EMPLOYMENT TRIBUNALS

Claimant: Ms S Savoia

Respondents: Trading 212 UK Limited (R1)
Mr D Dohmen (R2)
Ms V Mears (R3)
Ms S Griffiths (R4)
Mr M Chowdhury (R5)

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL FOLLOWING A PRELIMINARY HEARING

HEARD AT LONDON CENTRAL: By Video
On: 16-18 October 2023

Employment Judge: Employment Judge Henderson (sitting alone)

Appearances
For the claimant: In Person
For the respondents: Mr T Cordrey (Counsel)
Interpreter (Italian) Ms A Calabria

JUDGMENT

1. **The claimant was unable to meet the requisite standard of proof to establish that she is disabled within the meaning of section 6 of the Equality Act 2010. All claims relating to disability discrimination are accordingly dismissed.**

2. **The respondent's application for Strike Out (under Rule 37 of the Tribunal Procedure Rules 2013) is successful in so far as is set out in Schedule A to the Reasons below. The claims/allegations in Schedule A cannot proceed.**

REASONS

Introduction and Background

1. This was a continuation of a Preliminary Hearing (PH) which was heard by EJ Woodhead on 28-30 June 2023. By way of background, there have also been Case Management PHs held on 6 March 2023 (EJ Isaacson) and 26 May 2023 (EJ Woodhead).

2. The claimant was employed by R1 as Group Compliance & Risk Manager from 14 September 2020 to 2 September 2022. She has presented the following claims: claim number 2207391/2022 (**C1**) on 19 September 2022; claim number 2210605/2022 (**C2)** on 29 November 2022; claim number 2202538/2023 (**C3**) on 10 March 2023 and claim number 2209986/2023 (**C4**) on 5 June 2023.

3. The claimant currently names six respondents (her employer, R1 and five other individuals including R1's solicitor) across the four claims. The claims cover various forms of disability, race and sex discrimination as well as sexual harassment and whistleblowing detriment and automatically unfair dismissal. The claimant had also brought a claim for wrongful dismissal, but this was dismissed upon withdrawal.

4. The claimant has chosen to be unrepresented to date. During the course of the three-day PH, I urged her to reconsider this position and to seek free legal advice from the list of sources of such advice as provided by the tribunal. This recommendation was not made as any criticism of the claimant but in recognition of the volume and complexity of the discrimination claims which she has brought and also taking into account the claimant's health issues as described by her. The claimant indicated that she would seek such legal advice prior to the next PH, which is scheduled to be heard by EJ Woodhead on 13 & 14 December 2023.

Matters covered at the PH 16-18 October 2023

5. EJ Woodhead had listed eight matters to be covered at this October PH. However, due to time restraints only the following matters were able to be considered:

    a. whether the claimant had a disability at the material times pursuant to section 6 of the Equality Act 2010 (EQA);

    b. the respondents' Strike Out/Deposit Order applications in respect of all four claims;

    c. the claimant's application under Rule 50 (for anonymity orders for herself and her witnesses; private hearing and restricted reporting order).

6. The remaining matters for consideration at the PH on 13 and 14 December 2023 are as follows:

   d. finalising the list of issues in the remaining claims. This will be dependent on my decisions with regard to the disability issue and the strike out applications. As EJ Woodhead spent a considerable period of time in the June PH going through the various issues with the parties it is advisable that he should deal with this matter, given his direct knowledge of the List of Issues as agreed in June 2023;

   e. the claimant's application for additional respondents to be joined to C1 and C2;

   f. subject to my decisions on the Strike Out applications, whether C3 and C4 should be consolidated with C1 and C2;

   g. the respondent's application for the removal of references to without prejudice correspondence in the proceedings; and

   h. any further case management necessary to progress the claims to a Final Hearing (and to list a Final Hearing).

Conduct of the PH

7. The PH was conducted remotely using the Cloud Video Platform. The parties presented several electronic bundles which were divided as per the relevant issues. These included:

   -disability bundle (172 pages). The claimant's medical evidence was in Italian and had been translated into English and certified by THG Fluently. The claimant also provided an email (20 pages) of photographs and other evidence relating to disability on 16 October 2023.
   -strike out of C1 and C2 bundle (438 pages)
   -strike out of C3 and C4 bundle (383 pages)
   -rule 50 application bundle (48 pages)

8. The tribunal heard evidence from the claimant and on behalf of the respondent from Ms Victoria Mears. The witnesses adopted their written statements as their evidence in chief.

