, it is not, in my judgment, appropriate to make either a strike out or deposit order on these claims.

Relevant Law on Strike Out for Non-Compliance

19. I refer to the relevant parts of Rule 39 set out above.

20. In deciding whether to strike I do parties case for non-compliance with an order,I have regard to the overriding objective to deal with cases fairly and justly. In accordance with the guidance in *Weir Valves and Controls (UK) Ltd v Armitage 2004 ICR 371, EAT,* this requires me to consider all relevant factors including:
    - The magnitude of the non-compliance;
    - Whether the default was the responsibility of the party or his or her representative;
    - What disruption, unfairness or prejudice has been caused;
    - Whether it a fair hearing would still be possible, and
    - Whether striking out or some lesser remedy would be inappropriate response to the disobedience.

Parties' Positions on Non-Compliance

21. The respondent did not point to any unreasonable conduct other than non-compliance with EJ Broughton's orders which it identified as follows:
    - Late disclosure of documents on 10 November 2018 instead of 18th of October 2018

- Failure to disclose details of all previous and subsequent tribunal claims brought by him including the claim forms and outcomes
- Failure to disclose full evidence of all income from all sources from 1 October 2017 two 31 March 2018
- Late disclosure of bodycam footage on 30th of May 2019 which led to the respondents having to delay disclosure of their witness statements
- Late disclosure of a Schedule of Loss on 30 January 2019.

22. The respondent accepted, however, that it was now able to deal with these matters at a final hearing, subject to receiving disclosure of other ET claims and income and that a fair trial was still possible.

23. The claimant accepted that he was in default as set out above. He relied generally on misunderstanding what was required of him in relation to the first bullet point; struggling with finding time amidst work commitments and other life events and his belief that the income period and other claims were not relevant to this claim. In relation to other claims, he stated that there were no claims in approximately 5/6 years prior to his first claim against the respondent and that he had not retained any documents in relation to them; subsequently, he said he presented 3 claims in the Midlands West region against Trident Security, Corpus Security and Dukes Bailiffs and one on the Northwest region / Manchester ET against Elite Security. He undertook to disclose the Claim Forms and Responses and any ET decisions in respect of those claims and to make full disclosure of his income for the relevant period.

Conclusions on Strike Out for Non-Compliance

24. It is very unsatisfactory that the claimant has failed to comply with the Tribunal orders in a timely manner and, on occasions, at all. Disputes over compliance (and the misunderstanding of both parties in relation to the List of Issues) led directly to the postponement of the final hearing of his claims and has caused the unrepresented respondent a great deal of stress.

25. I note, however, that the majority of the orders were complied with by 30 May 2019 and the miscellaneous outstanding matters can be complied with in a short timescale. Both parties agree that a fair hearing is still possible. In the circumstances, and considering the factors set out in paragraph 22 above, it would not be a proportionate response to this level of non-compliance to strike out all the claims where a fair hearing remains possible.

Whether to Make a Deposit Order and the Amount

26. Although I have taken the view that 3 claims of detriment or unfavourable treatment and 3 claims of ‘automatically’ unfair dismissal have little reasonable prospect of success, I have a discretion as to whether to make a deposit order in respect of any or all of those claims / complaints. I must exercise that discretion in accordance with the overriding objective to deal with cases fairly and justly. I have come to the conclusion that it is undoubtedly appropriate to make a deposit order in respect of the 3 detriment / unfavourable treatment claims: they have little reasonable prospect of success and it will save Tribunal time and expense if work patterns over an extensive period do not have to be reviewed in evidence.

27. In relation to the 3 claims of automatically unfair dismissal, I have taken a different view. It is important that the claimant understands that these claims have little prospect of success for the reasons set out in paragraphs 11 and 17 above. It is important that he give serious consideration as to whether to pursue those claims. I am not, however, persuaded it is in accordance with the overriding objective to order that he pay a deposit in respect of those claims in circumstances where the same or similar issues that arise in the automatically unfair dismissal claims are likely to be fully ventilated in the disability claims such as the reason for dismissal and the reasonableness of carrying and using handcuffs and UV spray in this environment. Little Tribunal time will be saved by making a deposit order which is not paid by the claimant.

28. In respect of the 3 claims of detriment or unfavourable treatment prior to dismissal, I am satisfied that the claimant has the means to pay £100 deposit per claim out of his disposable income or by reducing his debt repayments or extending the sum outstanding on his credit card and that it is appropriate to make such an order.

Video Evidence

29. The claimant disclosed 31 video clips on 30 May 2019, some of which ran to 40 minutes in length. The respondent, having had the opportunity to review them, took the view that a number supported its case and was content that they be admitted into evidence. The claimant, contended they were relevant to one discussion about the use of PPE, demonstrated the usefulness of the equipment and the type of venue at which he typically worked. In response to a query from me, the claimant agreed that he could easily select up to 4 clips in addition to the recording of the conversation in respect of PPE in order to make his point. In light of the agreement between the parties, I accepted that a maximum of 5 video clips from the claimant could be played in evidence and that the respondent would identify those clips and the parts of the clips upon which they relied.

