EMPLOYMENT TRIBUNALS

Claimant: Mr A Ekoue

Respondent: Samworth Brothers Limited t/a Bradgate Bakery

Heard at: Nottingham **On:** 16 & 17 June 2021

Before: Employment Judge Victoria Butler (sitting alone)

Appearances
For the Claimant: In person
For the Respondent : Mr C Finlay, Solicitor (1st Respondent)

RESERVED JUDGMENT

1. The claimant's application to amend his claim to include allegations one, two and three is refused.

2. Allegation four is struck out because it has no reasonable prospect of success.

REASONS

Background

1. There are a number of live claims involving the Claimant and his partner, Ms Krejcova, which have been combined to form a multiple

2. The Claimant was employed by Samworth Brothers Limited at Bradgate Bakery ("Bradgate Bakery"). Ms Krejcova was employed by A La Carte Recruitment ("ALC") which is a recruitment agency and was assigned to work at the Bradgate Bakery. There is no contractual relationship between ALC and the Claimant.

3. The parties attended a closed telephone preliminary hearing on 15 February 2021 before my colleague, Employment Judge Ahmed ("EJ Ahmed"). He set out the existing claims within the multiple in his case management summary

and it appears that some may be duplicates. He also ordered the Claimants to provide further and better particulars of their claims, more particularly that *"they should specify each and every act or allegation of race, disability, or maternity/pregnancy discrimination in these proceedings*". They were also ordered to provide witness statements.

4. The following claims relevant to this judgment within the multiple are:

   Case no: 2602474/20 – Ms Krejcova (pages 1 -13)

5. The Claimant issued this claim on behalf of Ms Krejcova on **22 June 2020** in respect of pregnancy and maternity discrimination and '*other payments'*. The claim was rejected because there was no early conciliation certificate in respect of the proceedings.

6. Ms Krejcova contacted ACAS on 20 November 2020 and the claim was subsequently accepted in her name only on 29 November 2020.

   Case no: 2604138/2020 (pages 15 – 26)

7. The Claimant issued this claim on **18 November 2020** alleging race discrimination, disability discrimination and breach of contract. He says that the Respondent had no intention of responding to his various complaints (of which there were nine in total) and only did so when he issued proceedings.

8. The Claimant states in the ET1 that he sent documents in support of his claim to the Tribunal by post, but these were not received by the Tribunal or the Respondent.

   Case no: 26041500/20 – 'other payments' (pages 49- 60)

9. This claim was issued on **30 December 2020** and relates to '*other payments'* but there is no detail of the complaint provided. The Claimant simply states '*please see attached send to you by Post office*' but again, no supporting documentation was ever received by the Tribunal or the Respondent.

   Further particulars

10. The Claimant submitted further and better particulars of his claims/an amendment application on 6 March 2021. The particulars of the discrimination claim mirror that initially complained of, namely that the Respondent failed to deal with his complaints in a timely manner (p.124). He also confirmed that the disability relied on is anxiety which started on 7 April 2020 and was communicated to the Respondent on 20 April 2020 (page 124). However, he does not particularise allegations one, two and three (more below).

   <u>The hearing</u>

11. This hearing was an open preliminary hearing to determine (in respect of both Mr Ekoue and Ms Krejkova):

"1.1 Whether the complaints of race, disability, pregnancy and maternity discrimination should be struck out as having been presented out of time;

1.2 Whether any or all of the complaints should be struck out if it is considered that:

1.2.1 they are a duplicate of other claims;

1.2.2 they amount to an abuse of process;

1.2.3 that have no reasonable prospect of success within the mearing of Rule 37(1)(a) of the Employment Tribunal Rules of procedure 2013;

1.3 Alternatively, to determine if the Claimants should be required to pay a deposit as a condition of continuing with any or all of the complaints or any allegations or arguments in respect of them, if it is considered that they have little reasonable prospect of success, and if so to decide the amount of the deposit; and

1.4 To identify the issues any make such case management orders as are necessary for the future conduct of the case."

12. Unfortunately, both days were taken up dealing with the Claimant's case, so I was unable to deal with the matters relevant to Ms Krejcova. Her case has been re-listed for a two-day hearing before me.

13. To be clear, this judgment only relates to Mr Ekoue (referred to as the Claimant) and Samworth Brothers Limited (referred to as the Respondent).

