



# THE EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms S Younis**

**v**

**United Colleges Group**

**Heard at:** London Central

**On:** 30 June 2023  
In Chambers 14 July 2023

**Before:** Employment Judge Glennie

**Representation:**

**Claimant:** In person

**Respondent:** Mr A Bryant (Counsel)

## JUDGMENT ON PRELIMINARY HEARING

1. The complaint of unfair dismissal is struck out on the grounds that it has no reasonable prospect of success. Save for this, the Respondent's application to strike out the claims is refused.
2. The Claimant has permission to amend the claims by adding the following allegations:
  - 2.1 That the acts of Mr Daley in October 2021 complained of in the claim form were acts of discrimination because of religion or belief in addition to race and sex.
  - 2.2 That the acts of Mr Daley on 5 May 2022 were acts of discrimination because of religion or belief in addition to race and sex.
  - 2.3 That the Claimant's dismissal was an act of discrimination because of race and/or sex and/or religion or belief in addition to victimisation.
3. The other amendments sought by the Claimant are refused.

4. A preliminary hearing for case management with a time estimate of 2 hours will be listed on a date to be notified to the parties.

## REASONS

1. The Claimant, Ms Younis, has made three claims to the Tribunal, which can be summarised as follows:
  - 1.1. Claim number 2206175/2022, presented on 22 August 2022, while her employment was still continuing. This made complaints of discrimination because of race and sex. The Claimant referred to 2 incidents in which a colleague, Mr Daley, refused to allow her to use a photocopier, to the grievance she raised about this, and to the grievance appeal.
  - 1.2. Claim number 2207948/2022, presented on 19 October 2022, after her employment had been terminated. This made complaints of unfair dismissal and victimisation. The Claimant referred to her dismissal and said that she believed that she was being victimised due to bringing an Employment Tribunal claim and raising complaints of discrimination in the past.
  - 1.3. Claim number 2208864/2022, presented on 17 November 2022. This also made complaints of unfair dismissal, although giving more detail than in 2207948/2022, and of victimisation due to reporting 2 incidents of micro-aggressions of racism on 5 May 2022.
2. A preliminary hearing for case management took place before me on 4 April 2023. At that hearing, I identified with the Claimant 8 factual heads of claim on which she wished to rely. I made an order for the Claimant to summarise in a single document all of the claims in the 3 claims to the Tribunal. (There were 10 numbered paragraphs in my record of the claims: numbers 9 and 10 identified the protected characteristics and the protected acts).
3. I also listed the present preliminary hearing to determine any applications arising from the further information / clarification to be given in the Claimant's summary. I anticipated that the Respondent would argue that some of the information to be given had not previously appeared in the claim forms (as they in fact argue).
4. There was an agreed bundle of documents for the present hearing. The Claimant's document setting out the further information about the 8 heads of claim was at pages 107 to 116.

5. The Claimant gave oral evidence explaining why she had not included in the claim forms those matters that were new in the further information, and was cross-examined by Mr Bryant.
6. Where it was contended that the claims had not previously been made, the Respondent argued that the Claimant required permission to amend the claims in order to be able to rely on them, and that such permission should not be given. The Respondent also applied to strike out all of the claims on the grounds that they had no reasonable prospect of success, or for deposit orders on the grounds that they had little reasonable prospect of success.
7. I have structured these reasons by considering each of the 8 heads of claim in turn, determining in respect of each whether there are new claims which require permission to amend; if so whether such permission should be given; and (where applicable) whether each claim should be struck out or made the subject of a deposit order. It is therefore convenient to set out a summary of the relevant law before turning to the claims individually.
8. Rule 37 of the Rules of Procedure includes the following provision about striking out a claim:
  - (1) *.....a Tribunal may strike out all or part of a claim....on any of the following grounds –*
    - (a) *That it.....has no reasonable prospect of success.*
9. The requirement that there be no reasonable prospect of success does not mean, at one extreme, absolutely no possible chance of success, nor at the other, that the claim is more likely to fail than to succeed. It involves the Tribunal assessing whether the claim has no reasonable prospect of success, taking the pleaded claim at its highest, and generally assuming that any disputes of fact will be resolved in the Claimant's favour. If the Tribunal finds that there is no reasonable prospect of success, striking out does not follow automatically. The Tribunal has a discretion (which must be exercised judicially) which allows it to strike out the claim if appropriate.
10. Deposit orders are governed by rule 39, which includes the following provisions:
  - (1) *Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim...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.*