9. The tribunal was presented with written submissions by Mr Cordrey relating to each of the issue set out above. The claimant was allowed time (as requested by her) to consider these written submissions. The tribunal also heard oral submissions from both parties on each issue.

   <u>Italian Interpreter</u>

10. Although the claimant had indicated at the end of the June PH that she did not need the assistance of an interpreter, she changed her mind on the morning of the first day. Accordingly, an interpreter was booked at short notice and was able to assist from 2pm on 16 October.

11. Generally, the interpreter assisted on specific matters as requested by the claimant and/or the EJ. However, when the claimant gave evidence as regards the impact of her alleged disabilities, the interpreter assisted by translating the claimant's evidence and any questions to her in full. The interpreter also assisted when any matters of legal technicalities or tribunal process were being explained to the claimant. This was to ensure that the claimant fully understood what was happening at the hearing and to assist her as far as possible in understanding the legal tests being applied to her claims.

12. Given the claimant's description of her health issues it was agreed that regular breaks would be taken and as requested by the claimant. The claimant rarely requested a break and would often refuse breaks when offered by the judge. However, on occasions where the claimant was clearly upset, I insisted that we take a break until she had been able to collect her thoughts. I explained this was necessary to ensure a fair hearing for both parties.

Public Hearing

13. The claimant objected during the hearing of the disability issue to the use of the phrase "mental health" issues when referring to the claimant's medical condition. She wished these to be described solely as her "health" issues. I explained that Mr Cordrey and I would try to adopt the phraseology as requested by the claimant. However, I also explained that as the claimant was bringing disability discrimination claims, when dealing with the technical legal issues, the appropriate terminology within the EQA (namely that of a mental impairment) and descriptions of the relevant conditions, the phrase she objected to would have to be specified and mentioned.

14. I explained that I would also have to refer to her own impact statement and how she described the nature of her medical condition. The claimant said she understood why this was necessary, though she was not happy with it.

15. I also explained to the claimant that the PH was conducted as an open hearing. This meant that members of the public could attend. I noted that there had been no requests from external observers to attend the hearing. The claimant had a list of several friends and supporters whom she wished to be given access to the video hearing. I confirmed with her that if she wished those people to attend, they would be able to hear the discussions about her health issues. The claimant then narrowed the list of people she wished to attend.

The Disability Issue

16. The claimant describes her disabilities in her impact statement (dated 28 July 2023) as "depression anxiety and panic attacks". The claimant said that she had been experiencing these for the last 30 years.

17. The parties initially disagreed as to the "material times" during which the disability must be shown to be present; however, by the end of the hearing, in submissions, the parties effectively accepted that the relevant period was from

27 March 2022 to 6 December 2022 (being the date on which the claimant raised the last of her allegations in C3).

18. The test as to whether someone has a disability is a legal one (see the relevant law below). The decision is based on the evidence provided to the Tribunal. Deciding that someone is not disabled does not mean that the Tribunal does not believe their evidence about their health issues or what they have experienced. However, the test is a specific one and the claimant must provide the evidence to show that the test is met.

The Relevant Law

19. The definition of disability in EQA 2010 s 6(1) *is a person who has:*

> *(a) a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on [their] ability to carry out normal day-to-day activities.*

20. It is for the tribunal to assess whether the claimant falls within the relevant definition. In doing so, the tribunal should take into account EQA Guidance in determining questions relating to the Definition of Disability (**the Guidance).** The burden of proof is on the claimant to prove that she is disabled. The standard of proof is on a balance of probabilities.

21. There is no requirement that the impairment is "*clinically well-recognised*" As stated by EQA s 212, in relation to the requirement that the impairment has a "substantial" adverse effect on normal day-to-day activities, substantial means "*more than minor or trivial*". Schedule 1 paragraph 2 (2) EQA notes that "if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if that effect is likely to recur". The Guidance gives (at paragraph C6) an example of this principle as including mental health conditions.

22. It is well established that where an individual is treated by medication, the effects of that treatment should be discounted when determining the question of disability.

