EMPLOYMENT TRIBUNALS

Claimant: Ms I Cetin

First Respondent: Mr D E
Second Respondent: Mr B C
Third Respondent: A Limited

Heard at: Watford (in person; in public)

On: 17 April 2023

Before: Employment Judge Quill (sitting alone)

Appearances
For the claimant: In Person
For the respondents: Mr DE, for all the respondents

JUDGMENT

Judgment and reasons were given orally on 17 April 2023, and judgment was sent. Written reasons were requested, and these are they.

REASONS

1. This was an in person hearing. I had a bundle of 288 pages from the Claimant and 109 pages from the Respondent. I have also taken account of the documents on the tribunal file, including the notice of hearing, and the correspondence about the orders made in relation to Rule 50.

Relevant Law

2. Strike out is covered by rule 37 of the of the Employment Tribunals Rules of Procedure.

> 37.— Striking out
> (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. It is well established that striking out a claim is a draconian step. The consequence of strike out is that the claim is struck out without being considered on the merits; therefore, strike out should only be ordered in clear cut cases.

4. When there are allegations of breach of the Equality Act, or breach of whistleblowing protection, it is particularly important that the tribunal should be slow to strike out claims without consideration of the merits. That is a principle made clear by Anyanwu & Another v South Bank University and South Bank Student Union[2001] ICR 391, for example.

5. The principles were summarised by the Court of Appeal in the case of Mechkarov v Citibank N.A [2016] ICR 1121:

   (1) Only in a clear case should a discrimination case be struck out;

   (2) Where there are core issues of fact that may require a decision to be made based on oral evidence then decisions should not be made without hearing oral evidence

   (3) A strike out hearing should not turn into a mini trial of disputed facts (and oral evidence about disputed facts is not usually appropriate at a strike out hearing).

   (4) On the contrary, the claimant's case should be taken at its highest.

   (5) It is only if the claimant's case is conclusively disproved or is totally and inexplicably inconsistent with undisputed contemporaneous documents that the strike out decision should be made on the basis that the Claimant has no reasonable prospect of proving the disputed primary facts.

6. The time and resources of Employment Tribunals are not to be taken up by hearing evidence in cases that are bound to fail. Strike out provisions exist for a reason, and the principles which establish that there is a high bar before a strike out decision is made do not imply that strike out can never be appropriate in a discrimination or whistleblowing case.

7. In any case in which a party is not legally, it is important for the judge - before deciding any strike out - to take the time and effort to make sure that they

have clearly understood the claim and that the claimant has had a chance to explain it properly.

8. That does not only require asking the claimant questions about the claim (although that is part of it). It requires the judge to spend time looking at all of the background material that is available.

9. It is important to pay attention to the provisions of the Equal Treatment Bench Book and bear in mind that litigants in person potentially may make errors that a lawyer would not make in the way that they set out the claim. They might not identify correctly for example legal principles, but the judge should try to understand what legal principles underlie the allegations that are being made. As was summarised in Cox v Adecco,

   (1) No-one gains by truly hopeless cases being pursued to a hearing;

   (2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate

   (3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;

   (4) The Claimant's case must ordinarily be taken at its highest;

   (5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;

   (6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;

   (7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;

   (8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;

(9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

10. As summarised in Virgin Atlantic v Zodiac Seats [2013] UKSC 46, res judicata is a term which is used to describe a number of different legal principles with different origins. This includes:

> 2.1 Once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is "cause of action estoppel". It prevents a party challenging the same cause of action in subsequent proceedings.
>
> ……
>
> 2.4 Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties. This is sometimes referred to as "issue estoppel".
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> 2.5 Fifth, there is the principle first formulated in Henderson v Henderson (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but which could and should have been, raised in the earlier proceedings.

11. In terms of the last of those, Henderson abuse, Virgin Atlantic quoted the earlier case of Johnson v Gore Wood which explained:

> "It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not …
>
> While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances."

12. It is not possible to comprehensively list all the possible forms of abuse, but a broad merit based approach should be taken rather than separately first

deciding the party's conduct was the type of abuse of process identified in Henderson and then separately and later deciding whether that abuse could be excused or justified by special circumstances.

