



# EMPLOYMENT TRIBUNALS

Claimant: Ms J Breyal

Respondents: Blaby District Council

## Record of an Open Attended Preliminary Hearing by CVP at the Employment Tribunal

Heard at: Nottingham

Heard on: 18 April 2023

Before: Employment Judge Broughton (sitting alone)

### Representation

Claimant: In person

Respondent: Miss Stephenson, Solicitor

## JUDGMENT

1. The application to strike out the claims of **indirect discrimination** under Rule 37 is **granted** and the claims are struck out in their entirety as having no reasonable prospect of success.
2. The application to strike out the claims of **direct discrimination** under Rule 37 or for a deposit order under Rule 39 is **refused**.
3. The application to strike out the claims of victimisation is **granted** in respect of the following claims which are hereby struck out under Rule 37 as having no reasonable prospect of success: Allegation 1.1 and Allegation 2 (according to the numbering set out in the reasons below) .The applications are refused in respect of the other Allegations.

## REASONS

1. The Claimant was employed by the Respondent as a Youth Leader. The Claimant's says

that she was employed from 19 August 2019. The Respondent believes the correct date to be 18 August 2019. It is agreed that her employment was terminated by reason of redundancy on 4 March 2022.

2. The Claimant presented her claim form on 6 March 2022 and indicated at box 8.1, claims of unfair dismissal, race discrimination and victimisation.
3. The Claimant is without representation and attached to her claim form a narrative style of pleading.
4. The claim was listed for hearing by notice of claim dated 14 March 2022 for dates in January 2024.
5. The Respondent in its response complained of a lack of particularisation of the complaints.
6. There was a closed Telephone Preliminary Hearing before Employment Judge Blackwell on 11 August 2022.
7. Employment Judge Blackwell noted that the Claimant was complaining of sex discrimination and race discrimination pleaded in the alternative and that the Claimant describes herself as Asian in terms of her race.
8. Employment Judge Blackwell also noted that after discussion it appeared to him that the allegations were by no means clear.
9. He set out within his Orders the relevant statutory provisions as they relate to direct, indirect discrimination and victimisation and ordered that the Claimant provide further particulars of both the unfair dismissal and the discrimination and victimisation complaints. Employment Judge Blackwell specifically required in relation to the indirect discrimination claim that the Claimant was to identify the Provision Criterion or Practice (PCP) which is said to put women or persons of the same racial group as the Claimant at a particular disadvantage when compared with persons who do not share each of those protected characteristics and explain how the PCP gave rise to that disadvantage and how the Claimant was disadvantaged.
10. In relation to the victimisation complaints Employment Judge Blackwell set out the provisions of Section 27(2) Equality Act 2010 (EqA) namely the different types of protected acts and the Claimant was ordered to identify which type of protected act she was relying upon but also provided as follows:  
  

*“The Claimant alleges that the grievances of July 2020 and 11 January 2022 are protected acts, that she should give brief particulars of those grievances and how they satisfy the definition set out above”.*
11. There were other particulars requested from the Claimant and those had to be provided by 30 September 2020. The Claimant again in a narrative style of pleading submitted further particulars on 30 September 2022 (September Document) and there was a further Preliminary Hearing for Case Management this time before Employment Judge Cansick on 31 January 2023. It was observed by Employment Judge Cansick that the September Document did not address the particulars as ordered by Employment Judge Blackwell, that he had explained to the Claimant what was required and she confirmed that she now understood and despite opposition from the Respondent, he decided to give the Claimant another chance to amend her particulars.

12. Employment Judge Cansick provided the Claimant should send updated particulars of claim to the Respondent by 6 April 2023. The Claimant submitted on 3 March 2023 a revised particulars of claim (referred to her as a revised ET1).
13. The Respondent submitted amended grounds of response but on 31 March 2023 it requested an Open Preliminary Hearing in order to deal with the following applications:
  - 13.1. To strike out the Claimant's race and sex discrimination and victimisation claims on the basis that they have no reasonable prospect of success;
  - 13.2. A deposit order in respect of the Claimant's race, sex discrimination and victimisation claims on the basis they have little reasonable prospect of success; and/or
  - 13.3. To strike out the Claimant's race and sex discrimination and victimisation claims on the basis it is no longer possible to have a fair hearing of the claims.