14. During the course of the hearing, Mr Ekoue made a number of allegations against the Respondent about disclosure, more particularly that it had failed to disclose the second page of a letter which he said was '*crucial'* to his case. It emerged that this was simply a copying error and after spending a disproportionate amount of time getting to the bottom of the matter, the Claimant had the missing page in his possession all along and it was far from crucial – three lines long and of no material substance.

15. After dealing with the above, I asked the Claimant to summarise the allegations for me in a '*bullet point'* format. It was a difficult task to elicit exactly what the allegations are, but they are primarily allegations of direct race discrimination summarised as follows:

Allegation one

16. That he was denied the right to accompany Ms Krejcova at a meeting on **23 January 2020** chaired by the Respondent. This was a meeting to investigate her grievance relating to an incident where she claims she collapsed at work on 28 October 2019 causing her to miscarry.

17. As above, the Claimant is not employed by ALC and there was, therefore, no statutory right for him to accompany her. The Claimant says that it was since the meeting that '*all his problems started'*, and the Respondent started to '*block*' him.

18. The Respondent says that the Claimant was asked to leave the meeting because of '*unnecessary disruption through inappropriate behaviour'* and that the Respondent does not allow family members to accompany partners in such meetings because they are too involved (page 588).

Allegation two

19. That he was denied the right to training and education. He says that in July 2019, he was issued with a contract for a relief semi-skilled engineer requiring him to receive training. His colleague, Mr M Onyegbula was also offered the same contract and their manager, Mr M Mutemererwa, advised that they could not be trained concurrently. Mr Mutemererwa was selected to undertake training first and was still undertaking it on 26 March 2020.

20. The Claimant says that he was denied to opportunity to start his training and '*gave up'* and changed his shift on 18 January 2020.

21. The Claimant says that this allegation also amounts to discrimination because of something arising in consequence of his disability. He does not say what the 'something' arising is or why his treatment was because of that something.

22. The Respondent says that the Claimant was fully aware that only one employee could be trained at a time and that Mr Mutemererwa was trained first by '*no means of selection'.* The Claimant was advised when he made a request to change shift that there was no vacancy for a relief semi-skilled engineer on that shift and the offer of training was withdrawn when he confirmed he still wanted to change (page 189). It also points out that Mr Onyegbula and Mr Mutemererwa are both people of colour.

Allegation three

23. The Claimant relies on the Respondent's letter dated **9 April 2020** which accused him of '*aggressive and unacceptable'* behaviour in his grievance appeal meeting on 3 April 2020 and explained that his conduct was to be the subject of an investigation as it could be regarded as gross misconduct (page 213). He says that on receipt of this letter he realised the Respondent was '*trying to kill me, trying to destroy me'*.

24. The Claimant asserts that this allegation also amounts to direct disability discrimination.

Allegation four

25. That the Respondent failed to respond to his various complaints and that '*they have never been answered'* (my notes).

Application to amend

26. The Claimant accepted that allegations one, two and three are entirely new and not pleaded in any of the existing claim forms. The detail of these claims was advanced for the first time at the hearing before me.

27. Accordingly, he was required to make an application to amend his claim and was given opportunity to do so at the hearing. I explained to him the factors that I was required to consider, namely the nature of the amendment, time limits and the timing and nature of the application.

Submissions – the application to amend

The Claimant

28. As above, the Claimant acknowledged that allegations one, two and three are not pleaded in any existing claim and are entirely new complaints.

29. He sought to argue that they were not out of time given that he submitted his first claim on 22 June 2020. He says that the claim was rejected without his or his partner's knowledge and, once they learned that it had been rejected on 13 November 2020, it was re-submitted on 18 November 2020. He also provided further and better particulars on 6 March 2021 in accordance with EJ Ahmed's orders.

The Respondent

30. Given the considerable amount of time spent eliciting the necessary information from the Claimant, I ordered the Respondent to submit written submissions which were duly provided.

31. The Respondent says that the first claim was never intended to be a claim for race or disability discrimination - it is a claim for pregnancy and maternity discrimination and "*other payments*" but, regardless, it was properly rejected because the Claimant failed to obtain an early conciliation certificate. The Claimant's attempt to rely on the first claim to attempt to bring the claims in time is entirely '*fallacious*'. It does not relate in any way to the allegations now raised and, further, the Claimant failed to give an explanation as to why he did not raise them in his second claim issued in November 2020.

