EMPLOYMENT TRIBUNALS

Claimant: Ms Monica Dettori

Respondent: KBox Global Ltd

Heard at: Croydon (by video (CVP)

On: 23 May 2023

Before: Employment Judge Leith

Representation
Claimant: Mr Pettifer (Solicitor)
Respondent: Ms Ashiru (Counsel)

JUDGMENT

1. The allegation that the claimant did a protected act by her email of 15 October 2021 has no reasonable prospect of success and is struck out.

2. The allegations that the claimant made a protected disclosure by:

    a. her email of 14 October 2021;
    b. her email of 15 October 2021; and
    c. her solicitor's letter of 19 November 2021

    has little reasonable prospect of success and shall be the subject of a (separate) deposit order. The application to strike out that part of the claim is dismissed.

REASONS

1. This is my decision on the respondent's application for a strike out or a deposit order in respect of two specific aspects of the Claimant's claim.

2. The Claimant claims direct race discrimination, harassment on grounds of race, victimisation, protected disclosure detriment and automatically unfair dismissal. Employment Judge Dyal conducted a Preliminary Hearing on 23 January 2023. He clarified the issues in the claim, which were set out in a List of Issues annexed his Case Management Order. He then listed the

matter for a Preliminary Hearing to consider to consider the Respondent's application for a strike out or a deposit order in respect of part of the claim. He provided for the Claimant's to prepare a witness statement for today's hearing, although there was to be no cross-examination.

3. The application relates to the following aspects of the Claimant's claim:

    a. The first putative protected act relied upon in respect of the victimisation claim (3.1.1 on the List of Issues)
    b. The three putative protected disclosures relied upon (4.1.1, 4.1.2 and 4.1.3 on the List of Issues)

4. In advance of this Preliminary Hearing, Mr Pettifer sought an amendment to the list of issues to add specific reference to an allegation that the protected disclosures alleged a breach of contracts of employment. Both parties agreed that I could deal with the Respondent's application without considering the impact of that amendment, given that I would be required in any event to take the Claimant's case at its highest.

5. Prior to the Preliminary Hearing, Mr Pettifer indicated that the Claimant had some issues with the Respondent's disclosure. He indicated that it was not necessary to deal with the point before considering the Respondent's applications.

6. I had before me a bundle of 198 pages, including the Claimant's witness statement. I also had the benefits of helpful skeleton arguments from Ms Ashiru and Mr Pettifer, and oral submissions from both.

7. Having taken some time to deliberate, I delivered my decision on the respondent's application orally. In the course of doing so, Ms Ashiru very properly drew to my attention an error in my oral decision regarding the first protected disclosure. I deliberated for a short further period before clarifying the relevant part of my decision and continuing to deliver the remainder of my decision. At the conclusion of the hearing Mr Pettifer made an oral request for written reasons, which I now provide.

Law

8. Rule 37 of the Employment Tribunal Rules of Procedure 2013 deals with application to strike out. It provides as follows:

> 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;
>
> (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;

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

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(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."

9. Strike out is a draconian step that should be taken only in exceptional case. In the case of *Anyanwu v South Bank Student Union* [2001] ICR 391, the House of Lords indicated that discrimination claims ought only to be struck out in the most obvious of cases, as they are generally fact-sensitive and require a full examination to make a proper determination. Lord Steyn said this:

> "For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of process except in the most obvious and plainest cases. Discrimination cases are generally fact sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of the claim being examined on the merits or de-merits of its particular facts is a matter of high public interest."

10. The Court of Appeal held, in the case of *Ezsias v North Glamorgan NHS Trust* [2007] ICR 1126, that the same approach should apply in protected disclosure cases.

11. In considering whether a claim has no reasonable prospect of success, the Tribunal must consider whether there is a "more than fanciful" prospect of the claim succeeding (*A v B and another* [2011] ICR D9).

12. The Claimant's case must be taken at its highest. It is not appropriate for the Tribunal to carry out an impromptu mini trial of the facts before considering striking out (*Mechkarov v Citibank NA* UKEAT/0041/16).

13. The EAT held, in *HM Prison Service v. Dolby* [2003] IRLR 694 EAT, that the striking out process requires a two-stage test. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim, order it to be amended or order a deposit to be paid. *Dolby* was decided under a previous version of the Employment Tribunal Rules, but the important part of the wording of the relevant rule was the same, in that it provided that the Tribunal <u>may</u> strike the claim out.