### **TODAYS HEARING**

14. The case was listed for a 2 hour hearing on the afternoon of 18 April which was conducted via Cloud Video Platform (CVP). The Claimant remains unrepresented and Miss Stephenson represented the Respondent.
15. Unfortunately (albeit I accept there was no order to this effect) no bundle of documents had been prepared and other than the Respondent's email of 31 March setting out its application and written submissions received shortly before the hearing, no other documents were produced in support of the Respondent's application and indeed the Claimant had not produced any documents either.
16. Although listed to determine the applications by the Respondent I was concerned to ensure that I understood the complaints as set out in the Claimant's 3 March 2023 document. We took most of the hearing, indeed until 4.00pm going through the various claims so that I could clarify what the various elements of the claims were before dealing with those applications. As a result the parties were given an opportunity to make submissions and the decision had to be reserved.
17. In terms of any potential deposit order, I explained to the Claimant that if I decide that any of the allegations or complaints have little reasonable prospect of success and decide to make a deposit order under Rule 39, I may order that she pay a sum of £1000 per allegation or complaint but explained that I would take into account her financial means should she wish to give evidence as to her financial situation. The Claimant declined to provide any evidence about her financial means.
18. Although the application was made on the basis of three limbs, in submissions Miss Stephenson informed me that on reflection the Respondent, (taking into account that the case is not listed until January 2024) was not pursuing the application that the claims of race and sex discrimination and victimisation should be struck out on the basis that it is no longer possible to have a fair hearing. She withdrew that application.

### **LEGAL PRINCIPLES**

#### **Statutory Provisions**

19. The relevant statutory provisions are as follows:

### **Section 19 Indirect discrimination**

*(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

### **Section 27 Victimisation**

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act—*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

### **Section 13 Direct discrimination**

20. *(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

### **Section 136 Burden of proof**

*(1) This section applies to any proceedings relating to a contravention of this Act.*

***(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.***

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

**Case Law**

21. In ***Madarassy v Numora International Plc [2007] ICR 867*** Lord Justice Mummery in The Court of Appeal stated, “*The bare facts of a difference in status and a difference in treatment only indicate possibility of discrimination. They are, without more, sufficient material from which a Tribunal could conclude on the balance of probabilities the Respondent had committed an unlawful act of discrimination*”.
22. In ***Denman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1279***. At The Court of Appeal, Lord Justice Sedley accepted the approach in *Madarassy v Numora International Plc* that something more than a mere finding of less favourable treatment is required before the burden of proof shifts on to the employer. His Lordship made the point that the more which is needed to create a claim requiring an answer may not be great deal.
23. In ***Anyanwu and another v South Bank Student Union and another [2001] ICR 391***: the House of Lords highlighted the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact sensitive and require full examination to make a proper determination.
24. ***Silape v Cambridge University Hospitals NHS Foundation Trust EAT 0285/16***: support for the proposition that in applications to strike out a claim, it is necessary to take the claimant’s case at its highest and unless there is a compelling reason not to, to accept that the Claimant’s version of any disputed facts

**Tribunal Rules**

25. In considering the application for a strike out order or deposit the relevant rules are as follows.

*Striking out*

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

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

...