23. Under Schedule 1 EQA, "*long-term"* is defined as a condition which has "*lasted for at least 12 months*" or "*is likely to last for at least 12 months*". It is the *substantial adverse effects* which must be long-term (Guidance at paragraph A2)

24. *"Normal day to day activities*" is not defined as such. However, the Guidance (paragraphs D2 and D3) describes these as things which people do on a regular/daily basis, such as shopping, reading and writing, having conversations, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling on various forms of transport and socialising. These can include work activities such as interaction with colleagues, using computers, preparing written documents and keeping to a timetable.

25. I was referred by Mr Cordery to the case of **J v DLA Piper [2010] IRLR 936** (at paragraph 42) where the EAT drew a distinction between a "reaction to adverse circumstances (such as problems at work)" which may entail symptoms of

stress, depression and anxiety but which is not sufficient to constitute a disability and a "mental illness" or "mental condition", which could be of sufficient order to constitute a disability.

Ms Mears' Evidence

26. Ms Mears was the claimant's Line Manager from 7 March 2022. Ms Mears' statement said that she recalled that the claimant travelled to and from work on the DLR at peak times: arriving in the office between 8.30-9 am and leaving between 5.30 and 6pm. However, during the claimant's cross examination Ms Mears accepted that she often came into work after the claimant and left before her so she could not be sure about the times or of the nature of the claimant's travel arrangements.

27. Ms Mears also said that the claimant regularly went for a walk during her lunch hour. Again, Ms Mears accepted during cross examination that her perception about what the claimant did during her lunch hour was often based on what others told her the claimant had said and not on her own direct knowledge.

28. Ms Mears said that she had not been aware (as the claimant's Line Manager) that the claimant had any difficulties in performing her regular work tasks or was experiencing any problems with concentrating, focussing, memorising or executing tasks. The claimant mentioned some mistakes with sending emails to the wrong people, Ms Mears did recall this but did not attach any significance to it.

29. Ms Mears accepted that she and the claimant were not friends and had very little interaction outside work.

30. Given the content of Ms Mears' evidence, whilst I do not doubt her credibility, I place very little reliance on that evidence as contributing to my assessment of whether the claimant was a disabled person under the EQA.

The claimant's evidence

31. I note the claimant's concern about her health issues being made public. As this Judgment and Reasons will be available on the public register, I will attempt to summarise the evidence given by the claimant at the PH and keep details of her medical condition and symptoms described, to the minimum necessary to record how I reached my decision.

32. In her impact statement, the claimant said she had been diagnosed with depression for over 30 years and with depression, anxiety and panic attacks for the last 15 years. She gave a list of some of the doctors whom she had consulted over the years. (These were: Psychiatrist Dr Catania; Psychologist Viviana Venturi; Psychiatrist Marco Mazzoli; Psychiatrist William Esposito; Psychiatrist Alessa Colonna; Psychologist Antonella Liverani.). However, the documentary evidence produced by the claimant contained reports from only Dr Colonna (which included an exchange of WhatsApp messages between her and the claimant) and from Dr Esposito.

33. The claimant said Dr Catania had died in the last few years, but she did not explain why she was unable to produce historical records from her medical file. Further, the claimant said that although she had received therapy from Dr Liverani, she was unable to produce any medical evidence relating to her

treatment. This was because she had not had a professional relationship with Dr Liverani, who was a friend, but who worked for a hospital and so could not provide formal reports.

34. The claimant described her symptoms from October 2020 to date (with a major exacerbation from March 2022) as: atrial fibrillations and rapid heartbeat; chest pain; shortness of breath, depression; brain fog; inability to concentrate, memorise or focus; anger, agitation, irritability, mood swings, insomnia, nightmares and flashbacks, severe pain in her limbs and headaches and waking up at night with paralysis.

35. She described the effects on her normal day to day activities as having difficulty concentrating, focusing memorising and executing tasks on time, especially when under pressure. She was unable to sleep or if she did, she experienced nightmares and so awoke feeling very tired. She experienced low mood and lack of motivation. She struggled to commute on crowded transport or in crowded places. She also found it difficult to take care of her "daily tasks". However, the claimant did not specify which daily tasks she was referring to. I note that the claimant gave mostly examples of day-to-day activities in her work life and very few in her private life (other than the insomnia).

