EMPLOYMENT TRIBUNALS

Claimant: **Mr A Ikeji**

Respondent: **(1) Office of Rail and Road**
(2) Ian Prosser
(3) Matthew Farrell
(4) Victoria Rosolia
(5) Donald Wilson

Heard at: **East London Hearing Centre**

On: **24 October 2022**

Before: **Employment Judge Russell**

Representation
Claimant: **Mr P O'Callaghan (Counsel)**
Respondent: **Mr G Menzies (Counsel)**

JUDGMENT

(1) The Claimant's application for interim relief fails and is dismissed.

(2) The Respondents' application to strike out the claims fails and is dismissed.

REASONS

1 By a claim form presented on 15 July 2022, the Claimant brings a complaint of unfair dismissal because of a protected disclosure and made an application for interim relief. The effective date of termination was 12 July 2022 and so the application was presented in time.

2 The Claimant was employed by the Respondent from 5 January 2022 as a Trainee Inspector. From early in the employment, a number of disputes arose. The first was whether the Claimant should have been appointed to the Trainee Inspector position at Transport for London rather than the allocated role at Network Rail southern region. There then arose a dispute about the Claimant's training needs assessment. I do not need to go into any further detail for the purposes of deciding this application.

3 The Claimant and his line manager, Mr Wilson, met on 3 March 2022 and discussed, amongst other things, the Claimant's desire to work part-time. It is clear from contemporaneous emails sent by the Claimant and Mr Wilson that the latter's reaction was not favourable. Whilst the Claimant had not made a formal application, Mr Wilson said that if he did, the likely response would be no and that he would oppose it.

4 The Claimant was very unhappy about Mr Wilson's stance and raised a grievance on 8 March 2022. That grievance makes no complaint of race discrimination, harassment or victimisation. The Claimant and Mr Wilson were both interviewed as part of the grievance investigation and the Claimant subsequently provided further information which did allege victimisation, harassment and discrimination. An investigation report was sent to the Claimant on 31 March 2022. It concluded that the Claimant had not been treated unfairly but made recommendations to improve communication and address the outstanding training issues.

5 The Claimant disagreed with the conclusions of the investigation report and sent a significant amount of additional information by email dated 12 April 2022. This was the same day as the grievance hearing.

6 By 28 April 2022, the Claimant's position was that there were a number of unresolved issues which he considered breaches of his contract and he did not regard the duties proposed by his new line manager, Matthew Farrell, as appropriate due to his health condition and the outstanding breaches of contract which he required to be resolved. The alleged breaches of contract related to training, flexible working and his allocation to the Network Rail post.

7 The Claimant had been absent from work due to stress since 25 March 2022. On 4 May 2022, an Occupational Health report recommended that, so far as operationally feasible, the Claimant return to work on a phased basis, with flexible working in the office and/or remotely, regular breaks and further communication. The only amended to working duties suggested that the Claimant should do no live track visits.

8 The grievance outcome, sent on 6 May 2022, partially upheld the Claimant's complaints about poor communication by Mr Wilson and the delay in the deduction of the training needs assessment but did not conclude that Mr Wilson had breached any policy in respect of the request for part time working. The complaints of discrimination and victimisation were also rejected.

9 On 10 May 2022, the Claimant and Mr Farrell had a meeting in which the Claimant made clear that he was unhappy with the grievance outcome and remained firmly of the view that there had been breaches of his contract of employment. He made very clear that he was not prepared to remain in his existing team but was prepared to consider redeployment. In an email sent the same day, the Claimant concluded: '**if I have to be granted unpaid leave until the situation is resolved, I would consider that seriously to protect my health and well-being. I am also willing to consider a business move to any of the other directorate in ORR that seems possible**'. Mr Farrell replied the following day confirming that the Claimant could be put onto unpaid leave from 11 May 2022 until conclusion of the grievance appeal process. The Claimant then replied that he did not agree to be put on unpaid leave and, from the content of the email, made clear that the only acceptable solution was redeployment. On the evidence of the emails, it is clear that the Claimant had decided to stay away from work and to refuse to perform the duties of his existing role because of

what he perceived to be breaches of contract and unlawful treatment. I make no finding of fact as to whether or not the Claimant's belief that his contract had been breached was well-founded.