*(2) A claim or response may not be struck out unless the party in question has been given a reasonable **opportunity** to make representations, either in writing or, if requested by the party, at a hearing.*

*3) Where a response is struck out, the effect shall be as if no response had been presented, as set out **in** rule 21 above.*

*Deposit orders*

**39.—**(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.*

*(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.*

## **SUBMISSIONS**

26. Miss Stephenson produced written submissions which I have read and considered in full. In those submissions she refers to the following case of authorities of: ***Barton v Investec Henderson Crosthewithe Securities Limited [2003] IRLR 332, King v Great Britain China Centre [1992] ICR 516, Chapman v Simon [1994] IRLR 124*** (Authority for the proposition that mere intuitive hunch is insufficient) and ***Igen Ltd (formerly Leeds Careers Guidance and others) v Wong [2015] 258 CA***: it is not possible to infer discrimination merely from the fact the individual has a protected characteristic and identifies a difference in treatment.
27. Miss Stephenson also made brief oral submissions in support of her applications essentially submitting that the claims have no reasonable prospect of success. Miss Stephenson did not deal with each claim in any detail.
28. In terms of the indirect discrimination claims, Miss Stephenson submits that it remains unclear how the Claimant says that those with her protected characteristics would be disadvantaged by the PCP.
29. In relation to the victimisation complaint it is submitted that the Claimant has still failed to show any nexus between the detriments and the protected acts.
30. The Respondent argues the Claimant has failed to provide information to shift the burden of proof and that such a factual nexus needs to more than 'hunch' or a mere suspicion.
31. In terms of the unfair dismissal claim no application is made in relation to that however certain observations were made for consideration by the Tribunal namely: that the Claimant's role no longer exists, she does not dispute there was a genuine redundancy and she raises two possible roles as alternative employment. In relation to the first she was considered not to be appointable to that position and in relation to second she was offered a trial period but declined it and therefore she has no possible losses arising
32. In terms of the Claimant's submissions, they were very brief. Addressing the points made by the Respondent about the unfair dismissal claim, she submits that she was offered a trial period in relation to the second role, she accepted the role, however certain conditions were attached which were not acceptable to do with the salary. She indicated she would accept the trial period on the basis that she would be paid the salary for the role as advertised. She also had no trust in working with the Manager concerned because she had been forced to offer the trial period and there was no guarantee that she would be retained in that role afterwards but in any event when she explained what her skills were and that she should be paid the salary as advertised for the job, she said the offer was withdrawn.

33. The Claimant did not deal with each claim separately but made general submissions and argued that it should be concluded that the Respondent considered that there was 'something wrong with her' because she was not offered the roles but she disputes that this could be anything to do with her skills or professional qualifications. She referred to the impact of the practices which had a negative impact on her as an Asian female 'who looked different' to the other employees the Respondent employs.

## **CONCLUSIONS AND ANALYSIS**

### **Direct Discrimination**

34. The Claimant brings complaints of direct discrimination on the grounds of her race, namely her ethnicity in that she is Asian and her sex (female).
35. I went through the complaints with the Claimant and she confirmed the number of allegations I identified and which are set out below:

***Allegation 1: that there was a flawed consultation process in that the claimant was not given the priority in the selection process that she was told she would be given.***

36. The Claimant complains about two specific posts that were available and being recruited for; Building Control Officer job (BCO Post) and Team Leader Economics and Community Development post (TLECD Post) .
37. She complains of a failure to prioritise her for redeployment into the two roles, and to being subject to a competitive process with external candidates.
38. The Claimant is not able to identify any actual comparators in terms of someone else at risk because her situation was 'unique' in that only her role was being made redundant.
39. In relation to the 'something more' the Claimant asserts that she had been assured by her Line Manager and by HR that she would be given priority over external candidates and would not have to be put in a competitive exercise with external candidates.
40. The initial burden of proving a prima facie case of discrimination is on the balance of probabilities and on the Claimant(as set out in the Explanatory Notes to the EqA and the EHRC Employment Code) and confirmed by the Supreme Court in ***Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC.***
41. When considering the Claimant's case and the merits, I have assumed for the purposes of these applications, that her version of events is correct in the absence of compelling reasons not to do so.
42. Taking her case at its highest, her evidence is that she was assured that she would not have to compete for those roles but in practice, despite her having the requisite skills and experience for the roles that is what happened. Neither party had produced a copy of the relevant policy which deals with the Respondent's approach to alternative employment for employees at risk and neither the Claimant nor Miss Stevenson made submissions about what the policy states. Miss Stevenson could not recall what was set out in the policy. Miss Stevenson also put forward no evidence in rebuttal of the Claimant's assertion that a finding from the grievance was that the Claimant had been told that she would have priority over external candidates.