32. The Claimant frequently threatened the Respondent with litigation during his employ yet did not seek to introduce the allegations until March 2021.

33. The Respondent also deals with the merits of each allegation. In respect of allegation one, the Claimant's partner was not an employee of the Respondent. Accordingly, the Claimant had no right to accompany her at the meeting, either under the Respondent's policy or the ACAS code of practice. For the allegation

to succeed, the Claimant would have to show that the manager who conducted the meeting, Mr Alex Arthur (who is also a person of colour), refused to allow the Claimant to continue to attend the meeting because he is a person of colour. It submits that the appropriate comparator would be a hypothetical white person who was a family member of an agency worker complainant who had demonstrated an emotional involvement in the issues and, therefore, the allegation has no prospects of success.

34. In respect of allegation two, it submits that given that Mr Onyegbula and Mr Mutemererwa are both persons of colour it is '*somewhat unlikely*' that the treatment received by the Claimant was because he is a person of colour. Of particular note, during the hearing the Claimant said that his training was '*blocked'* because he had '*exercised his right to free speech'* at the meeting on 23 January 2021. Accordingly, the allegation is bound to fail

35. In respect of allegation three, the Claimant admitted that he lost his temper in the meeting on 7 April 2020. Further, he only makes one reference to this letter in his witness statement and, at the hearing, the Claimant said that on receipt of the letter he realised that the Respondent was "*trying to kill him*" - but failed to give any reason to suggest why the letter amounted to less favourable treatment. The correct comparator is a white person who lost his temper and behaved in the same manner as the Claimant. The complaint has no reasonable chance of succeeding.

36. More generally, the Respondent submits that any allegation occurring prior to 7 December 2020 is out of time because the Claimant did not submit his further particulars until 6 March 2021. Accordingly, allegation one is over eight months out of time, allegation two is over ten months out of time and allegation three is almost eight months out of time.

37. The Respondent submits that the balance of prejudice would fall against it if the amendments are allowed and the delay in raising the allegations will have an impact on the cogency of its evidence.

Strike out/deposit application

38. Turning to allegation four, the Respondent accepts that this allegation is pleaded and in time. However, it submits that it should be struck out as having no reasonable prospect of successful or, alternatively, that it should be subject to a deposit order.

39. In the ET1, the Claimant simply states (verbatim):

"The organisation I am complaining about did not have any intention to respond to complaints instead the time limit of their own policy (7 days).

Nine complaints in total were send since 06.03.2020 but any of them was respond till time I decided to contact you.

As formally I need to deal Grievance Meeting with them regarding matter I was complaining about, this circumstance to refused to respond complaints basically delayed the time to contact ACAS and submitted you my claim.

Last information received from the business was 08.11.2020 where they decided to submit answer before end of the week but this timeline was breached.

Date 13.11.2020 the business did contact me again that they will submitted response within the week, but today date (18.11.2020) any response was send".

40. The Respondent asserts that the Claimant was aware that it was undertaking significant investigatory work into his numerous complaints and kept him updated of the same. It was not in breach of its own grievance policy and was taking active steps to determine numerous and complex grievances submitted by the Claimant. In summary, the Claimant has simply made an assertion of different treatment with no foundation or explanation as to why it amounts to direct race discrimination.

The law

Application to amend

41. The starting point in an application to amend is always the original pleading set out in the ET1. In ***Chandok v Tirkey*** 2015 ICR 527, the EAT said:

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

42. In dealing with an application to amend, the Tribunal will take into consideration its duty under the overriding objective: to ensure that the parties are on an equal footing; to deal with the case in a way that is proportionate to the complexity and importance of the issues; to avoid unnecessary formality and seek flexibility in the proceedings; to avoid delay so far as compatible with proper consideration of the issues; and to save expense.

43. In ***Cocking v Sandhurst Stationers Ltd [1974] ICR 650*** the President held that regard should be had to all the circumstances of the case and in particular the Tribunal should *"consider any injustice or hardship which may be caused to any of the parties if the proposed amendment was allowed or, as the case may, be refused*".

44. In ***Selkent Bus Co Ltd v Moore [1996] I.C.R. 836*** the EAT held that relevant circumstances include:

"Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account <u>all</u> the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.