10 This is the background to the grievance appeal meeting that took place on 17 May 2022. In advance, the Claimant provided considerable detail of his complaints in answers to a questionnaire dated 13 May 2022. That information formed the basis of the discussion in grievance appeal hearing. The Claimant's request to record the appeal meeting had been refused. Ms Rosolia would take handwritten notes for the Respondent and a copy would be provided to the Claimant. At the start of the appeal meeting, the Claimant referred again to recording the meeting but when told that it was not the Respondent's policy to record, replied "**I can do nothing to compel you."** The Claimant covertly recorded the meeting.

11 On 20 May 2022, Ms Rosolia sent a copy of her notes to the Claimant for comments. The Claimant replied with an amended copy of the notes, produced by reference to the covert recording. Copies of Ms Rosolia's notes and the Claimant's notes are both included in the bundle today. The Claimant's version shows the parts with which he disagrees as crossed out and his version of what was said is shown in red. For the purposes of this application I have assumed that all of the entries in red are an accurate transcript from the recording. In a series of emails that followed, the Claimant made clear that he regarded the Respondent's version of the notes as materially inaccurate, going so far as to describe them as misleading and unacceptable.

12 During the course of today's hearing, I asked Mr O'Callaghan to identify the material differences between the two versions of the notes which the Claimant relies upon to support his view that there has been an attempt to cover-up wrongdoing or fraud. I adjourned the hearing for an hour and 20 minutes to give Mr O'Callaghan some time privately with the Claimant to identify relevant differences. He was unable to provide any specific examples.

13 The Claimant's appeal against the grievance was not upheld.

14 On 24 May 2022, the Claimant sent an email to Ms Elizabeth Thornhill, General Counsel for the Respondent, copied to Mr Prosser, with the subject: "**Whistle-blowing complaint under PIDA 1998**". In this email, the Claimant stated:

> **'My concerns are in the public interest and relate to the deliberate actions and statements made by two senior officials in the Office of Rail and Road who have conspired to conceal breaches to the Equality Act 2010. They have also breached the employer's statutory duty to ensure the health, safety and welfare of employees like me, at work, and they have refused to rectify the untruthful and harmful account of formal internal proceedings, which they published yesterday (23/05/2022).**
>
> **The senior officers in question are:**
> 1. **Vinita Hill - Director of Corporate Operations**
> 2. **Victoria Rosolia - Associate Director of Human Resources.'**

15 The Claimant attached to the email the Respondent's version of the notes of the appeal hearing, his own version of the notes, the correspondence between Ms Hill, Ms Rosolia and the Claimant in the period immediately after the hearing dealing with the

alleged inaccuracies, a copy of the appeal hearing outcome letter and the CSC complaint and acknowledgement. He went on to state in his email:

> '**You will see from the protected disclosures that the senior officers presented untruths and had taken deliberate steps to conceal several unlawful acts of other employees, in a comprehensive example of abuse of power, gaslighting and coercive control in the workplace which must not be condoned in the civil service**.'

16 The Claimant did not provide in his email any specific example of an untruth or a deliberate step to conceal unlawful acts of others. I had careful regard to the contents both of the email itself and the attachments to it when deciding whether or not the Claimant had a pretty good chance of showing that he had disclosed information tending to show a relevant breach.

