



EMPLOYMENT TRIBUNALS

OPEN PRELIMINARY HEARING

Claimant Mr R Hartigan

Represented by In person

Respondent The Financial Reporting Council Ltd

Represented by Ms T Barsam of Counsel

Employment Judge Ms A Stewart (sitting alone)

Held at: London Central by CVP **on:** 12 September 2023

JUDGEMENT

1 The Claimant's application at the start of today's hearing, for its postponement, is refused.

2 The Respondent's application, under Rule 37 of the ET Rules 2013, to have the Claimant's complaints struck out because he has no reasonable prospect of showing that he made a qualifying disclosure, within the meaning of section 43B(1)(b) of the Employment Rights Act 1996, is refused.

3 The Respondent's alternative application, under Rule 39, for a deposit order because he has little reasonable prospects of showing the same, is granted, in the sum of £1,000.00.

Reasons

1 The Claimant brings a complaint that he was dismissed on 15 September 2022 because he made a single protected disclosure on 9 August 2022. The dispute today centres on the definition of what constitutes a disclosure 'qualifying for protection' under **section 43B of the Employment Rights Act 1996**. The Respondent contends that the 'policy/directive/guidelines' alleged to have been breached, did not have legal

force and do not create a legal obligation. The Claimant contends that the Respondent, as a public sector independent regulatory body, was under a legal obligation to implement government policy.

2 After careful consideration of the detailed argument on both sides, the Tribunal concluded that it could not be said, putting the Claimant's case at its highest, that there was *no* reasonable prospect of success for the Claimant's argument, bearing in mind:

(i) That 'legal obligation' is not defined in the statute and that the courts have given it a broad interpretation in the past. The categories are not closed.

(ii) Strike out is a draconian sanction at this stage of the proceedings and it can reasonably be said that the issue in this particular case needs the benefit of detailed legal argument on the evidence.

3 However, on the face of it, on the material before the Tribunal today, it concluded that there was little reasonable prospect of success and accordingly makes a deposit order as a condition of pursuing the claim, in the maximum sum of £1,000.00, under Rule 39.

4 The Claimant sought postponement of today's hearing, at the outset, because he, as a litigant in person, had only received the Respondent's 3 case law authorities at lunchtime on the previous day.

5 The Tribunal refused postponement because it was disproportionate and was mindful that producing legal argument/authority very close to the hearing time was normal practice among representatives. Case authorities were not the same as evidence, which could not, fairly, be disclosed to the other party only the day before the proposed hearing.

6 The Tribunal decided instead to deal with the situation in the following way, in order, as far as possible, to ensure a level playing field:

(i) The Tribunal had not received these cases either, before the hearing, and would not itself read them.

(ii) Respondent's Counsel would explain, in oral submissions, the legal points which she was making to the Tribunal and to the Claimant, who would then ask such clarification questions as he wished.

7 In the event, the Claimant, who is an intelligent professional man, himself, in oral submissions, made reference to, and quoted from, other parts of these same cases which he had received from the Respondent, so that the Tribunal benefitted from argument on both sides.

Signed: Employment Judge A Stewart

Date 18 September 2023

Judgment sent to the parties on

18th Sept 2023

FOR THE TRIBUNAL OFFICE