11. The test of little reasonable prospect of success envisages a better prospect of success than that of no reasonable prospect, while still falling well short of a 50-50 prospect. Again, there is a discretion to be exercised if the requirement of little reasonable prospect of success is met. When setting the amount of any deposit, the Tribunal should not impose an order that has the effect of striking out the claim by default, in that the amount ordered is beyond the Claimant's ability to pay.
12. With regard to all of the complaints under the Equality Act 2010 I had in mind the provisions of section 136 concerning the burden of proof, in the following terms:
  - (1) .....
  - (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.*
13. In **Efobi v Royal Mail Group [2021] ICR 1263** the Supreme Court confirmed that the test under section 136 remained the same as under the equivalent provisions of the earlier legislation. At the first stage, a claimant has to show a prima facie case of discrimination which needs to be answered. If the claimant does so, the claim will succeed unless the respondent can discharge the burden placed on it at the second stage. The approach set out by the Court of Appeal in **Madarassy v Nomura International PLC [2007] ICR 867** remains applicable. The bare facts of a difference in protected characteristics and a difference in treatment are not, on their own, sufficient to allow a Tribunal to conclude that the discrimination had occurred. There must be "something more" (which might not, in itself, be very significant) to satisfy the first stage and place the burden of proving that discrimination did not occur on the respondent.
14. As to amendment of a claim, in **Chaudhry v Cerberus Security [2022] EAT 172** HHJ Talyer propounded a two-stage test for applications of this nature. The Tribunal should first identify the amendment sought; and second, should balance the injustice and/or the hardship of allowing or refusing the amendment, taking account of all the relevant factors including, to the extent appropriate, those identified in **Selkent v Moore [1996] ICR 836**.
15. Having set out these generally applicable principles, I shall refer to others as they arise in the context of the particular complaints identified as numbers 1 to 8 in the record of the case management discussion on 4 April 2023. I have considered the claims so identified by the Claimant, and the contents of her document produced in response to order 3 made on that date.

16. **Complaint 1** was originally pleaded as a complaint of discrimination because of race and/or sex. It involves an allegation that on a date in October 2021 a colleague, Mr Daley, first refused to allow the Claimant to use a printer, and subsequently allowed her to use it grudgingly. In her further information, the Claimant stated that Mr Daley told her that the printer was not for the use of the Art and Design department, and that when she subsequently informed her manager of this, he said that he did not know why Mr Daley would say that. The Respondent's case is that Mr Daley denied the allegation; the Claimant says that he gave untrue accounts of interactions between them. The Claimant further seeks to add religion or belief to the protected characteristics that she relies on in this regard. I am satisfied that this was not raised in the claim form and that permission to amend is required if the Claimant is to be permitted to rely on this.
17. Similar considerations arise in relation to **Complaint 2**, in which the Claimant complains of another incident on 5 May 2022 involving Mr Daley refusing to allow her to use a printer. Her case is that, on this occasion, he did not give a reason. Again, the Claimant relied on the protected characteristics of race and/or sex in the claim as originally pleaded, and seeks to add religion or belief by way of amendment.
18. Mr Bryant argued that complaint 1 was presented out of time, as the events concerned occurred in October 2021 and the first claim was presented on 22 August 2022, and section 120 of the Equality Act provides for a primary time limit of 3 months from the date of the act complained of, as extended (if applicable) by the early conciliation period. Taken in isolation, complaint 1 would indeed be out of time. Subsection (3) of section 120, however, provides that conduct extending over a period is to be treated as done at the end of the period. Although the alleged events were some 10 months apart, given that the complaints are against the same individual and of a similar nature, I find that it is not the case that there is no reasonable prospect of a Tribunal finding that there was conduct extending over a period within the meaning of section 120(3).
19. Mr Bryant further argued that there was no, or little, reasonable prospect of complaints 1 and 2 succeeding on their substantive merits. He submitted that these were classic examples of a difference in protected characteristic and a difference in treatment, without there being something more that would enable the Claimant to raise a case requiring an answer from the Respondent.
20. I accept that, on the face of the matter, there is nothing that would positively indicate that Mr Daley's two refusals to allow the Claimant to use the printer were made because of a protected characteristic. It is also true that, on the Claimant's case, he gave a reason on the first occasion. The Claimant, however, challenges that reason. I do not know what findings a Tribunal will make about these matters. It is, however, possible that a Tribunal will find that the Claimant's account of her interactions with Mr Daley is correct, and that the explanation he gave on the first occasion was untrue. On