17 Dealing first with the two versions of the notes of the appeal hearing, there are no obvious material differences. It is inevitable when comparing a summary note taken during a meeting with the greater detail of a transcript of a recording that the latter will be lengthier. That is the case here, the Claimant's version records at greater length some of the questions and answers than the Respondent's more summary notes. However, I consider that the summary is accurate and that there is no material difference of substance. The Respondent's summary notes record that the Claimant's assertion in the meeting that lodging his grievance was a protected act and that he suffered a detriment since he raised his grievance. I considered the longer passages in red when deciding if the differences in the notes were material. By way of example, when Ms Hill tries better to understand the Claimant's complaints and asks for clarification about the meeting on 3 March 2022:

- The Respondent's summary note records that the Claimant stopped her, asserted that since he raised his grievance there had been gaslighting from a number of people, delays from HR which were detrimental. He had experienced a lot of stress, there had been a lack of support and there was no suggestion of the alternative role.
- The more full note answer produced by the Claimant includes a greater number of context words but the substance of the complaint in his answer is the same. Since he lodged his formal grievance, he had gaslighting from a number of colleagues, referring to a section in his questionnaire about gaslighting. He goes on to say that the delays from HR since he lodged his grievance have been detrimental. Some of detriments were linked to a particular protected act (paragraph 1d in his questionnaire). He has experienced a lot of stress, his health has deteriorated since lodging the grievance that is a linked detriment. The lack of support is a detriment, there has been no suggestion whatsoever of an alternative role or employment option is also a detriment linked to the protected act.

18 It is clear from just that one example that where there may be differences in the number of words used and the precise framing of the response, the substance of the question and answer is the same. The summary notes record the Claimant's case that he had made a protected act and suffered detriment as a result. They also record the Claimant's case that his initial appointment to the Southern team was an act of discrimination by comparison to the other appointee who is white and that he was discriminated against because several inspectors were allowed to work part time whereas he received a less favourable response from Mr Wilson. The Respondent was not on a

reasonable reading seeking to cover up or hide the Claimant's allegations of breaches of the Equality Act 2010.

19 The Claimant's probationary period was due to end on 4 July 2022. Mr Farrell conducted a probationary assessment of the Claimant's employment on 1 July 2022. The Claimant was still off work and he declined to attend the meeting for a discussion to form the basis of his assessment. In his contemporaneous note, Mr Farrell sets out a number of matters of concern about the Claimant's conduct, namely his refusal to undertake work from 11 May 2022 to date, his refusal to participate in the recommendations set out in the grievance decision, poor timekeeping but with an acknowledge that the Claimant's performance is acceptable. There is no reference to the grievance appeal hearing or the disputed notes of that hearing nor is there anything to suggest that Mr Farrell knew about or was influenced by the Claimant's email to Ms Thornhill or that he believed that the Claimant had made a protected disclosure.

20 The probationary review meeting took place on 12 July 2022. The Claimant again did not attend. The decision maker was Mr Alshaker**.** There is nothing in the minutes of the meeting which refer to the Claimant's grievance, the appeal hearing, the dispute about the accuracy of the notes or any alleged protected disclosure. I consider it material that the Claimant's pleaded case does not allege that Mr Alshaker was aware of his protected disclosure (or believed him to have made a protected disclosure), but concentrates on Mr Farrell. In response to this potential weakness in the Claimant's case on causation, Mr O'Callaghan today said that the Claimant's case was that Mr Alshaker did have knowledge of the protected disclosure because he had been appointed by Ms Rosolia, the note taker at the appeal hearing. This misses the point that the protected disclosure relied upon is the email to Ms Thornhill and Mr Prosser and the appeal meeting which gave rise to the alleged disclosure. Furthermore, there is no evidence to support the Claimant's case as first articulated today. The Claimant was informed by letter dated 13 July 2022 that he was being dismissed with five weeks' pay in lieu of notice.

21 Finally, today the Claimant made an application to amend his claim to plead that the sole or principal reason for dismissal was his assertion of the statutory right to pay after 11 May 2022. Before giving Judgment on this interim relief application, I determined the issues in each of the claims now presented to the Tribunal. Due to a lack of time the decisions on the amendment application and the Respondent's applications for strike out and/or deposit orders was reserved.