36. The claimant was asked in cross examination about her regular attendance at the Virgin Active Health Club near the office. In summary, the claimant said she went there every evening after work. She could not recall exactly but she probably went swimming once (maybe twice) a week. Otherwise, she did yoga and/or breathing exercises on her own or meditation or simply sitting by the pool. She did not use the gym and she did not do any physical exercise or classes (other than the swimming).

37. The claimant said that she arrived at work at around 8/8.30 am but she would leave her home much earlier and travel when the DLR was quiet and then have a coffee at Pret a Manger before going into work. She said she always went to a quiet park near St Paul's at lunchtime and sat down, she then left work around 6.30 pm though she sometimes stayed till 7-8pm. The claimant said that she stayed late because her regular tasks often took her longer to complete. However, other than the examples the claimant gave of occasionally sending emails to the wrong group of recipients, there did not appear to be any problems with her performance generally.

38. The claimant's evidence about her medication and the relevant dosages at specific times was unclear and often vague. This could be a result of the lack of documentation about her prescriptions. However, she accepted that she only took Zolpeduar as and when she needed it, ie when she could not sleep. She did not like taking it as it was very strong, and she was worried about the side effects. She did not take it if she had "had a beer". This was contradictory to her witness statement which said she took 10mg of Zolpeduar per night. The claimant's oral evidence suggests that she did not need to take Zolpeduar every night, which in turn suggests that she did not have problems sleeping every night.

The claimant's medical evidence

39. The claimant was asked in cross examination about her medical evidence and her medication. The claimant said that she had never had a GP or visited a doctor in the UK. She had obtained her medication when she went to Italy. Italian chemists did not provide a copy of the prescription given by the doctor. Accordingly, the claimant did not have copies of any prescriptions from her doctors to share with the Tribunal.

40. The claimant provided limited medical evidence, given her assertion of a 30-year medical condition. She was unable to produce any evidence of her treatment/therapy by Dr Liverani as this had not been done on an independent/professional basis. She had not paid Dr Liverani, who worked at a hospital and was seeing the claimant in her spare time. There was no witness statement from Dr Liverani.

41. It was noted in cross examination that the majority of the claimant's contact with Dr Colonna was by WhatsApp messages (pages 100-123 of the Disability Bundle DB). The claimant said this was common in Italy.

42. I asked the claimant about her medical evidence as contained in the Disability Bundle and translated into English.

43. The earliest evidence was an Emergency Department Report of 6 July 2007, when the claimant was discharged after 5.5 hours. This report referred to ongoing treatment for anxiety disorder and panic attacks, but the diagnosis was "Muscle Tension Headache" (page 144-146).

44. There was a report dated 28 July 2023 from Dr Esposito (pages 159-160). Dr Esposito said he had treated the claimant from 25 May 2007 to 23 April 2013 for what he described as "Generalised anxiety disorder; panic disorder and Bullimia nervosa in her medical history". The quote marks are contained in the report itself which suggests that Dr Esposito is himself quoting from another document or from something told to him by someone else. However, he does not cite any particular source.

45. This report also linked the episodes of the claimant's condition and medication to specific events in her life, such as: commitments relating to her degree; breastfeeding her daughter; emotional crises due to serious family issues; the start of a new job.

46. The claimant agreed that she had first contacted Dr Colonna on 2 November 2020 (page 100). I asked the claimant about her medical treatment between April 2013 and November 2020. She said that she had been consulting Dr Liverani as a friend. There was no medical evidence produced to cover this period.

47. Following an examination, Dr Colonna (page 103) notes that tests have shown a variation of hormones which are "indicative of menopause" and suggests referral to a gynaecologist. The claimant replied that she already had a contact in Italy and would get in touch with them.

48. At page 105 there are WhatsApp messages exchanged between the claimant and Dr Colonna on 16 November 2020 about reducing the dosage of Paroxetine as the claimant had been experiencing side effects. On 2 December

2020 (page 106) the claimant told Dr Colonna that she was “in great shape” and was sleeping “pretty well”.

49. There was no further contact with Dr Colonna until 27 March 2022 (page 107) when the claimant said she needed an urgent appointment as she had been felling unwell for about a month and was soon to be in Italy. The claimant referred to “serious problems at work” and feeling depressed. The claimant linked this to being bullied and sexually harassed by her new boss. She also referred to being unable to sleep and having paralysis in her limbs. There was also a discussion about increasing dosage levels of Paroxetine to help the claimant to sleep. This is unclear as the claimant said that it was Zolpeduar which was the drug which helped her sleep.