those findings, there would be two refusals, one with an untrue explanation being given and one with no explanation. I consider that a Tribunal could, in those circumstances, conclude that the untrue explanation and the lack of explanation provided the “something more” that would place the burden of disproving discrimination on the Respondent. I am not, of course, saying that a Tribunal will reach this conclusion: but I find that it could do so.

21. I do not therefore find that these complaints, as originally based on the protected characteristics of race and sex, have no reasonable prospect of success. Whether they have little reasonable prospect of success is, in my judgement, quite finely balanced. The case is not an easy one for the Claimant, and would depend on her succeeding on a number of different points. Ultimately, I do not find that the test of little reasonable prospect of success is satisfied, although the case comes close to it. If I am wrong about the test itself, I would not as a matter of discretion make a deposit order, because of the marginal nature of the decision on little reasonable prospect in a fact-sensitive case.
22. I then considered whether to allow the application to amend these complaints so as to add the protected characteristic of religion or belief. The Claimant’s explanation for not including this characteristic in the claim form was that it was only on reflection that she had thought that her religion had played a part. Mr Bryant submitted, and I accept, that apparently nothing had changed such as to lead the Claimant to conclude that her religion might have been relevant. I find, however, that there would be little, if any, prejudice, to the Respondent if I were to allow the Claimant to rely on religion as well as race and sex. These two complaints concern what Mr Daley did, and why he did it. His evidence about this will presumably be the same whatever protected characteristics are relied on. I find that there would be greater prejudice in not allowing the Claimant to rely on religion when she wishes to do so, and that there is no compelling reason for preventing this. I therefore allow the amendment to these two complaints.
23. **Complaint 3** concerns the grievance that the Claimant raised about the two incidents involving Mr Daley. Her case is that the grievance was not investigated properly by Mr Clark, and that the outcome favoured Mr Daley. The Claimant makes a similar complaint with regard to the appeal, which was heard by a panel of 2 (or 3 if the notetaker is included). The complaint is of discrimination because of race and/or sex.
24. In her further information the Claimant made a number of criticisms of the grievance process. She said that Mr Clark was dismissive of her complaints; that he found Mr Daley’s account to be sufficient; and that he did not investigate alleged interactions that the Claimant said Mr Daley had invented. The Claimant said that the appeal panel also did not follow up the allegedly invented interactions; that the fact that the Claimant stated that one of the witnesses was a friend of Mr Daley was ignored; and that the outcome was to protect the reputation of the college.