Law

22 Sections 128 and 129 of the Employment Rights Act 1996 provides that interim relief is available as a remedy where the Tribunal is satisfied that it is likely that at the final hearing, the Claimant will show that the sole or principal reason for dismissal is a protected disclosure. The burden of proof is on the Claimant to show that he is likely to succeed in a claim under s.103A Employment Rights Act 1996.

23 The meaning of the word "likely" has been considered in several cases. In **Taplin v C Shippam Ltd** [1978] ICR 1068, the EAT held that it must be shown that the claimant has a "pretty good chance" of succeeding, meaning something more than merely on the balance of probabilities. That approach to the word "likely" has been followed in several subsequent decisions, such as **Dandpat v The University of Bath and Anor** UKEAT/0408/09 and **Ministry of Justice v Sarfraz** [2011] IRLR 562.

24 In **Al Qasimi v Robinson** [2021] EWCA Civ 862, the Court of Appeal endorsed the "settled practice in this area of law" established by **Taplin** and the subsequent EAT decisions. The Court of Appeal acknowledged the common ground of the parties that the "likely" test is a relatively high threshold which takes into account the serious consequences for the employer if an interim order is made. Indeed, in the earlier EAT Judgment in **Al Qasimi**, Eady J made it clear that where interim relief is sought in a whistleblowing case, the Claimant must show that it is likely that the claim will succeed on each of its constituent parts, ie that it is likely that the Tribunal will find (1) that there was a disclosure to the employer; (2) reasonable belief that it tended to show one of the prescribed matters and that it was in the public interest; (3) that it was the sole or principal cause of dismissal.

25 By operation of rule 95 of the Employment Tribunal Rules of Procedure, when deciding an interim relief application the Tribunal will not ordinarily hear oral evidence. What is required of the Tribunal is broad and summary assessment on the material available of whether the claim has a pretty good chance of success. It is not a final judgment and no findings of fact are made at this stage.

Conclusions

26 Having considered the documents put before me and the helpful submission of Counsel, I am not satisfied that the Claimant has a pretty good chance of showing that he disclosed information tending to show a breach of legal obligation or health and safety in his email to Ms Thornhill. The content of the email itself is a bare allegation of untruths and alleged concealment, without examples given. Even having regard to the attachments, particularly the two different versions of the notes, I do not consider that the Claimant has a pretty good chance of showing that there is any information tending to show an attempt to conceal a breach of the Equality Act. Having looked at the summary notes, it is clear that the Equality Act claims are included and the Claimant does not have a pretty good chance of showing that he reasonably believed that there was a disclosure of a proscribed matter. Furthermore, it is clear from reading the attached documents that even on the Claimant's full version of the appeal hearing notes, his complaint is all about his own individual circumstances. He does not have a pretty good chance of showing a reasonable belief objectively considered that any disclosure was in the public interest.

27 It is material that the Claimant now seeks to argue (if given leave to amend) that the reason for his dismissal was an assertion of his statutory right to pay after 11 May 2022. In deciding the unfair dismissal, the Tribunal will have to make a finding as to the sole or principal reason for dismissal (unlike discrimination where the protected characteristic need only be a material cause). As it stands today, therefore, the Claimant's case is that there were *two* sole or principal reasons – protected disclosure and/or assertion of a statutory right. In forming my broad brush assessment, I consider this seriously undermines the credibility of his case and the likelihood of success at final hearing.

28 Overall, my view is that the s.103A claim does not have a pretty good chance of success and is not likely to succeed. The application for interim relief is refused.

Respondent's application to Strike out

29 An Employment Judge has power to strike out a claim on the ground it has no reasonable prospect of success under Employment Tribunal Rules of Procedure 2013 rule 37. The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances.