50. I note that the claimant said that she would be back in Italy in May though she may return earlier. The claimant did not seek any immediate medical assistance in the UK.

51. The next exchange of messages is on 21 October 2022 (page 111) when the claimant asked to see Dr Colonna on 24 October when she was in Italy, although she subsequently changed this to a later date.

52. I asked the claimant about her health issues between March to October 2022. The claimant said she had been “really unwell” and “devastated” and repeated the symptoms as set out in her witness statement, including panic attacks, insomnia and depression. I asked about her ability to carry out daily tasks and she referred to making mistakes at work and being tired at work due to lack of sleep.

53. The claimant accepted that she had not produced any medical evidence for the period March to October 2022 or any evidence to show that she had sought medical assistance or advice during this period. The claimant said that she had regular check-ups, but there was no evidence of this in the bundle.

54. There are also short written reports from Dr Colonna dated 6 November 2020 and 27 October 2022 (pages 150 and 151). Both documents refer to the claimant’s history of anxiety and depression and recommend medication. However, neither document contains any formal diagnosis of the claimant’s medical condition.

55. The claimant referred to six doctors who had treated her (paragraph 1 of her witness statement) but only produced limited medical evidence from two of those doctors (Dr Esposito and Dr Colonna). Whilst I accept the claimant’s evidence that she has been living with her health issues for over 30 years, she had not produced medical evidence to show any diagnosis of that condition.

Conclusions on Disability

56. I find that on the basis of the evidence presented to the Tribunal, the claimant has not shown to the requisite standard of proof that she has a disability within the definition of section 6 EQA.

57. The claimant did not specify in her witness statement which daily tasks (other than some work-related tasks) had been substantially impacted by her alleged impairment. The only such normal day to day activity referred to was her sleeping pattern. However, even as regards this symptom, her evidence about

how often and when she needed to take Zolpeduar to help her sleep was unclear and suggested that this was not on a nightly basis. On the evidence available I find that the claimant has not shown any substantial adverse effect on her normal day to day activities.

58. I accept that the claimant has experienced anxiety and panic attacks over many years, but based on her own evidence and that of the medical reports she has chosen to present, these do appear to be brought on or exacerbated by stressful or emotional events. I find that the claimant has not shown that there was any long-term adverse impact lasting 12 months or more or likely to last 12 months of more over the material period of March to December 2022. For much of that period the claimant has produced no medical evidence whatsoever.

59. I note the case of **J v DLA Piper** referred to by Mr Cordrey and the evidence in this case does tend to show that the claimant's periods of anxiety, insomnia and depression are linked to various adverse events in her professional or personal life. This was referred to in Dr Esposito's report.

60. The claimant's medical evidence did not contain any diagnosis of clinical depression. The EAT's decision in that case drew the distinction between the situation where adverse life events cause stress, depression and anxiety, which is not indicative of a disability and the situation where a clinical impairment substantially impacts on normal day to day activities regardless of such life events. The claimant's situation falls into the former category.

61. As Mr Cordrey pointed out, whilst the anxiety and stress may not be a disability within the meaning of the EQA that does not diminish the impact or gravity of their effect upon the individual. I therefore have sympathy with the claimant's situation and with her response to the issues she was experiencing over the relevant period, but I must conclude that she has not discharged the burden of proof to show that she had a disability within the meaning of the EQA.

62. The claims for disability discrimination cannot proceed.

Strike Out/Deposit Order Applications by the Respondent on C1 and C2

63. At the PH in June 2023 EJ Woodhead spent a considerable time with the parties finalising the majority of the Issues in these two claims (pages 275-309 in the Bundle for Strike Out of C1 and C2). The allegations brought by the claimant appear to have expanded considerably from the original pleadings in these two claims.

64. **Following my decision that the claimant is not disabled within the legal definition in the EQA, her disability discrimination claims should be removed from the List of Issues**.

65. Mr Cordrey set out in his written submissions on this matter (at pages 6-29 of those submissions) the elements of the claims which he said should be struck out or be the subject of a deposit order, using the headings taken from the List of Issues as discussed with EJ Woodhead at the PH on 28-30 June 2023.