What are the relevant circumstances? It is impossible and undesirable to attempt to list them exhaustively, but the following are certainly relevant:

(a) <u>The nature of the amendment</u>

Applications to amend are of many different kinds, ranging, on the one hand, from the correction of clerical and typing errors, the additions of factual details to existing allegations and the addition or substitution of other labels for facts already pleaded to, on the other hand, the making of entirely new factual allegations which change the basis of the existing claim. The Tribunal has to decide whether the amendment sought is one of the minor matters or is a substantial alteration pleading a new cause of action.

(b) <u>The applicability of time limits</u>

If a new complaint or cause of action is proposed to be added by way of amendment, it is essential for the Tribunal to consider whether that complaint is out of time and, if so, whether the time limit should be extended under the applicable statutory provisions e.g., in the case of unfair dismissal, S.67 of the 1978 Act.

(c) <u>The timing and manner of the application</u>

An application should not be refused solely because there has been a delay in making it. There are no time limits laid down in the Rules for the making of amendments. The amendments may be made at any time - before, at, even after the hearing of the case. Delay in making the application is, however, a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the discovery of new facts or new information appearing from documents disclosed on discovery. Whenever taking any factors into account, the paramount considerations are the relative injustice and hardship involved in refusing or granting an amendment. Questions of delay, as a result of adjournments, and additional costs, particularly if they are unlikely to be recovered by the successful party, are relevant in reaching a decision."

45. The Presidential Guidance on General Case Management ("the Guidance") incorporates the factors set out in ***Cocking*** and ***Selkent.***

46. In respect of re-labelling, the Guidance provides: *"While there may be a flexibility of approach to applications to re-label facts already set out, there are limits. Claimants must set out the specific acts complained of, as Tribunals are only able to adjudicate on specific complaints. A general complaint in the claim*

form will not suffice. Further an employer is entitled to know the claim is has to meet".

47. Under 'Time Limits' the Guidance provides: *"The Tribunal must balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Where for instance a claimant fails to provide a clear statement of a proposed amendment when given the opportunity through case management orders to do so, an application at the hearing may be refused because of the hardship that would accrue to the respondent".*

48. A Tribunal can allow an application to amend but reserve any limitation points until the final hearing which might be necessary in cases where it is not possible to make a determination without hearing the evidence – ***Galilee v Commissioner of the Metropolis UKEAT/0207/16.***

Time limits

49. Section 123(1) of the Equality Act 2010 provides that a complaint may not be brought after the end of (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the Tribunal thinks just and equitable.

50. Under section 123(3) conduct extending over a period is to be treated as done at the end of the period; and failure to do something is to be treated as occurring when the person in question decided on it.

51. Under section 123(4) in the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something (a) when P does an act inconsistent with doing it; or (b) If P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Striking out a claim or part of it – Rule 37 Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013

52. Rule 37 provides:

"At any stage of the proceedings, either on its own initiative or on the application of a party, the 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.*
- *(b) That the manner in which the proceedings have been conducted by or on behalf of the Claimant or the Respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
- *(b) For non-compliance with any of these Rules or with an order of the Tribunal;*
- *(c) That it has not been actively pursued;*
- *(d) That the Tribunal considers it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out.)"*

53. In dealing with an application to strike out all or part of a claim the Tribunal must be satisfied that there is "no reasonable prospect" of success in respect of that claim or complaint. It is not sufficient to determine that the chances of success are remote or that the claim or part of it is likely, or even highly likely to fail - it must be bound to fail. As Lady Smith explained in Balls v Downham Market High School and College [2011] IRLR 217, EAT (paragraph 6):

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

54. Claims or complaints where there are material issues of fact which can only be determined by an Employment Tribunal will rarely, if ever, be appropriate to be struck out as having no reasonable prospect of success before the evidence has been deliberated.

55. When consideration is being given to striking out discrimination claims particular care must be exercised and it will rarely, if ever, be appropriate to do so in cases where the evidence is in dispute. The Claimant's case should be taken at its highest, unless it can legitimately be said as enjoying no reasonable prospect of succeeding at a substantive hearing.

Deposit Orders – Rule 39 Employment Tribunals (Constitution & Rules of Procedure Regulations 2013

56. Rule 39 provides:

> *"(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 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.*
>
> *(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out.*

Where a response is struck out, the consequences shall be as if no response had been presented as set out in Rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides a specific allegation or argument against the paying party for substantially the same reasons given in the deposit order: - (a) The paying party shall be treated as having acted unreasonably pursuing that specific allegation or argument for the purpose of Rule 76 unless the contrary is shown and; (b) The deposit shall be paid to the other party or if there is more than one to each other party (or the parties as the Tribunal orders), otherwise the deposit shall be refunded.