25. I find that all of these are the sort of criticisms that an employee might make of a grievance and appeal outcome with which they were dissatisfied. They do not involve anything which in itself suggests that race or sex might have been a factor. The suggestion that the appeal decision was reached in order to protect the college's reputation tends, if anything, to run counter to the Claimant's case.
26. I considered whether all of this means that the complaint has no reasonable prospect of success. I found that the prospects were not quite as poor as that. If the Tribunal were to find that Mr Clark was dismissive of the grievance, or did not follow up what the Claimant said about the interactions, it would be bound to ask itself why that was so. The point is less strong with regard to the appeal panel, as there is no allegation that they were dismissive, but it seemed to me to be unrealistic to draw too fine a distinction between the two aspects of the process.
27. For the reasons given in paragraph 25 above, I concluded that this complaint has little reasonable prospect of success. I considered whether, as a matter of discretion, I should make a deposit order. I concluded that I should, so as to give the Claimant reason to consider whether she should continue with this complaint. I will address the amount of the deposit below.
28. **Complaint 4** arises from the Claimant's dismissal. The complaints are of unfair dismissal and victimisation.
29. I find that the complaint of unfair dismissal has no reasonable prospect of success. Section 108(1) of the Employment Rights Act provides that, subject to certain exceptions (none of which applies in the present case) section 94 (providing the right not to be unfairly dismissed) does not apply to the dismissal of an employee who has not been continuously employed for a period of not less than 2 years ending with the effective date of termination. The Claimant's pleaded case is that her employment began on 2 December 2021 (which appears to be a mistake, as the Respondent pleads 5 October 2021 and she complains of an interaction with Mr Daley in October 2021) and ended on 1 September 2022. In any event, the Claimant did not have 2 years' continuous employment and cannot maintain a complaint of unfair dismissal. There are no reasons why that complaint should not be struck out, and I find that it should be.
30. Turning to the allegation of victimisation, in her further information the Claimant states that on 30 August 2021 (the date must in fact be 2022) she received an email asking her to a probation review meeting on 1 September. At that meeting she was dismissed for failing her probation period and underperforming. The Claimant specifies 5 reasons that were given to her as amounting to poor performance, and states that she has evidence to counter each of them. She says that her dismissal was an act of victimisation for having made the complaints about Mr Daley. She also seeks to add a complaint that the dismissal was an act of direct discrimination because of race and/or sex and/or religion.

31. I find the position regarding this complaint to be similar to that of the complaint about the grievance process. Nothing in the information given by the Claimant of itself suggests that her grievance, or her race, sex, or religion might have been a factor in the decision to dismiss her. The route by which the claim might succeed seems to me to be that of the Tribunal finding that the allegations against the Claimant were not well-founded, and asking itself why, then, they had been made. I find, in a similar way to my finding on complaint 3, that this complaint has little reasonable prospect of success, in any of its pleaded forms.
32. I therefore decided that I should make a deposit order in respect of this complaint. Again, I consider that doing so will give the Claimant reason to consider whether she should continue with this complaint.
33. I have also decided to allow the application to amend this complaint so as to enable the Claimant to rely on the same facts as allegations of direct discrimination on grounds of race and/or sex and/or religion or belief. My reason for doing so is essentially the same as in relation to complaints 1 and 2. The witnesses on the Respondent's side will be giving evidence about why they made the decisions that they did, and there would be little, if any prejudice in allowing the Claimant to maintain a complaint of direct discrimination as well as victimisation. I also consider, however, that the complaint has little reasonable prospect of success when formulated as one of direct discrimination, for the same reasons as apply to it as a complaint of victimisation. Again, I will deal with the amount of the deposit orders separately.
34. **Complaints 5 to 8** all raise matters which I find were not previously included in the claim forms. The Claimant therefore needs permission to amend the claim(s) in order to be able to rely on them.
35. I will deal with these complaints together as my conclusions apply to all of them. Complaint 5 is that the review of the Claimant's probation, which was due after 12 weeks, was delayed. The Claimant states that the review should have taken place on around 25 February 2022 (incorrectly shown as 2021 in the further information) and that delaying it was an act of victimisation arising from the complaints about Mr Daley, and an act of discrimination because of race and sex. Complaint 6 is that the Claimant was not promoted. This also is presented as an act of victimisation in response to the complaints about Mr Daley, and as discrimination because of race and religion.
36. Complaint 7 is of "gaslighting", meaning blaming the Claimant for things that were not her fault. This complaint is wide-ranging and put in general terms, including allegations that she was "accused of being rude, unsupportive and dismissive of students" and that "I was accused of ongoing work relation issues throughout my employment. By all but one of the Art team members making complaints about my behaviour and attitude between January and June 2022. During these conversations, I was