14. Applications for a deposit order are governed by Rule 39 Employment Tribunal Rules of Procedure 2013 which provides as follows:

> 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.
>
> (5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—
>
> > (a)the paying party shall be treated as having acted unreasonably in 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 such other party or 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."

15. The purpose of a deposit order is to week out claims which are unlikely to succeed but do not meet the strike out criteria, and to give a clear warning that costs may be payable if a claim succeeds (*Hemdan v Ishmail and anor* 2017 ICR 486). The Tribunal retains a discretion even where the test in rule 39 is met.

16. In considering whether to strike out or make order a deposit, the Tribunal must bear in mind the overriding objective, in rule 2 of the ET Rules:

"The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing;

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues;

and

(e) saving expense."

Protected disclosure

17. A protected disclosure is defined in section 43A of the Employment Rights Act 1996 as a qualifying disclosure (as defined in s.43B) which is made by a worker in accordance with any of sections 43C to 43H.

18. Section 43B provides as follows:

43B Disclosures qualifying for protection.

(1) In this Part a " qualifying disclosure " means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,
(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
(d) that the health or safety of any individual has been, is being or is likely to be endangered,
(e) that the environment has been, is being or is likely to be damaged, or
(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.
(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.
(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

19. The worker must have a reasonable believe that the information disclosed tends to show that a relevant failure has occurred, is occurring, or is likely to occur. The test contains both a subjective and an objective limb. The worker must subjectively believe that the information disclosed tends to show one of the relevant failures, and that belief must be objectively reasonable (*Phoenix House Ltd v Stockman* [2017] ICR 84 EAT). The worker's individual circumstances are to be taken into account, but an objective standard is applied (*Korashi v Abertawe Bro Morgannwg University Local Health Board* [2012] IRLR 4 EAT).

20. For the purposes of s.43B, "legal obligation" is broadly drawn (*Parkins v Sodexho* [2002] IRLR 109*)*. It can cover legislative obligations, but also those imposed under the common law, as well as contractual obligations. It does not, however, cover a breach of guidance or best practice, or something that is considered merely morally wrong (*Eiger Securities LLP v Korshunova* [2016] UKEAT 0149_16_0212).

21. The worker must also reasonably believe that the disclosure is in the public interest. The term "public" can refer to a subset of the general public, even one composed solely of employees of the same employer. In order to be in the public interest, a disclosure does not need to serve the interests of person outside the workplace. Even where a disclosure is personal in character, there may be features of the case that make it reasonable to regard disclosure as being in the public interest (*Chesterton Global Ltd v Nurmohammed* [2017] EWCA Civ 979). The Court of Appeal in *Nurmohammed* set out four factors which are of assistance to Tribunals in considering the public interest test:

    a. the numbers in the group whose interests the disclosure served
    b. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
    c. the nature of the wrongdoing disclosed, and
    d. the identity of the alleged wrongdoer.

Victimisation

22. Section 27 of the Equality Act 2010 provides as follows:

> 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.
> (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
> (4) This section applies only where the person subjected to a detriment is an individual.
> (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

23. For the purposes of section 27(2)(d), it is of course not necessary that a complaint expressly mentions the Equality Act 2010. However merely making reference to a criticism, grievance or complaint without suggesting that it was in some sense an allegation of discrimination or otherwise a contravention of the Act is not sufficient (*Beneviste v Kingston University* EAT 0393/05).

Discussion

24. The context in which the various disclosures in question arose are as follows. In reciting the context I make it clear that I am making no findings of fact and am taking the Claimant's case at its highest. I have had regard to all of the documentary evidence put before me.

25. The Claimant was employed by the Respondent from 14 September 2021 until her dismissal on 21 October 2021. She was employed as HR Business Partner. In effect, she was the head of the Respondent's HR function. The Claimant is an Associate of the CIPD and has held a CIPD Level 7 award in employment law since 2016.

26. The Respondent is a start-up company which operates a portfolio of "delivery-first" food brands and delivers technology across commercial kitchens. The Claimant's case, which for the purposes of this hearing I accept, is that the Respondent relied on venture capital from funds with a

strong commitment to ethical values and ethical decision-making, and that consequently (and as a result of media scrutiny of the way in which the food delivery industry operates), it would be particularly important for the Respondent to follow ethical practices in the way it dealt with its staff.

27. Early in her employment, the Claimant was asked to advise on a situation which arose in the Respondent's marketing department. A function was to be outsourced (although for completeness, there was no suggestion that the TUPE Regulations would be engaged). Discussions were held internally regarding making two members of staff redundant. The two members of staff affected had less than two years service. The Claimant advised on a process of consultation to be undertaken.