30 It may be seen that the test for strike out imposes a very high threshold due to its draconian nature: there must be no reasonable prospect of success. This requires the Tribunal to consider whether on a careful consideration of all available material it can properly conclude that the claim has no reasonable prospects of success. It is not a matter of whether the Claimant's claim is likely to fail nor of asking whether it is possible that the claim will fail. It is not a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is a high test.

31 As summarised in **Ukegheson v Haringey Borough Council** [2015] ICR 1285: Tribunals should be cautious in exercising the power to strike out, particularly in discrimination claims where there is a public interest in them being heard and because they are likely to be fact sensitive. A hearing to consider strike out should not be a mini-trial. The Claimant's case should be taken at its highest unless conclusively disproved by (or totally and inexplicably inconsistent with) undisputed contemporaneous documents, **Ahir v British Airways** [2017] EWCA Civ 1392..

32 As was made clear in **Cox v Adecco** [2021] ICR 1307 EAT, before considering strike out, the Tribunal should make reasonable efforts to identify the claims and the issues to be decided having regard to the pleadings and any core documents that set out the Claimant's case. However, litigants in person should focus on their core case rather than trying to argue every conceivable point. The more prolix and convoluted the claim, the less likely a litigant can criticise the Tribunal for failing to get to grips with it. The Tribunal can only be expected to take reasonable steps to identify claims and issues.

33 As set out above, a large part of the hearing was spent identifying the issues in the claims as no draft List of Issues had been produced by either party. It would not have been appropriate to determine the application to strike out without first knowing what the claims are. I refer to the List of Issues set out in the separate Case Management Summary for today's hearing.

34 The Claimant's case is that there was direct race discrimination in the failure to allocate him to the Transport for London vacancy, Mr Wilson deleted interview notes, did not properly consider the Claimant's development plan requirements and told the Claimant that he would block a part time working request. The Claimant compares himself with the other successful candidate (white) and other trainee inspectors (white). The harassment claims relies on unwanted conduct surrounding initial role allocation, development plan and Mr Wilson's comments about part time working but also includes comments in Mr Wilson's email of 7 March 2022, a 21 March 2022 training needs assessment conducted in his absence, suspension without pay from 11 May 2022 and ultimately the recommendation for dismissal. The Claimant's case in short is that a hypothetical white trainee inspector would not have been treated the same way (no legal comparator is required for a harassment claim so this is for evidential/inference purposes only). There

are five protected acts for the victimisation claims – orally to Mr Wilson on 5 January and 7 January 2022; 23 February and 28 February 2022 feedback about discriminatory comments made at a training course; 3 March 2022 orally to Mr Wilson about the comments at the training course; 8 March 2022 grievance and 4 April 2022 first ET1 form. There are six detriments alleged – failure to appoint him to the TfL role, Mr Wilson saying that he would block part time working, threats from Mr Wilson to the Claimant's employment in emails sent on 4 March and 7 March 2022, failure to pay from 10 May 2022, dismissal on 12 July 2022 and 29 July 2022 a complaint made by the Respondent to the police about a potential threat. The breach of contract and unauthorised deductions claims rely on the express term as to pay and contractual benefits (regarding failure to pay the Claimant from 10 May 2022).

35 The automatic unfair dismissal claim relies on the single email and attachments to Ms Thornhill and Mr Prosser on 24 May 2022. There is no whistle blowing detriment claim. The Claimant says that at the material time he was disabled by reason of the mental impairment of chronic anxiety and/or the physical impairment of essential hypertension. He alleges that he was treated unfavourably when sent home on 10 May 2022 without being offered a safe way of working, imposed unpaid leave without notice or consent, 11 May 2022 being accused of being absent without leave by Ms Rosolia, failure to apply the disciplinary process and unfair processes about grievance and pay. The "something" is said to be the Claimant's inability to undertake his normal duties due to his physical and mental impairments.