43. The fact that the Claimant has been subjected to unreasonable treatment is not, of itself, sufficient as a basis for an inference of discrimination so as to cause the burden of proof to shift: *Glasgow City Council v Zafar 1998 ICR 120, HL*. However, in *Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong 2005 ICR 931, CA*, Lord Justice Peter Gibson accepted that it was open to the employment tribunal on the facts of that case to draw an inference of discrimination from *unexplained* unreasonable conduct on the part of the employer.
44. There may also be support for inferences adverse to the Respondent, to be drawn where there is evidence of other discriminatory behaviour.
45. The deviation from what the Claimant had been told is the Respondent's practice and how she would be treated, potentially provides the minimum "*something more*" that may satisfy a prima facie case of unlawful discrimination and reverse the burden of proof.
46. Taking into account that discrimination cases are fact sensitive (Anyanwu case) I do not find that it can be said the claim is bound to fail ergo that it has no reasonable prospect of success. I am also not satisfied that it can be said at this stage that it has little reasonable prospect of success.
47. The facts including any explanation put forward by the Respondent should be properly tested and the evidence fully ventilated at a final hearing.
48. In those circumstances the application for an order striking out the claim or for a deposit order is refused.

**Allegation 2: the Grievance was not upheld even though the Respondent had found there to be failings and the outcome did not result in the offer of a job or any other resolution. The decision was that the failings were 'mistakes' that could be addressed with training.**

49. The Claimant does not identify an actual comparator because she says she was the first person who challenged the process but complains that despite findings that there had been failings in terms of how she was treated, her grievance was not upheld and there was no resolution offered to her e.g. the offer of a role or other resolution.
50. It cannot be said taking the claim at its highest, that a claim that the Respondent did not deal with her grievance fairly in terms of the outcome is bound to fail or that there is little reasonable prospect of success, taking into account the wider circumstances, namely the failure to follow through on the assurance that she would be given priority over external candidates.
51. There are crucial factual disputes which should be properly tested. No evidence was put forward by the Respondent which gave compelling reasons not to accept the Claimant's account of events at this stage.
52. The applications under Rules 37 and 39 are refused.

**Allegation 3: In terms of the BOC Post;**

**3.1 She was not told by a Manager, Nicola Jones that the interview was an interview, she was told it would be only a 'chat'**

**3.2 An external candidate was interviewed before a decision was made about whether**



**the Claimant should be offered the job**

**3.3. She was not offered the job**

53. The Claimant does not identify an actual comparator in terms of the information she was given about the interview however the person who was offered the job was male. He was external but treated as an internal candidate because he worked for a partner organisation.
54. Taking the Claimant's case at its highest, in terms of complaint 3.1, her case is that she was not told that there would be an interview, only that it was an informal chat but when she arrived she was then told it was both a chat and an interview for the BOC Post. That alleged failure to explain that it was an actual interview requires explanation from the Respondent. I consider that being given incorrect information by a person conducting an interview which was not rectified before the interview started in sufficient time to enable the candidate to properly prepare, is likely to be sufficient to reverse the burden of proof at stage 1, particularly when taking into account the surrounding circumstances (namely the failure to prioritise her during the selection process despite the assurances to the contrary).
55. The merits of the complaint about not being offered the job, should be considered further once the Respondent has confirmed the race/ethnicity of the successful candidate. Miss Stephenson did not seek to dispute that the successful candidate was male and was not in a position to say that the candidate's ethnicity was the same as the Claimant's.
56. In the circumstances in my judgment these are not claims which have no or little reasonable prospect of success in terms of the establishing a prima facie case of discrimination.
57. The applications for an order to strike out the claims or for a deposit order are refused.