_____

Employment Judge Connolly

22 July 2019

Sent to the parties on:

…….

NOTE ACCOMPANYING DEPOSIT ORDER
Employment Tribunals Rules of Procedure 2013

1. The Tribunal has made an order (a "deposit order") requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.

2. If that party persists in advancing that complaint or response, a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

What happens if you do not pay the deposit?

3. If the deposit is not paid the complaint or response to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.

5. If the deposit is not paid within that time, the complaint or response to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation or argument against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.

8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.

9. Payment must be made to the address on the tear-off slip below.

10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.

12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 916 5015. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

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DEPOSIT ORDER

To: **HMCTS**
Finance Support Centre
Spur J, Government Buildings
Flowers Hill
Brislington
Bristol
BS4 5JJ

Case Number _____

Name of party _____

I enclose a cheque/postal order (*delete as appropriate*) for £_____

Please write the Case Number on the back of the cheque or postal order

ANNEX - ISSUES

1. Public interest disclosure claim/s

1.1. The claimant alleges:-

1.1.1. On an unknown date between October 2016 and October 2017 he reported an assault on him at a venue called Fever Boutique in Macclesfield to the General Manager of the venue

1.1.2. On an agreed date in approximately November / December 2016, he reported to Mr Simpson of the respondent that he had a statutory right to wear all of the PPE that he chose or that his health and safety would be put at risk if he was not allowed to wear all of the PPE that he chose

1.2. In any or all of these, was information disclosed which in the claimant's reasonable belief tended to show one of the following:

1.2.1. A criminal offence had been committed

1.2.2. The health or safety of the claimant had been put at risk

1.2.3. Or that any of those things were happening or were likely to happen?

1.3. If so, did the claimant reasonably believe that the disclosure was made in the public interest? The claimant relies on the following as going to show his reasonable belief:

1.3.1. it is in the interests of the respondent's staff, clients and customers of the venues (the public) that assaults are monitored and door supervisors are properly equipped to do their job.

1.4. If so, was that disclosure made to:

1.4.1. the employer

1.4.2 another person to whose conduct the claimant reasonably believed the failure related

1.4.3. another person who had legal responsibility for the failure?

Detriment complaints

1.5. If protected disclosures are proved, was the claimant subject to detriment by the employer in that:

1.5.1. Mr Anderson changed the venues at which the claimant worked with greater frequency after he made the disclosures than before. The claimant was unable to identify when this change occurred, the approximate frequency with which he moved venue prior to any disclosures or the approximate frequency after any disclosures.

The claimant no longer relied upon a change in shifts or change in hours worked as set out in EJ Broughton's List of Issues

1.6 If so, was the claimant subjected to this detriment on the ground of any protected disclosure found?

Unfair dismissal complaint

1.7. Was the making of any proven protected disclosure the principal reason for the dismissal?

1.7.1. Did the claimant have at least two year's continuous employment?

1.7.2. no, accordingly the burden is on the claimant to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the protected disclosure(s)

2 Health and Safety Claims - s.44(c)&(e) ERA 1996

2.1 Did the claimant do the following:

2.1.1 on or about 16 September 2016 he began carrying handcuffs, wearing a stab vest and body camera and/or carrying 'UV' spray

2.1.2 On an agreed date in approximately November / December 2016, he reported to Mr Simpson of the respondent that he had a statutory right to wear all of the PPE that he chose or that his health and safety would be put at risk if he was not allowed to wear all of the PPE that he chose

2.2 If so,

2.2.1 did the former amount to the claimant taking appropriate steps to protect himself from danger which he reasonably believed to be serious and imminent and/ or

2.2.2 did the latter amount to bringing to his employer's attention by reasonable means circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety?

2.3 If so, was the claimant subject to detriment by the employer as set out in §1.5.1 above i.e.

2.3.1. Mr Anderson changed the venues at which the claimant worked with greater frequency after the above conduct by the claimant than before. The claimant was unable to identify when this change occurred, the approximate frequency with which he moved venue prior to any health and safety issues or the approximate frequency after any such issues.

The claimant no longer relied upon a change in shifts or change in hours worked as set out in EJ Broughton's List of Issues

2.4 If so, was the claimant subjected to this detriment on the ground of §2.1.1 and/or §2.1.2?

Unfair dismissal complaint s.100 ERA 1996

2.5. Was the claimant's conduct in §2.1.1 and/or 2.1.2 the principal reason for the dismissal?

2.5.1. Did the claimant have at least two year's continuous employment?

2.5.2. no, accordingly the burden is on the claimant to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was the health and safety issue(s).

3 Assertion of Statutory Right s.104 ERA 1996

3.1 Did the claimant, in bringing Employment Tribunal claim number 1304314/2017, bring proceedings against the employer to enforce a relevant statutory right and/or allege that the employer had infringed a relevant statutory right?

3.2 If so, was this the principal reason for his dismissal? The burden is on the claimant to show jurisdiction and therefore to prove that the reason or, if more than one, the principal reason for the dismissal was that he asserted a relevant statutory right.