36 The application to amend pursued by Mr O'Callaghan was to include assertion of the statutory right to pay as the principal or sole reason for dismissal, rendering it automatically unfair. Also, to include a claim of failure to make reasonable adjustments of amended duties but instead requiring the Claimant to perform the full duties of the role to which he was appointed. There was some dispute about the amount paid by way of notice but this should be capable of resolution between the parties as it seemed to turn on gross or net figures.

37 Having identified the claims as above, I considered whether or not they can be said to have no reasonable prospects of success. I reminded myself of the high threshold to be applied, the fact that the Claimant's case must be taken at its highest and that discrimination (and protected disclosure claims) are fact sensitive. Whilst the Respondent asserts that no other Trainee Inspectors work part time, the Claimant says that other inspectors were permitted to do so. Even if not trainees, and therefore not statutory comparators, they are evidential comparators from which inferences could be drawn. In the circumstances, I do not conclude that there are no reasonable prospects of success for the claims surrounding part time working.

38 On the allocation to the Network Rail rather than TFL vacancy, the job advertisement states that the TfL role covered London's railway operators and the Network Rail role covered Kent, Sussex and Wessex. In his application form the Claimant gave his preferred choice of location as London and his further preference as Southern Region. At interview, the Claimant expressed a preference to join TfL. He was the highest scoring candidate. In the circumstances, I do not conclude that there are no reasonable prospects of success for the claims surrounding initial role allocation.

39 It is not in dispute that there was a delay in completing the development plan and training needs assessment, this is one of the recommendations which came out of the

grievance investigation report and decisions. Evidence is required to make findings as to the treatment of the other trainee inspectors and the reasons for the delay. I do not conclude that these claims have no reasonable prospects of success.

40 As for the claims relating to pay from 11 May 2022, the Claimant's own email on 10 May 2022 made clear that he was not prepared to continue to work in his current team, the options he proposed were redeployment and possible unpaid leave. When Mr Farrell accepted the unpaid leave offer, the Claimant sought to resile and suggested that there were budgetary contingencies for such situations, in other words that he be paid. There is, however, a factual dispute as to whether the Claimant had offered unpaid leave in the meeting on 10 May 2022 and his email said only that he would consider unpaid leave. In the circumstances, taking the Claimant's case at its highest, I do not conclude that his claims of discrimination, harassment, victimisation, breach of contract or unauthorised deduction from wages relating to pay can be said to have no reasonable prospects of success.

41 As for the protected disclosure/automatic unfair dismissal claims, whilst on the limited evidence before me today it seems that such claims are weak, I am not prepared to conclude that they have no reasonable prospects of success. Evidence is required from the decision makers as to their reasons for dismissal and even though I could not discern a disclosure of information for the purposes of the interim relief application, I have made no finding of fact and it may be that the Claimant will at the final hearing be able to point to relevant parts of the email or attachments which meet the statutory requirements.

42 Finally, the Claimant's case is that he was unable to work in his normal job due to his disabilities. Evidence is required as to whether the Claimant is disabled within s.6 Equality Act 2010 and, if he is, whether this caused him to be unable to work. If so, then it is reasonable that he can show that the failure to pay from 10 May 2022 was unfavourable treatment because of something arising in consequence of disability. Of course, the decision may well be objectively justified but, again, these are all matters requiring evidence and proper consideration at a final hearing.

43 In addition to strike out on the merits, the Respondents applied to strike out the claims due to the Claimant's conduct.

44 The decision about whether to strike out for conduct is a two-stage process. The Tribunal must first identify the conduct in question and decide whether it meets the required threshold. Only if it does, should the Tribunal consider whether or not to exercise its discretion to strike out. This inevitably involves consideration of whether a fair trial is still possible and whether less draconian sanctions would be appropriate. As made clear in **Bolch v Chipman** [2004] IRLR 140, EAT, there are four matters to be addressed:

1. There must be a conclusion by the tribunal not simply that a party has behaved scandalously, unreasonably or vexatiously but that the proceedings have been conducted by or on his behalf in such a manner. Such a finding must be supported by appropriate reasons. Such conduct is not confined to matters taking place within the Tribunal hearing but may include threats as to possible consequences if the proceedings are not withdrawn.