13. In terms of judicial proceedings immunity, this is the principle that addresses whether a person has immunity from being sued in respect of things said or done in the course of judicial proceedings.

14. As per Lincoln v Daniels [1962] 1 QB 237:

> The absolute privilege which covers proceedings in or before a court of justice can be divided into three categories. The first category covers all matters that are done coram judice . This extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence. The second covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of the proceedings and starting with the writ or other document which institutes the proceedings. The third category is the most difficult of the three to define. It is based on the authority of Watson v M'Ewen, in which the House of Lords held that the privilege attaching to evidence which a witness gives coram judice extended to the prerecognition or proof of that evidence taken by a solicitor. It is immaterial whether the proof is or is not taken in the course of proceedings. In Beresford v White, the privilege was held to attach to what was said in the course of an interview by a solicitor with the person who might or might not be in a position to be a witness on behalf of his client in contemplated proceedings.'

15. Matters that are an integral part of the judicial process attract the judicial proceedings immunity, not just things said in open court or tribunal. An example was South London & Maudsley NHS Trust v Dathi [2008] IRLR 350, in which the immunity was applied to letters sent by one of the parties to the other during previous litigation between them.

The Current Claims

16. Turing to the facts of this particular case, the complaints which the claimant seeks to bring are complaints of harassment and/or discrimination connected to sex and harassment or, discrimination connected to race.

17. She also seeks to bring complaints of detriment because of protected disclosures, sometimes called whistleblowing detriments, and victimisation within the definition in s.27 of the Equality Act (that she had been subjected to a detriment because of protected acts).

18. She also seeks to bring a claim for breach of contract alleging an ongoing breach of the duty of trust and confidence.

19. The particular matters which were alleged to be unlawful are the same in relation to each of those legal headings, in other words it is the same alleged acts and omissions for each of them.

20. For present purposes it is not necessary for me to distinguish what is relied on as a protected disclosure - under the Employment Rights Act 1996 – from what is relied on as a protected act - under the Equality Act 2010. In general terms the things that are relied on are the same for each. They are

    a. Contact by the claimant with NSPCC in 2017.

    b. Claims that the claimant has brought against Mrs XYZ and Mr XYZ at various dates

    c. Previous proceedings brought against some of the current respondents in November 2019.

21. As an overarching summary of the complaints that the claimant is seeking to brings, she alleges that these current respondents have, both on their own accounts and also in collaboration with Mr and Mrs XYZ, been dishonest about the claimant on various occasions and in various ways and they have sought to undermine her.

22. One set of dishonesty relates to what was written on around 23 Septemebr 2018 according to page 206 of the claimant's bundle. According to that document one of the current respondents sent an email on 23 September 2018 at 16.51. The claimant only saw all of this item (with the header information included) in 2022. What she had seen previously is the item on page 204 of the bundle. It is the same communication just without the header information. The Claimant saw that version in 2018. Even without the header information, the document shows that it is from one of the current respondents (their name appears under "Best Regards") to Mrs XYZ (It says "Dear" followed by her name). Furthermore, the content of the email (being a description of particular events written in the first person, with specific personal details in the final paragraph) made clear to the Claimant in 2018 who (on the face of it, at least) authored this email.

23. Another set of allegations of dishonesty and/or of attempting to undermine the claimant, is connected to the claimant's allegations that the current respondents have assisted Mrs XYZ during litigation brought by the claimant against Mrs XYZ. That assistance (it is alleged) includes in relation to various costs applications that have been made in that litigation, and particularly, Mrs XYZ's attempts to seek reconsideration of a costs order in that litigation. The claimant found out in around November 2019 that these current respondents had been assisting Mrs XYZ with that and, in particular, the claimant alleges, they had shared information with Mrs XYZ about some family court proceedings. This caused the claimant, in around November 2019, to contact the High Court in an attempt to find out more information. In particular, according to the Claimant, she wanted to know what information, if any, about the claimant had been shared.