**Allegation 4. 16 February 2020 the Respondent expressed disappointment in the Claimant via email for not accepting a lower level post.**

58. In the terms of the allegation around the expression of disappointment in the Claimant for not accepting the TLECD Post, taking the Claimant's case at its highest, her case is that she refused to accept the trial period because it was offered to her at a salary lower than the one advertised.
59. Her case is that this job was advertised at a higher salary and she had the relevant skills and experience for that role and that to express disappointment that she was not willing to accept a lower salary, was less favourable treatment. This also needs to be seen in the context of the wider allegations of how she was treated during the redeployment process.
60. The applications for an order to strike out the claims or for a deposit order are refused.

**Allegation 5: In connection with the interview on 16 December 2022 for the TLECD Post, she that complains it was advertised to external candidates before the Claimant was interviewed on 20 January 2022 and she was not offered the Post.**

61. For the same reasons as set out above in connection with the BOC Post, in light of the assurance over how she would be treated in the redeployment process and the failure to do so and the surrounding circumstances about how she was treated during the interview process, I am not persuaded to strike out the claim or make a deposit order at this stage.
62. The Respondent does not assert that the successful candidate was of the same gender or

ethnicity of the Claimant .

**Allegation 6: 16 December 2021 she expressed an interest in the TLECD Post but when she informed Jill Stephenson, Service Manager that she was interested in applying for the position Ms Stephenson commented, “There will be quite a lot of interest in this post, it will be very competitive”. This comment was made before the post was advertised externally and she complains that this comment was said on the grounds of her sex/race.**

63. Taking the above allegations together, her evidence is that she was assured that she would not have to compete in the redeployment process with external candidates, that there was a failure to follow through on what she was told and discouraging comments were made about the competition for the roles, potentially provides the minimum “*something more*” that may satisfy a prima facie case of unlawful discrimination and reverse the burden of proof at stage 1.
64. Taking into account that discrimination cases are fact sensitive (*Anyanwu*) I do not find that it can be said the claim is bound to fail or on the evidence provided by the Respondent at this hearing, that it has little reasonable prospect of success.
65. **The application under rule 37 and 39 is refused in relation to the direct discrimination complaints.**
66. In respect of all the above claims of direct discrimination, other than alleging in its written application in general terms that the Claimant cannot show a nexus between the alleged less favourable treatment and her protected characteristic, the Respondent has not today produced any evidence in rebuttal of her case and has not in written or oral submission engaged specifically with the applicable legal tests in respect of each allegation in terms of why the Claimant cannot on the claim as pleaded, establish a prima facie case particularly in light of the possible inferences to be drawn for the series of alleged acts relating to the redeployment/recruitment process.

### **Victimisation**

#### **Allegation 1:**

**Allegation 1.1 failure to acknowledge negative impact of raising the complaints and application of the process and procedures; and**

**Allegation 1:2 not offered jobs because she was seen then as a trouble maker**

**Allegation 1.1 failure to acknowledge negative impact of raising the complaints and application of the process and procedures; and**

67. The complaint that there was a failure to acknowledge the negative impact of her raising the complaints and the application of the policies, remained unclear even after taking time with the Claimant to understand it . The Claimant was unable to explain exactly what the failure was and what an ‘acknowledgement’ would look like (other than prioritising her in terms of alternative roles).

68. She also alleges that this treatment was a result of not only of the protected act in 2020 but protected acts in 2021 but with regards to the protected acts in 2021, the Claimant has still failed to identify what was contained within either the grievance or the emails which would satisfy the requisite requirements of Section 27 of the Equality Act 2010, despite the specific instruction by Employment Judge Blackwell to address this in her further and better particulars.
69. Given the vagueness with regards to this specific allegation despite spending a significant amount of time trying to clarify the claims with the Claimant today, including what actually the detriment is, and the failure to identify the protected acts, in my judgment this complaint has no reasonable prospect of success even taking her claim at its highest as it is now put and this claim is therefore struck out.
70. **The application for an order striking out the claim is granted.**