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order."

57. Accordingly, the Tribunal may make a Deposit Order where allegations or arguments have little reasonable prospect of succeeding. It remains the Tribunal's discretion to determine if such an Order should be made, even where there is little reasonable prospect of success.

58. The Tribunal should identify the allegations or arguments that have little prospect of success and to discourage their pursuit by ordering a sum to be paid, consequently placing the party at risk of costs if the claim is pursued and subsequently fails.

59. The Tribunal is not restricted to considering purely legal issues and am entitled to have regard to the likelihood of the Claimant being able to establish the facts necessary to the case and can reach a provisional view as to the credibility of the assertions being advanced.

Conclusion – application to amend

60. In considering the application to amend to include allegations one, two and three, I considered the interests of justice and balance of hardship as I am required to do, including the nature of the amendment, time limits and the timing and manner of the application. I also felt that it was appropriate to consider whether the claim, as amended, has any reasonable prospect of success.

61. The Claimant concedes that the allegations are entirely new thereby amounting to a substantial alteration pleading a new cause of action.

62. Turning to time limits, the proposed amendments are clearly out of time. The Claimant sought to argue that they were in time given that he submitted his first claim to the Tribunal on 22 June 2020. However, that claim was issued on behalf of his partner and related to pregnancy and maternity discrimination and other payments, and not race or disability discrimination. It was properly rejected and notification of the same was sent to the named representative. The Claimant was not aware that the claim was rejected until he made enquiries with the Tribunal on 13 November 2020. The claim was subsequently accepted

on 29 November 2020 in Ms Krejcova's name only and cannot be used as a vehicle to bring the Claimant's claim in time.

63. The Claimant submitted his second claim on 18 November 2020 alleging race discrimination, disability discrimination and breach of contract but only in respect of allegation four. The first time the new allegations were articulated was during this hearing, albeit the Respondent uses the date of 6 March 2021 when the further particulars/application to amend was submitted. Even using the earlier date of 6 March 2021, I am entirely in agreement with the Respondent that any allegation occurring before 7 December 2020 is outside the primary time limit. Of course, taking the later dates of this hearing (16 & 17 June 2021) the allegations are even further out of time.

64. To recap, allegation one occurred on 23 January 2020, allegation two occurred on or around 26 March 2020 at the latest and allegation three on 9 April 2020. By 7 December 2020, the Claimant had submitted his resignation and his grievances had been determined. Furthermore, he had not attended his place of work since April 2020. Clearly, the allegations are out time even on the earlier date.

65. The Claimant has made no coherent argument that the allegations amounted to conduct extending over a period but even if he did, given that the Claimant had resigned by 7 December 2020, and his grievances had been determined, any final allegation is still outside the primary time limit.

66. I have considered whether it is just and equitable to extend the time limit to allow the claims to proceed. The Claimant was unable to explain why he had failed to raise these allegations prior the hearing. Of course, he referred to the June 2020 claim but as I have already explained, this was in no way related to race or disability discrimination. The Claimant was fully aware of his entitlement to issue proceedings in the Tribunal, having threatened the same in his correspondence with the Respondent on numerous occasions. He submitted a claim on behalf of his partner on 22 June 2020 and submitted his first claim on 18 November 2020 - he was not ignorant of his rights. Absent any credible explanation as to why the Claimant failed to raise these matters earlier, I conclude that it is not just and equitable to extend time.

67. My considerations in respect of time limits also apply to my consideration of the timing and manner of the application to amend. The Claimant has simply not provided any explanation for the delay.

68. Finally, it would seem to me that in any event, the three allegations have no, or at best little, reasonable prospects of success. The Claimant has simply made assertions of discrimination but no more than that and I am persuaded by the Respondent's submissions in respect of each. I am mindful that it is rare to find overt evidence of discrimination, but there must be something more than a simple assertion of different treatment – he would need to establish primary facts from which the Tribunal could draw an inference that the treatment was because of the Claimant's race or in any way related to disability, as the case may be.