24. Another set of allegations of dishonesty and/or attempts to undermine the claimant is about Mrs XYZ and the current respondents contacting the police. That is alleged to have happened in 2020. At page 203 of the claimant's bundle is an email to the Claimant from a police constable, which refers to a decision - made by a sergeant - that there would be no further action on the allegation of harassment that had apparently been made against the claimant by the current respondents. That email dated 4 July 2020 says that the matter will be closed as there was insufficient evidence to prove harassment. The email is, of course, referring to the criminal offence of harassment, not to section 26 EQA. It refers to the intent requirement that the prosecution would have had to prove. It makes no comment one way or the other as to whether police believed or disbelieved that the Claimant had performed all the actions alleged by the respondents in their police complaint. Indeed, only one matter is referred to, and, for that, the police were satisfied that the Claimant was "acting on court instructions and not purposely harassing" the complainant.

25. The claimant says that in relation to the contact between the respondent and the police that there were some details that she only became aware of in around May 2022 when she read Mrs XYZ's statement prepared for an upcoming hearing in that case. That witness statement is apparently dated 20 May 2022 (pages 254 to 285 of the bundle prepared for this hearing). For the purposes of the decisions I make today, I assume that the claimant is right in her particulars of claim when she says it was sent to her on 25 May and she read it around three days later.

26. Regardless of when she read it, the claimant commenced early conciliation for this current claim less than three months after 25 May 2022. She did that on 22 August 2022 and she presented her claim less than one month after that early conciliation finished. So, to the extent (if at all) that time started to run from when this document was sent to the Claimant, the current claim appears to in time. (I am not deciding any time points as preliminary issues; merely examining them as part of the strike out decision).

27. The claimant says that until she read that statement she did not know that the current respondents had allegedly told Mrs XYZ that the police had told them, the current respondents, that the claimant was suspected by police of having visited their address. The claimant alleges that Mrs XYZ is telling the truth with that comment. In other words, she says that the current respondents did say that to Mrs XYZ. The Claimant also alleges it was a lie; she says that the police did not make any such comment to the respondents.

Previous Claim

28. The claimant's employment with the current respondents had ended in June 2017. On 12 November 2019 the claimant presented a claim against two of them (the corporate body and one of the individuals, Mr BC) and the claim form for that appears at page 84 of the claimant's bundle.

29. As per the boxes that are ticked at box 8, page 89, she claimed unfair dismissal, and in the boxes for discrimination, race and sex were both ticked. Further down the page she listed post-employment discrimination, victimisation, harassment under the Equality Act. She alleged breaches of data protection; she alleged breaches of human rights, she alleged breach of contract for failing to pay National Minimum Wage and she alleged "whistleblowing under the Public Interest Disclosure Act".

30. Her particulars of claim dated 12 November 2019 at page 99 of the bundle. Paragraph 7 refers to events of October 2018. The claimant says that following document exchange in the proceedings between her and Mrs XYZ or Mr XYZ, she received a copy of the items mentioned earlier at page 204 of the current bundle. That is a document which the claimant describes as a defamatory letter from the current respondents and which (according to the letter) also provided a copy of one of the Claimant's payslip to Mrs XYZ. In commenting on that letter the claimant alleged: that it insinuated that the claimant had reported the current respondents to social services; that it implied or insinuated that the claimant was dangerous; that it claimed that the respondents had moved to a new area because of the claimant; that the current respondents had raised issues with the claimant's performance. The claimant denies that and says that no issues with her performance had been raised ands she refers to Family Court proceedings. She also alleges that the author of the letter (one of the current respondents) had sought to make himself credible by listing his (and the other respondents) previous employers (or bodies for whom they had worked as contractors). She points out that the letter said that the author was willing to have further discussions with Mrs XYZ.

31. Pausing there, I note that in Mrs XYZ's statement she refers to conversations between her and the current respondents having happened for some weeks after September 2018. The claimant says that Mrs XYZ is a liar about a lot of things and that she is lying about this and that actually, the conversations started earlier than this 23 September email (perhaps in August 2018).