4 Disability

4.1. Did/does the claimant have a physical or mental impairment that amounted to a disability as defined, namely Asperger's Syndrome and dyslexia? These are conceded by the respondent

4.2. The relevant time for assessing whether the claimant had/has those disabilities (namely, when the discrimination is alleged to have occurred) is from the date the respondent was made aware of them which is agreed to be in September 2017.

5 **Section 15: Discrimination arising from disability**

5.1 The allegations of unfavourable treatment are:

5.1.1. Mr Anderson changed the venues at which the claimant worked with greater frequency after the claimant began wearing PPE which said pattern continued after he learned of the claimant's disability in September 2017. The claimant was unable to identify when this change occurred, the approximate frequency with which he moved venue prior to wearing PPE or the approximate frequency after he began wearing PPE.

The claimant no longer relied upon a change in shifts or change in hours worked as set out in EJ Broughton's List of Issues

5.1.2 his dismissal

No comparator is needed.

5.2. Can the claimant prove that the respondent treated him as set out above?

5.3. Is his alleged need for PPE, specifically his need to carry and use handcuffs and/or 'UV' spray "something arising in consequence of the claimant's disability"? The claimant accepts that the respondent was content for him to wear a stab vest under his shirt and a body camera.

5.4. Did the respondent treat the claimant as aforesaid because of the "something arising" in consequence of the disability? The respondent argues that there were many other reasons for the claimant's treatment, to the extent that it is admitted, such as the claimant's refusal to wear appropriate dress, his lateness, failure to properly carry out his duties and the client's wishes and/or needs.

5.5. Has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had a disability at the relevant time?

5.6. Alternatively, can the respondent show that the treatment was a proportionate means of achieving a legitimate aim? The respondent relies on its client pubs and clubs not wanting their doormen to appear heavily armed and defended as this was deterring and upsetting customers.

6 Reasonable adjustments: section 20 and section 21

6.1 Did the respondent apply the following provision, criteria and/or practice ('the provision') generally, namely requiring the claimant not to wear excessive PPE and/ or not to carry handcuffs and/or UV spray in some venues?

6.2 Did the application of any such provision put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that:

6.2.1 the claimant relies on memory deficits associated with his dyslexia which he claims impeded him in identifying those involved in violent conduct which he alleges was ameliorated if he could 'tag' them with UV spray

6.2.2 the claimant relies on communication difficulties associated with his Asperger's syndrome which he alleges impeded him in dealing verbally with an agitated or violent individual and were ameliorated by (a) the deterrent effect of the sight of the handcuffs and / or (b) applying the handcuffs which brought the individual under control without the need for the same level of verbal communication.

6.3. Did the respondent know, or could the respondent be reasonably expected to know that the claimant

6.3.1. had a disability and

6.3.2. was likely to be placed at the disadvantage set out above?

6.4. if so, did the respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the claimant, however it is helpful to know the adjustments asserted as reasonably required and they are identified as follows:

6.4.1. allowing him to wear his desired PPE (i.e. carry and use handcuffs and UV spray)

6.4.2. training for the respondent's directors and their clients on the symptoms and effects of the claimant's disabilities

6.5. The respondent asserts that they made adjustments which were sufficient to meet the duty upon them and/or that the proposed adjustments would not have removed the disadvantage and/or were not reasonable

7 Unpaid annual leave – Working Time Regulations

7.1. Was the respondent's approach to "rolling up" holiday pay sufficient to meet their obligations?

7.2. If not, what was the claimant's leave year?

7.3. How much of the leave year had elapsed at the effective date of termination?

7.4 In consequence, how much leave had accrued under regulations 13 and 13A?

7.5. How much paid leave had the claimant taken in the year?

7.6. How many days remain unpaid?

7.7. What is the relevant net daily rate of pay?

7.8. How much pay is outstanding to be paid to the claimant?

8 Was the claimant an employee?

8.1. The respondent admits that the claimant was a worker for the purposes of the ERA and an employee for the purposes of the Equality Act 2010 but not that the claimant was an employee for the purposes of the ERA

9 Breach of contract

9.1. It is not in dispute that that respondent dismissed the claimant without notice.

9.2. Can the respondent prove that it was entitled to dismiss the claimant without notice because the claimant had committed gross misconduct in refusing to work New Year's Eve and/or any other reason relied upon by the respondent? This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed a fundamental breach of contract such as an act of gross misconduct.

9.3. To how much notice was the claimant entitled? It is agreed that, if successful the claimant would be entitled to 1 weeks' pay

10 Statement of terms and conditions

10.1. Did the claimant receive a statement of terms and conditions of employment as required by the ERA?

11 Remedies

11.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

11.2. There may fall to be considered a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, breach of contract and/or the award of interest.

12 Time/limitation issues

12.1. Bearing in mind the effects of ACAS early conciliation, any act or omission which took place before 22 September 2017 is potentially out of time, so that the tribunal may not have jurisdiction.

12.2. Can the claimant prove that there was conduct extending over a period which is to be treated as done at the end of the period? Is such conduct accordingly in time?

12.3. Was it reasonably practicable for the claims to be presented in time and was any complaint presented within such other period as the employment Tribunal considers reasonable or, in respect of the discrimination allegations only is it just and equitable to extend time?