69. I have concluded that the application to amend should be refused. It was entirely within the Claimant's gift to present the allegations at a much earlier stage and he failed to explain why he neglected to do so, despite being fully aware of his legal entitlements. The allegations relied on date back to January 2020 and are out of time, placing the Respondent at a disadvantage given that by the time this matter comes to trial, the allegations will be substantially over two years old, without justification. Accordingly, the balance of injustice and hardship will fall against the Respondent if the amendment were allowed.

Conclusion - strike out/deposit order

70. The Respondent submits that allegation four should be struck out as having no reasonable prospect of success given that the Claimant has failed to explain in his further particulars, his witness statement or in the two days before me any matter in support of his allegation that the delay in delivering his grievance outcome was because of or in way related to race or disability. He was aware that the Respondent was investigating his grievances, it held a grievance hearing with him on 22 October 2020 and delivered a lengthy outcome thereafter. Further, there was no breach of the Respondent's grievance procedure.

71. Within the bundle for this hearing, I observe the following:

72. On 10 March 2020, the Claimant raised a grievance alleging discrimination which was fully investigated, and an outcome delivered. He was offered the right to appeal which he duly exercised. An appeal hearing was conducted on 2 April 2020 and an outcome delivered thereafter.

73. The Claimant was absent from work from 29 April 2020 and the Respondent maintained appropriate contact with him regarding his welfare. The Claimant habitually wrote accusatory letters in response to any contact from the Respondent, especially during his sickness absence.

74. On 13 June 2020, the Claimant raised a further grievance. He was invited to attend a grievance hearing, but the Claimant initially declined to attend, citing that he was unfit to do so. The hearing was re-scheduled for 3 August 2020 and an outcome delivered on 5 August 2020.

75. Thereafter, the Claimant raised more complaints (often referring to '*libel defamation'*) culminating in a further grievance dated 20 September 2020 which was not e-mailed to the Respondent until 6 October 2020.

76. A grievance hearing was scheduled for 13 October 20210 but postponed at the Claimant's request until 22 October 2020. Following the hearing, the Respondent investigated each letter of complaint/grievance that the Claimant said it had failed to respond to and interviewed five employees relevant to the complaints. This had been undertaken *before* the Claimant issued his claim on 18 November 2020.

77. A comprehensive outcome was provided by way of letter dated 23 November 2020 comprising over seven pages. Had the Claimant not postponed the first hearing, the outcome may well have been delivered prior to 18 November 2020. However, it is abundantly clear that the Respondent was taking his grievance seriously and investigating it in accordance with its grievance procedure and the Claimant was aware of the steps it was taking.

78. The Respondent's grievance procedure states that each stage (the grievance meeting and subsequent outcome) will occur '*normally within one week'*. This is not an absolute deadline and the procedure is clear that further investigation may be undertaken after the grievance hearing. As above, the Claimant raised numerous issues and the grievance officer conducted five further interviews after the hearing before producing a comprehensive grievance outcome. In light of this, I do not consider that a period of four-and-a-half weeks to deliver the grievance was unreasonable.

79. The power to strike out discrimination claims should only be exercised in rare circumstances and not where the central facts are in dispute. The correct approach is to take the Claimant's case at its highest, as it is set out in the claim, unless contradicted by plainly inconsistent documents. As a general principle, discrimination cases should not be struck out except in the very clearest circumstances. Having said that, the above guidance is not to be taken as amounting to a fetter on the Tribunal's discretion.

80. The thrust of the Claimant's case is that the Respondent had no intention of responding to his complaints from 6 March 2020 until he issued this claim. This is simply not correct and his assertion in this regard is misleading at best. The Respondent had previously dealt with the Claimant's grievances dated 10 March 2020 and 13 June 2020 properly and in accordance with its grievance procedure. It was doing the same with the most recent grievance prior to proceedings being issued. The documents evidencing the same are entirely inconsistent with the Claimant's pleaded case.

81. Notably, in the hearing before me the Claimant said on a number of occasions that all his problems started after he tried to accompany Ms Krejcova at her grievance hearing and did not state that race was a factor.

82. Even if I take the Claimant's case at its highest, I cannot conclude that it has any reasonable prospect of success. His claim is so obviously contradicted by the documents and of equal concern, he appears to have mislead the Tribunal. He says specifically that none of his complaints since 6 March 2020 have been responded to but the documents evidence this to be a false assertion as I set out above. As such, I conclude that allegation four has no reasonable prospect of success and is, therefore, struck out.

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Employment Judge Victoria Butler

Date: 3 December 2021

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