32. Returning to the particulars of claim for that first complaint, in paragraph 7 the claimant said that the respondents were clearly intended to influence the dispute between her and the XYZs by trying to make the claimant look like a bad employee who was dangerous and dishonest.

33. She continued at paragraph 9 referring to alleged correspondence between her and the current respondents in October 2018 and a Subject Access Request that she had made.

34. Paragraph 11 she refers to events of 1 November 2019 and the application for reconsideration by Mrs XYZ of a costs award made against her. She says that Mrs XYZ had made her aware thereby that the current respondents had volunteered to give Mrs XYZ information about the claimant.

35. Paragraph 12 the claimant alleged that her dismissal took place shortly after the current respondents had received a visit from social services and police. She alleged in paragraph 12 that the respondents now admit that hey dismissed her because they thought that she had reported them to social services. The claimant says that she had no contact directly with social services and that her contact was with NSPCC.

36. Paragraph 13 the claimant alleges that Mrs XYZ has been dishonest. It also says that Mrs XYZ had offered to help the current respondents by meeting a social worker and that Mrs XYZ had smeared the claimant as being dishonest to assist the current respondents in a particular matter. She alleges that there was communication between the XYZs and the current respondents about a London Borough off Islington reference (and that that was an item put before the High Court).

37. In paragraph 17, referring to the current respondents, the claimant alleges:

> … continued actions of sharing, receiving and using (false and/or factual) information about me for their own purposes or to harm me post employment is harassment and victimisation. The fact that they feel justified in doing so is an indication they are not planning to stop this behaviour either. [Mrs XYZ] communications indicate they are acting in this openly antagonistic manner because it has been a long time since I left the job and they believe I cannot bring a claim in Employment Tribunals. Apparently post employment victimisation, harassment and discrimination are covered by Equality Act 2010 and EHCR. Their actions are also and offence under GDPR 2018.

<u>Disposal of Previous Claim</u>

38. That claim came before Employment Judge George. Employment Judge George's decision was sent to the parties in June 2021. It was a reserved judgment and reasons.

39. In the reasons at paragraph 2, EJ George refers to the fact that, because of litigation with XYZ (commenced in May 2018) a letter was disclosed to the claimant which she received in October 2018. I am satisfied that is a reference to the item on page 204 of the bundle before me.

40. At Paragraph 10 of the reasons, EJ George refers to the claimant's further and better particulars dated 11 May 2020 and her application dated 18 June 2020 for further information from the respondents. Within those documents, EJ George notes that the claimant referred to having been "recently" contacted by the police and having been told by the police that the respondent had filed a complaint of harassment against the claimant for communicating with them. That clearly refers to the contact with police which eventually led to the 4 July 2020 letter mentioned above.

41. Paragraph 12, EJ George considers whether the matter of the alleged complaint, about the claimant, by the respondent to police was before her. She says that applying a generous reading of the email of 16 June would be that the claimant wished to include the complaint about the respondents having gone to the police as an allegation/ EJ George quoted the Claimant as having said:

> "complaining to the police about me for trying to deal with the respondent's conduct since last year is unreasonable and worrying. This is a post-employment continued act to harm me. They also want to harm my reputation and affect my DBS."

42. At paragraph 13, EJ George mentions that the claimant had told her that she had found out that the complaints to the police had been filed on 15 April 2020. At paragraph 18 of the reasons, EJ George summarises the complaints that were brought in that claim.

43. In paragraph 20, she comments on the particulars of claim and makes the point that much of what the claimant alleges is based on the claimant's inference from what the claimant has found out in the course of the proceedings against Mrs XYZ, and notes that the Claimant complains that the respondents had not cooperated with her enquiries. EJ George then goes on to say:

> Nevertheless, it was possible to draw up the following list of specific actions which do include at least one that is not yet in the claim form and which is the subject of the amendment application. These were read out to the claimant and she accepted that they represented the gist of her present complaints.
>
> a. First, the claimant alleges that she was dismissed because of a protected disclosure with effect from 23 June 201
>
> b. Next, she alleges that there was a detriment on grounds of protected disclosure by the respondents writing a letter to [Mrs XYZ] in about September 2018 that she found out about in October or November 2018.
>
> c. Next, she alleges that at some point prior to 1 November 2019, [Mr BC] and Mr D.E. subjected her to a detriment when they volunteered information about her to [Mrs XYZ] and alleged to the latter, the subsequent employer, that the claimant's employment had been terminated on the advice of the police because of the claimant's reports to them of child abuse. She alleges in paragraph 11 of her narrative particulars of claim that she found out this information because it was contained in [Mrs XYZ] application for reconsideration of a costs order awarded in the claimant's favour in the Tribunal proceedings between them. The way that the claimant explained this allegation in her evidence is that the respondents told [Mrs XYZ] that they volunteered to give her information about the claimant because it was a public duty and shared file number for … (see also paragraph 1 of the claimant's further particulars dated 11 May 2020). The claimant had made allegations of child abuse which resulted in police, medical, and social services investigations. All allegations were dismissed. According to the respondents, the

police advised them to terminate the claimant's employment immediately. The claimant does not know when that action is said to have taken place by the respondent. The respondent says that, in reality, all that information available to claimant from the letter of October 2018 (from which I quote in paragraph 42 below).

d. The next specific allegation is that of subjecting the claimant to a detriment by supporting her subsequent employer ([Mrs XYZ]) against the claimant In her own employment tribunal claim. In reality the facts relied upon are the same as those set out in paragraph 20.b. and c. I deal with the alleged date of knowledge below.

e. Next it is alleged that the respondents (or [Mr BC] and Mr D.E.), provided untrue information about the claimant in support of their own application for .. at the Family Court. In the present application, I am concerned primarily with whether the complaint was presented in time, however reliance upon acts done within the Family Court proceedings seem to me to be potentially affected by the principal of judicial immunity from suit.

f. Next, it is alleged in paragraph 14 of the narrative claim form, that the respondent went to the police and she accuses the respondents of supporting [Mrs XYZ] against her. She says, and this is in paragraph 14:

> *"Some of their communications suggest Mr [D.E.] and Mr [B.C.], highly likely complained to the police about me post-employment just like* [Mrs XYZ] *did. I get a disclosure and barring check from my employments and they seem to have wanted to create suspicion about me after I left the job. They used the notion of parenting and vulnerability of children to attack my personality, prospects and livelihood."*

g. She then complains that the respondent shared sensitive information about her without checking the identity of the person to whom they were sending it. She refers in relation to this to the forwarding a payslip to [Mrs XYZ] and alleging that they had given her disciplinary warnings when she says that that was untrue. In reality, it is difficult to see that this is different to information she may have discovered when finding out about the letter of October 2018 because the letter refers to those details.

h. And in paragraph 18 of the particulars of claim there is an allegation that reads as follows:

> *"Mr [B.C.] made degrading comments about women during my employment. He was trying to teach the children supremacy over females even at their young age. He likened himself to a chicken husband in relation to …. He laughed about "terrorizing chickens" he ridiculed women such as the other nannies they employed, Mr [D.E.'s] female friends, the ... His attitude towards me was derogatory, rude and verbally aggressive. Mr [B.C.] looked down upon Turkish and Kurdish people where this ethnic group formed the biggest sub-group in the community where they lived. He had a hierarchical view of races which he used as a basis for relating to people."*

44. Paragraph 21 of EJ George's reasons refers to the application to amend the claim to add alleged detriment by the respondent filing a complaint of harassment with the police.

45. Paragraph 26 stated:

> The claimant is presumed to have intended that any acts that she complains about, which post-date the bringing of the claim against Mrs Griffiths, were acts of victimization contrary to s.27 of the EQA. Those are the same allegations relied upon as post-employment acts of detriment on grounds of protected disclosure.

46. EJ George, having described the complaints in detail, went on to give her reasons for striking out those claims.

Analysis and Conclusions

47. In terms of the potential protected disclosure in the current claim, it is alleged to include the report to NSPCC. In relation to protected acts, it alleged to include the bringing of the first claim in November 2019.