28. On 21 September 2021, the Claimant advised (by email) that the process she advocated following was based on best-practice, to mitigate business risks and ensure fair treatment of the employees affected. She noted in her email that the employees did not have 2 years service, and that therefore the Respondent's only legal obligations towards them were tied to contractual notice and accrued holidays, plus time off to find suitable employment.

29. On 13 October 2021, one of the Respondent's directors, Mr Velani, emailed the Claimant asking her to inform the individuals that they were being served notice on Friday 13th October, as due to business priorities there was a need to outsource their tasks. The reference to Friday 13th October was apparently a typo, as 13 October 2021 was a Wednesday. Significantly, the impact of Mr Velani's email was that there would no longer be a period of consultation with the affected employees.

30. The Claimant responded at 8.58 the following morning, as follows:

> Hi Karim
>
> Thank you for your email.
>
> I have invested several hours with Nic and his Team to discuss the situation within Marketing on the basis of the reshuffling that is occurring as a result of outsourcing some activities.
>
> We had agreed that they would have consultation with the affected employees to follow a consistent process internally.
>
> I now receive this email when I am asked to action this from my end. Can you please clarify the change.
>
> The 13th of October was yesterday. Please clarify the exact date when you wish for the notice to be served.

31. Mr Velani responded at 9.13 that morning, in the following terms:

> Hi Monica
>
> I originally left Nic left out of the chain as he is withdrawing from executive management tasks. I have done so again.
>
> Apologies it should be Friday October 15.
>
> I wasn't involved in the discussion so I obviously couldn't advise at the time. There is no change to internal consistency and Abdallah will be present to offer a gentle explanation. We are a rapidly evolving business (by definition) and business priorities have changed. I would like to keep the process streamlined and straightforward as described below. My (our) duty is to ensure the most equitable and sustainable long-term outcome for the business as a whole. Please proceed as per my note.
>
> Best wishes
>
> Karim

32. At 11.57 that morning, the Claimant emailed Mr Velani as follows (this email is the first protected disclosure relied upon by the Claimant):

> Hi both,
>
> I feel obliged to address this email to you both and for objective reasons.
>
> As somebody who'd been working in the people field for over 14 years now, I always bridged between the business and the people's needs by striking the right balance to ensure that engagement and performance are maintained over time whilst delivering as agreed.
>
> I am experiencing a high level of fragmentation internally in terms of communication and "marching orders" to act in a manner that contradicts what I agreed with you based on different workstreams.
>
> During my interview with Salima specifically, I asked the question about what she would envision in a year from now; her response was "To become an Employer of Choice".
>
> I trust you both appreciate the impact that a decision like the one I have been asked to action by Karim today will have on the Marketing Team and the organisation at large from a people engagement, performance and brand perspective.
>
> In a competitive World like the Start-Up World is, reputation is everything.

> Agility can go hand in hand with humanity and I know this to be true for many companies, including Start-Ups, where people are the driving force behind a company's growth and success.
>
> You can of course take my advice on board or not despite the fact that it is a reflection of what was agreed at the very outset.
>
> Something seems to have gone lost in translation along the way, and I would be grateful if you could offer clarity so that we can all work in synergy.
>
> Thanks in advance for your time.

33. Mr Velani sent the Claimant a detailed response at 19:20 that evening. He indicated in that email that the two members of staff should be informed that they were being given notice for performance reasons, in that their performance had not been on the standard expected.

34. The Claimant responded at 8.48 the following morning, as follows (this email is the second protected disclosure relied upon by the Claimant, and the first protected act):

> Hi Karim,
>
> Many thanks for your time on my email.
>
> I am very saddened by the treatment I have been afforded including the exclusion from Management Team meetings and by your words which do not reflect the objective content of my email.
>
> I do not offer views or opinions which are subject to bias. When I speak, I do so mindfully and with evidence at hand.
>
> My email is an account of all internal communications I had with the Marketing Team about the situation, and of my expertise in managing such situations in a way that mitigates risk for the Company and it is fair and aligns with best-practice principles which you will be called upon to justify if any of the affected employees bring a claim against your company.
>
> Of course, your lawyers are simply interested in the commercial aspect of the transaction and the hefty fees they will earn should you need to defend an Employment Tribunal claim.
>
> There is no reference in my email to any of your managers, so it is not clear to me as to where your comments about your managers come from.