accused of using inappropriate, rude, negative language and not understanding boundaries.” The Claimant’s case is that this amounted to discrimination because of race, religion and potentially sex. Complaint 8 is of microaggressions by 2 members of staff, Ms Dhak and Mr O’Callaghan and refers to incidents in January, February and June 2022. The Claimant relies on the protected characteristics of race, sex and religion.

37. Applying the test of the balance of hardship as between allowing and refusing the applications, I find that in all of complaints 5 to 8, the hardship to the Respondent were I to allow them would outweigh the hardship to the Claimant if I did not. I have reached this conclusion for the following reasons:

37.1 There is some hardship to the Claimant in not permitting her to put forward complaints that she wishes to advance. It is difficult, however, to discern what might be the “something more” in each case that could lead the Tribunal to conclude, in the absence of an explanation from the Respondent, that discrimination had occurred. I find that this is particularly so as there is no obvious reason why the protected characteristics relied upon should vary, as they do, from one complaint to another. Apart from victimisation, complaint 5 relies on race and sex; complaint 6 on race and religion; and complaints 7 and 8 on race, sex and religion. There is nothing in the factual allegations advanced by the Claimant that points to any particular protected characteristic being relevant.

37.2 The hardship to the Claimant is therefore mitigated by my finding that the complaints would have little reasonable prospect of success.

37.3 I find that the hardship caused to the Respondent were I to allow these amendments would be considerable. The complaints are wide-ranging and would add a great deal to the evidence that the Respondent would need to obtain and call. Complaint 7 is expressed in general terms which would be difficult to address. The length of the hearing would be increased. There would be prejudice to the Respondent in having to meet further claims which have little reasonable prospect of success.

38. I now turn to the question of the amount of the deposit orders. Having reminded the Claimant that she remained on oath, I asked for information about her ability to pay. She said that she is in receipt of Universal Credit; that she has no dependants; she has around £1,500 in savings; lives in rented accommodation; and is in arrears with the rent. She said that she was not able to pay a deposit.
39. Mr Bryant pointed out, correctly, that there was no documentary evidence showing the Claimant’s financial position. I did not, however, see any reason to disbelieve what she told me, and I accepted her evidence about this.
40. I found that the Claimant had some ability to pay a deposit. I did not take it that the whole of her savings, or even the greater part of them, should be

regarded as available for this purpose. I concluded that a total of £400 would be reasonable and affordable. This will be reflected in deposit orders (which will be contained in a separate Order) of £100 in respect of each of the following 4 allegations:

- 40.1 In complaint 3, the complaint that the grievance was not properly investigated, and that this was an act of discrimination because of race and/or sex.
  - 40.2 In complaint 3, the complaint that the way in which the appeal was conducted was an act of discrimination because of race and/or sex.
  - 40.3 In complaint 4, the complaint that the Claimant's dismissal was an act of victimisation.
  - 40.4 In complaint 4, the complaint that the Claimant's dismissal was an act of discrimination because of race and/or sex and/or religion or belief.
41. The claims will be listed for a preliminary hearing for case management, to take place after the time for paying the deposits has expired. The Claimant is not required to pay any of the deposits: she may decide not to proceed with all or any of the relevant complaints.

Employment Judge Glennie

Dated: .....8 September 2023.....

Judgment sent to the parties on:

08/09/2023

For the Tribunal Office