**Allegation 1:2 not offered jobs because she was seen then as a trouble maker**

71. In terms of the complaints that she was not offered the BCO or TLECD roles, the Claimant asserts that she had the requisite skills for these jobs. Taking her claim at its highest, her case is that she had been asked questions about her 'loyalty' during the interview for the BOC role on 22 December 2021. Inferences may be drawn from such a question, not least given the surrounding allegations about how she was treated in respect of the redeployment/recruitment process. A question about loyalty following on from an alleged protected act may provide the "something more" in terms of establishing a causal connection between the treatment and the protected acts she relies upon, taking into consideration the wider circumstances.
72. That said, the Claimant has still failed to explain on what grounds she says she made protected acts.
73. The interview for the BOC post (where this 'loyalty' comment was made), took place on **22 December 2021** which was after she allegedly sent an email on that same date which she relies upon as a protected act. She has still not however set out what was stated in that email of 22 December 2022 which meets the requirements of section 27 (2) EqA.
74. Further, while she seeks to rely on a number of emails and the grievance, this 'loyalty' comment was made before the other 'protected act' emails and before the formal grievance that she raised on 11 January 2022.
75. Taking the Claimant's case at its highest at this stage, namely that she had the skills and experience required for both posts and was given assurances that she would be given priority in the recruitment process alongside the question about 'loyalty' at the 22 December 2021 interview, there is sufficient merit in the claim to persuade me not to make an order under rule 37.
76. The Claimant said she had the 'protected act' emails and grievance with her during the hearing and could with time provide the details. She had not provided copies to the Tribunal. Whether the claims have sufficient merit can be revisited if and once this further information is provided.
77. Given the continuing failure to address why it is alleged the grievance and emails relied upon

amount to protected acts however, an Unless Order will be made giving her one last chance to set this out or her victimisation claims will be struck out.

78. **The application for an order striking out the claim is refused but an Unless Order is made**

**Allegation 2: failure to rectify the processes in and polices around redundancy (detriment)**

79. In terms of the complaint that it was an act of victimisation not to rectify the Organisational Change Policy (OCP) when the Respondent accepted that it was vague and train their managers before her employment terminated, the complaint relates to a very short space of time given that she was not told about the outcome of the grievance until 5 days before her employment ended.

80. I consider that this complaint has no reasonable prospect of success in the context of rectification of the OCP as a whole which is how she puts her case, rather than addressing any specific unfairness in the application of it to the Claimant. Her complaint about a failure to uphold her grievance about how the policy was applied in her case is addressed as part of her direct discrimination claim. Her complaint as she described it is, that as an Asian female the vagueness of the policy permits Managers to interpret it differently, which can and in her case did, give rise to bias, rather than a deliberate decision because of her alleged protected acts to not make the wording more prescriptive. She also failed to explain what it was precisely about the wording of the OCP which was problematic and gave rise to a detriment.

81. The complaint that the failure to rectify the policy and procedures generally as an act of victimisation because of the protected acts (not sufficiently identified) has no reasonable prospect of success and that particular complaint is struck out.

82. **The application for an order striking out the claim is granted.**

**Allegation 3: not giving outcome of grievance until 5 days after employment ended (detriment)**

83. The complaint is that the grievance was predetermined and that this is evidenced by the fact that she had been served notice of termination before the actual outcome was communicated to her.

84. The timing of the decision to serve her notice of the termination of her employment rather than wait until after the outcome of her grievance (the grievance being linked to the circumstances around the termination of her employment), may be sufficient to reverse the burden of proof taking into account inferences which may be drawn from the wider circumstances (namely her treatment around redeployment/alternative employment).

85. I do not consider that at this stage it can be said that the claim has no or little reasonable prospect of success and thus no order is made under rule 37 or 39.

86. The failure to provide sufficient details of the protected acts will dealt with by way of an

Unless Order.