> I have a CIPD Master Level 7 in Employment Law which makes me rather knowledgeable about UK Employment Law, something that even your Lawyers have appreciated. I know exactly what advice I can and cannot offer based on a case by case scenario.
>
> As for the situation that you asked me to handle, I take note of the fact that your position has changed again.
>
> In your email of yesterday, you asked me to serve a notice to the employees so that they can work through it whilst you have today asked to actually inform them that their contract is being terminated immediately on the basis of under performance despite the fact that one of them has been with your Company for over a year whilst the other has passed the probation and has been with the organisation for months to now.
>
> As you can appreciate, this is a major change from yesterday to today, and I have not yet spoken with Abd about it.

35. On 21 October 2021, the claimant's employment was terminated.

36. Subsequently, on 19 November 2021 her solicitor wrote to the respondent. The letter was lengthy. I do not set it out in full here. It recited passages from the various correspondence, with commentary, and asserted that the claimant's emails contained protected disclosures.

Victimisation

37. I am only concerned with the first alleged protected act, which was said to be by an email of 15 October 2021. Specifically, the part of that email on which the claimant relies says this:

> "I am very saddened by the treatment I have been afforded including the exclusion from Management Team meetings and by your words which do not reflect the objective content of my email"

38. Mr Pettifer realistically accepted that the disclosure did not refer to any previous correspondence that identified the allegation as being one of discrimination or identified that the claimant was being treated in the way that she was because of a protected characteristic.

39. Of course the wording of s.27(2)(d) does not require an express allegation that the Equality Act 2010 has been contravened. But there must be in some sense an allegation of discrimination – merely making a complaint without suggesting that the reason for the complaint was an allegation of discrimination is not sufficient.

40. I am therefore satisfied, even bearing in mind the high hurdle for striking out claims, that there is no reasonable prospect that the claimant would

succeed in establishing at final hearing that the email of 15 October 2021 was a protected act as set out in para 3.1.1 of the List of Issues.

41. I have considered whether it is appropriate to exercise my discretion to strike the allegation out. I conclude that it is. I therefore strike out that paragraph.

Protected disclosures

42. Mr Pettifer indicated that the claimant's case regarding whether the solicitor's letter constituted a protected disclosure stood or fell with the first two disclosures. That is, if neither of the first two disclosures were protected, then it would follow that the third would not be either. I have therefore focussed on the first two disclosures.

43. The claimant's case regarding the first two disclosures is described in the list of issues as follows:

    a. that it tended to show that the Respondent had failed, was failing or was likely to fail to comply with a legal obligation to which it was subject, by the dismissal or the manner of dismissal of staff in the marketing team contrary to part X of the ERA, s.207A TULR(C)A and the Equality Act 2010.

44. In addition, I bear in mind that the reference the claimant sought to add to a breach of contract, which Mr Pettifer explained in submissions was a reference to the duty of mutual trust and confidence.

45. In respect of a claim under part X of the Employment Rights Act 1996, that is a reference to a claim of unfair dismissal. It is trite to say that such a claim requires two years' continuous service, save in certain specific circumstances. There is no suggestion that any of those circumstances was engaged. It is apparent from the contemporaneous email correspondence that the claimant was aware that Part X would not be engaged. She specifically referred to the employees having less than two years' service, and to the consultation process she advocated being based on best practice. The claimant is an experienced HR professional, with a masters-level qualification in employment law.

46. The reference to section 207A TULR(C)A in the list of issues is to the power of the Tribunal to make an adjustment to the award payable to a successful claimant where there has been a failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. Even if it was engaged on the facts, the section does not give rise to any freestanding legal obligation. The point was not developed further in the claimant's witness statement or in Mr Pettifer's submissions. There is of course no reference to the ACAS Code of Practice in either of the claimant's emails.

47. In respect of the Equality Act 2010, the claimant's evidence in her witness statement was that there was no evidence that either of the two employees being dismissed were being selected because they were female. The high-point of the claimant's evidence in that regard was that if the respondent was lying to the employees about the reason for dismissal, the reversing burden of proof in section 136 of the Equality Act 2010 would be engaged which could lead to the respondent losing such a claim.