48. Having discussed the particulars of the new claim extensively prior to lunch today, I am satisfied that the proposed complaints in this case are effectively replicating the things that were already complained about in the previous claim and were already before Employment Judge George when she made her decision to strike out the old claim.

49. Mr DE is actually named as a respondent on this occasion. Although wrongdoing by him was alleged in the previous complaint, and, in reality, the allegations are of Mr BC and Mr DE acting jointly. There was nothing to stop the Claimant bringing a claim against MR DE as part of the earlier claim, and the Claimant has not found out anything new since then. His presence or absence as a named respondent in the previous claim would have made no difference to EJ George's decision, as is clear from the facts that she relied on when striking out.

50. To the extent that anything else is ever so slightly different (the purported new issue about whether or not the respondents lied to Mrs XYZ by telling Mrs XYZ {allegedly falsely} that the police had made certain comments about the claimant having visited their premises), those are just specific details of the complaint that was already before EJ George about dishonesty by the respondents and collaborating with Mrs XYZ dishonestly in mutual support of the claims that they each faced from the claimant.

51. To the extent, if at all, that the "lie" complaint is a brand new claim I would, in any event, strike it out as having no reasonable prospects of success.

    a. The claimant was not there, she is not in a position to ask me to accept (even taking her case at its highest) that that comment was not made by the police to the current respondents. She is simply guessing.

b. The claim is considerably out of time in that it was allegedly something that the respondents' said to Mrs XYZ in around 2020. There is no reasonable prospect that a tribunal would extend time for that in the circumstances.

c. So, for those reasons, I would have struck out the "lie" allegation even had it been "new". However, my main reason for striking it out is that simply replicating part of the claim that was already brought and struck out by EJ George.

52. Another potential difficulty that the Claimant would have (in relation to documents sent by the respondents to the XYZs, at least) is the decisions that certain items the Claimant sort to rely on in the litigation with XYZ were covered by judicial immunity.

53. Finally, in relation to the claimant's breach of contract claim, I point out that in terms of the extension of jurisdiction order for there to be a complaint before and employment tribunal of breach of contract, it has to be a complaint that it is said to have arisen either during the employment or on termination of the employment and in ether case, a complaint about a breach that is outstanding as of the date of termination of the employment. The claimant's employment ended in June 2017 and even on her own case taken at its highest, all of the alleged acts and omission occurred later than June 2017. For that reason, the claim alleging breach of contract has no reasonable prospects of success.

54. In terms of Henderson v Henderson abuse of process, had the claimant wished to allege in the previous claim against two of these respondents that there was whistleblowing detriment based on her report to NSPCC and/or that the bringing of the claim against these respondents was a protected act which caused them to victimise her and then she could have made an application to amend that old claim, just as she could have applied to add Mr DE even after not including him originally. It is an abuse of process having made some amendments or applications to amend that claim and having had it adjudicated at a preliminary hearing by EJ George to seek to bring further claims based on the same alleged acts and omissions. Taking a broad merits based approach, alleging the same detriments, following dismissal of the first claim, even where based on any different protected disclosure/act is an abuse. Therefore, for those reasons, the claim is struck out in its entirety.

55. In relation to the Rule 50 orders made in June 2021 by Employment Judge George, there has been no relevant change of circumstances and I do not vary either of those orders in this case.

56. In relation to the Rule 50 orders dated 27 January 2023, sent to the parties on 31 January 2023 by Regional Employment Judge Foxwell, with written reasons supplied subsequently, I decline to vary those orders.

57. I have balanced the requirements of open justice but, in this case, the exceptional circumstances are that the restrictions are proportionate and necessary in order to protect the identities of minors whose identity is protected in any event by primary legislation.

58. These orders do not affect the litigation between the Claimant and XYZ. However, the Claimant must not make any attempt to get around the Rule 50 orders in the Watford cases by seeking to identify, in anything she publishes, any of the persons named in any document as being one of the respondents in the Watford cases.

EMPLOYMENT JUDGE QUILL

Date: 4 July 2023

Sent to the parties on: 7 July 2023

G de Jonge
For the Tribunal Office