87. **The application for an order striking out the claim is refused**

**Allegations 4: failure to offer an appeal against dismissal**

88. The Claimant complains that she was told she could Appeal and then she was told that she could not and there was no right of appeal.
89. If it is correct that she was told that she could Appeal and that right was withdrawn, this will require explanation from the Respondent. The Claimant case is she was not shown the applicable policy document.
90. At this stage, I am not persuaded that taking the claim at its highest, it has no or little reasonable prospects of success. That she was told that she could appeal and then told she could not, may be sufficient to draw an inference adverse to the Respondent taking into consideration the wider circumstances from which inferences may be drawn.

91. **The application for an order striking out the claim is refused**

**Indirect Discrimination**

**Allegation 1: The PCP of there being no appeal against dismissal for redundancy**

92. The Claimant alleges that although she was told she could appeal the decision to terminate her employment, she was then told that the manager was misinformed and the policy which did not allow for appeals. The Claimant does not know whether or not such a policy exists but she complains that if there is a policy which states that there is no right of appeal, this is indirect discrimination.
93. The amended response to the claim provides that (paragraph 24) the Claimant submitted on appeal against her redundancy by letter dated 18 February 2022 but failed to identify a ground of appeal capable of progression under the Organisational Change Policy OCP. It does not state that the OCP or any other applicable policy does not allow for appeals and Mss Stevenson did not appear familiar with the Respondent's policies and no copy of them had been disclosed for the purposes of this hearing.
94. However, despite the Order of Employment Judge Blackwell on 11 August 2022 that the Claimant identify the particular disadvantage and explain how the PCP would put persons in the same racial or gender group as the Claimant at that particular disadvantage compared with those who do not share those protected characteristics, she has still failed to do so and during this hearing remains unable to explain how she puts that part of her case
95. I accept that she considers that such a policy (if it exists) put her at the disadvantage of not being able to challenge the termination by way of an Appeal (although she said that perhaps she did challenge it by way of a grievance but she had difficulty recalling whether she had or not), the Claimant has still not explained how she puts her section 19 claim in terms of group disadvantage.
96. The claim I find has no reasonable prospect of success, the Claimant has been given a reasonable opportunity to provide further particulars and even today to clarify her claim, but

is unable to identify how it fits within the legal framework of a section 19 claim.

**97. This claim has no reasonable prospect of success and is struck out under Rule 37.**

**Allegation 2: PCP of having no risk assessment or mentoring systems in place to safeguard against discrimination during the redeployment process when someone is at risk of redundancy**

98. The Claimant is complaining of a practice of not having systems in place to prevent discrimination however if the particular disadvantage (which she did not set out in these terms), was that she was as a consequence subject to discrimination based on her gender or race, she has not identified how that PCP would put women and persons in the same racial group as the Claimant at that particular disadvantage compared with those who do not share those protected characteristics.

99. The Claimant has been given a reasonable opportunity to provide further particulars and even today, to clarify her claim, but is unable to identify how it fits within the legal framework of a section 19 claim. Her situation she asserts was unique, there was no pool of others, if there was a pool of other candidates, she does not seem to be asserting that some would be subject to a different policy or different treatment than others within that same pool.

100. **This claim has no reasonable prospect of success and is struck out under Rule 37.**

**Allegation 3: PCP of not having a clear policies, procedures and management practices underpinned by the OCP policy in place such that Managers and HR then interpret them, leaving the policy open to unconscious basis.**

101. Taking the above two allegations together, the Claimant is alleging that the Respondent had a practice of not having clear policies. The Claimant was still not able during today's hearing to clarify how this as clarified her claim today, how that PCP would put women and persons in the same racial group as the Claimant at that disadvantage compared with those who do not share such protected characteristics. She does not positively assert that it has or would have such a disadvantage but rather that it presents as no higher than a risk. Her claim remains vague and ill defined.

102. **This claim has no reasonable prospect of success and is struck out under Rule 37.**

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Employment Judge Broughton

Date: 15 May 2023

**Note**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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