48. Mr Pettifer's submission was that what the claimant was drawing to Mr Velani's attention was that the reason for the dismissal was changing (from redundancy, with a consultation process being followed, to outsourcing, to performance concerns). His submission was that that necessarily meant that one of the potential reasons advanced had to be a lie. That lie, in Mr Pettifer's submission, would necessarily breach the implied duty of mutual trust and confidence. I am not sure that the position regarding the reason for dismissal can be that black and white. It is not unusual for there to be more than one reason for an employee's employment to be terminated. Furthermore, I cannot see many circumstances where the reason given for dismissal could amount to a freestanding breach the implied duty of mutual trust and confidence, given that that duty would be extinguished by the dismissal.

49. Of course what the claimant must show, in order for there to be a qualifying disclosure, is not merely that she believed (at the time) that there *was* a breach of a legal obligation. She must show that she reasonably believed that the information she disclosed tended to *show* that there was one. What I must decide is whether there is any reasonable prospect of the Tribunal finding that that was the case.

50. I am not satisfied that it can be said that there is no reasonable prospect the claimant will succeed in that. I am, however, satisfied that there is little reasonable prospect she will succeed. I reach that conclusion for the following reasons:

    a. Neither of the first two disclosures refers in terms to a breach of any legal obligation. Mr Pettifer submitted that employees who seek to blow the whistle often do so obliquely, to avoid the risk of repercussions. I see the force in that submission, and I have been careful to take the claimant's position at its very highest. But I can only consider what the claimant actually disclosed – in order to qualify for protection, a disclosure must be made, not merely contemplated.
    b. What was in the claimant's mind at the relevant time is nonetheless relevant to what she could potentially have disclosed (in that she could not believe she was disclosing information which tended to show a breach of a legal obligation if she knew there was no such breach). For the reasons I have set out above, I can see no reasonable prospect that a Tribunal would conclude that the Claimant reasonably believed there was a potential breach of Part X of the ERA 1996 or (by extension) s.207A of the TULRCA 1992. That

is simply inconsistent with the claimant's own contemporaneous emails, as well as her knowledge and experience of employment law.

c. The claimant's own witness statement suggests she did not believe there was a potential breach of the Equality Act 2010. Again, if she did not believe there was such a breach then she cannot have believed that what she communicated tended to show such a breach.
d. Read as a whole, in my judgment the most that the claimant appears to be referring to within the emails is the risk that the dismissed employees may bring a claim against the respondent (which of course is not the same thing as suggesting a breach of a legal obligation).
e. At its absolute highest, I consider that there a small chance that the claimant may succeed in the allegation that she both reasonably believed, and believed that she had communicated to the respondent, that:
    i. there was some duty towards the affected employees which could be breached by the process or reason given for dismissal (notwithstanding their short service); and
    ii. which, by changing their position regarding consultation and then regarding the reason for dismissal, the respondent was going to breach.

51. I have also considered the public interest test, as the respondent's case was that the test for a strike out was also met in that regard. Again, the question is whether the claimant reasonably believed what she was disclosing was in the public interest.

52. The claimant referred in her disclosures to the impact of the process being followed on the wider team, and to the reputational risks for the respondent. Taking her case at its highest, I accept that those were points which were in her mind at the point of the disclosure, and that they could go the question of the public interest.

53. There is in my judgment a factual dispute over the extent to which the claimant reasonably believed the disclosures were in the public interest, with regard the four limbs in *Nurmohammed*. That is a dispute which would turn on the Claimant's evidence. As such, I do not consider that the test for a strike out is met in respect of the public interest test (and nor would I have considered the test for a deposit order was met on that basis).

54. EJ Dyal's order indicated that the claimant's witness statement should deal with the claimant's ability to pay a deposit order if she was of limited means. In the event, the claimant's statement only contained a bare assertion that she was of limited means. It did not give any evidence regarding her means (although Mr Pettifer confirmed in submissions that she has not yet found another job).

55. Having concluded that the test for a deposit order is met, I have considered whether, in all of the circumstances, it is appropriate to make such an order. I am satisfied that it is. The purpose of such an order is to mark out weak

claims. I have concluded that the allegations in question are weak. It is in my judgment appropriate in the circumstances that the Tribunal should mark that by way of a deposit order, and that the respondent should have the protection that comes from such an order.

56. Because of the way the three alleged disclosures are interlinked, I do not consider it would be appropriate to make a separate order in respect of each. I make a single deposit order in the sum of £500 as a condition of continuing to assert that the claimant made the three protected disclosures (which are of course the only alleged protected disclosures she relied upon). I am satisfied that that sum adequately reflects the weakness of the allegations, without (on the information before me) serving as a barrier to access to justice.

Employment Judge Leith
Date: 29 May 2023