2. Even if such conduct is found to exist, the tribunal must reach a conclusion as to whether a fair trial is still possible.

3. Even if a fair trial is not considered possible, the tribunal must still examine what remedy is appropriate, which is proportionate to its conclusion. It may be possible to impose a lesser penalty than one which debars a party entirely.

4. If the tribunal decides to make a striking out order, it must consider the consequences of the debarring order.

45 As made clear in **Emuemukoro v Croma Vigilant (Scotland) Limited** EA-2020-000006-JOJ, it is not necessary to show that a fair trial is not possible at all, merely that as a result of a party's conduct, a fair trial was not possible in the trial window. A fair trial is one conducted without undue expenditure of time or money and with proper regard to the demands of other cases awaiting hearing. The fairness question must be considered with regard to notions of fairness generally and the overriding objective.

46 The Respondents' case is that the Claimant has brought previous unsuccessful claims against other employers. His claim against MTR (Crossrail) Limited was dismissed with a costs order against him in August 2018. He brought claims against Morden College in the County Court and the Employment Tribunal in November 2020 which also included allegations of racial harassment, victimisation, whistle blowing and breach of contract. The outcome of those claims is not known.

47 The Respondents also rely on the Claimant's conduct in these proceedings, namely his threats of defamation proceedings against Ms Rosolia upon receipt of the ET3 to his first claim, complaints to the Civil Service Commission, use of intemperate language and obstructive behaviour in connection with the return of property and attempt to agree a list of issues and, on 21 September 2022, a statement that he had no objection to press coverage of open hearings. The Respondents submit that the claims are arbitrary, weak, lacking particulars and accompanied by tactics which include obstruction and unwarranted personal attacks. This cannot be ascribed to lack of knowledge given the Claimant's previous experience of Employment Tribunal litigation.

48 In response, the Claimant submits that the proceedings against former employers are of very limited assistance. There is a general denial of scandalous, unreasonable or vexatious conduct.

49 Applying the two stage **Bolch** approach, I considered first whether the Claimant's conduct meets the required threshold. I can derive little assistance from the proceedings against Morden College as it is not known whether the claims have (or will) succeed. It cannot be unreasonable, vexatious or scandalous to bring successful claims for discrimination. As for the MTR proceedings, I was provided only with a copy of the Judgment refusing the Claimant's application for reconsideration. Even if the Claimant has not disclosed a copy of the Judgment, this is a matter of public record and the Respondents could (and should) have taken steps to produce a copy. It follows that I do not know why the Claimant lost or the conduct which led to the costs order, although I accept from the Reconsideration Judgment that it refers to his ability to make sound judgments about his prospects of success.

50 The Claimant's conduct of these proceedings, whilst no doubt intemperate and not of the standard one might expect of an experienced litigator, falls far short of the high threshold required to strike out. If the Claimant continues to be obstructive and in breach

of the parties duty to cooperate to assist the Tribunal, the Respondents can apply for appropriate sanctions such as Unless Orders, strike out or even that the Claimant be limited in the way in which he can adduce documents or statements. All are more proportionate sanctions which will enable there to be a fair trial without undue cost and delay. The final hearing is listed for two days in February 2023, this is clearly too short a time estimate and I have ordered that there instead be a further Preliminary Hearing and the final hearing be relisted for five days before the end of 2023 if possible. Given the pressure on Tribunal resources in this region, that is not a particularly lengthy delay for claims presented in April and July 2022. Other than the costs of today's hearing, there is no evidence before me that the Claimant's conduct has incurred significant additional costs. For these reasons, I also reject the application to strike out the claims by reason of conduct.

51 In the circumstances, the application to strike out the claims is dismissed in its entirety.

Employment Judge Russell
Date: 29 December 2022