66. Mr Cordrey accepted that there were core elements of the claimant's claims (such as her allegations of sexual harassment against R2) which needed to be

dealt with at a full hearing. However, he maintained that there were a substantial number of "entirely baseless" allegations of race sex and disability discrimination made by the claimant against a large number of individuals, which should be struck out.

67. At this PH we spent the best part of a day (the afternoon of Day 2 and the morning of Day 3) going through each of these claims (which we numbered sequentially from 1 to 32). I heard from Mr Cordrey and the claimant with their respective oral submissions as to Strike Out on each of those allegations/claims. In the interest of time, Mr Cordrey withdrew his strike out application on several claims. The claimant also withdrew some of the allegations accepting that the claim had not been properly made or could not be substantiated.

Relevant Law

Strike out

68. Rule 37(1) of The Tribunal Rules of Procedure 2013 provides that "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 […]".

69. Mr Cordrey recognised in his submissions that the appellate courts have indicated that discrimination and whistleblowing cases should, as a matter of policy, only rarely be struck out where the facts are in dispute. See for example ***Anya v University of Oxford*** **[2001] ICR 847** and ***Anyanwu v South Bank Students' Union*** **[2001] UKHL 14.**

70. However, attention must be paid to what facts are in dispute because, as stated by the Court of Appeal in ***Kaur v Leeds Teaching Hospitals NHS Trust*** **[2018] IRLR 833, at § 77:** "*there is no absolute rule against striking out a claim where there are factual issues* (***Ahir*** **v British Airways plc** ***[2017] EWCA Civ 1392)****. Whether it is appropriate in a particular case involves a consideration of the nature of the issues and the facts that can realistically be disputed*."

71. Langstaff J in ***Chandhok v Tirkey*** **[2015] ICR 527** at § 20 reiterated that there is no blanket ban on strike-out applications succeeding in discrimination (or, by extension, whistleblowing) claims and in ***Hawkins v Atex Group Ltd*** **[2012] IRLR 807,** Underhill J, upheld the decision of an Employment Judge to strike out a discrimination claim at a Preliminary Hearing holding (at paragraph 25) that "*Judges should not be shy of making robust decisions in a case where there is realistically only one possible outcome even if the issue is formally one of fact".*

72. In ***Madarassy v Nomura International plc*** **[2007] ICR 867** the Court of Appeal noted, at § 56, that to identify a difference in characteristic and difference in treatment, only indicate[s] a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

Deposit order

73. Rule 39 of The Tribunal Rules states that

> (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.

74. The threshold of "little reasonable prospect of success" is not as high as its strike out counterpart in r 37 of "no reasonable prospect of success" and must be applied against that background. Secondly, and also in contrast to the procedure under r 37, the Tribunal *can* make a summary assessment of the factual position to determine whether the threshold is met. That assessment is designed to avoid cost and delay and should not involve a mini trial of the facts, as this would defeat the object of the exercise: *per* Simler J, in Hemdan ***v Ishmail*** **[2017] IRLR 228 at §13.** This case also noted that the purpose of a deposit order "is emphatically not ... to make it difficult to access justice or to effect a strike out through the back door".

Conclusions on Strike Out for C1 and C2

75. Having taken the relevant principles into consideration, I concluded that the on the majority of the allegations as listed, there should be no strike out ordered or deposit order made. To do so would run contrary to the decisions of the appellate courts as cited above. The claimant was able to demonstrate an arguable point and therefore the evidence to support the allegations should be heard at the Full Hearing.

76. In the interests of time, I shall not go through each of the 32 allegations separately. However, **I have listed below in the attached Schedule A (using the numbering agreed with the parties at the PH) the claims/allegations which should be struck out.** It should be noted that some of these were formally withdrawn by the claimant (and I have noted where this was the case).

77. I also note that some of the Strike Out allegations were in fact arguments that the claims were out of time. It had not been made clear that this issue was to be considered at this PH. The claimant had not prepared evidence to explain why such claims were not brought in time and whether there should be an extension granted on just and equitable grounds. These claims/allegations are allowed to proceed, and the respondents will take the time point at the Full Hearing.

Schedule A – **the following allegations/claims as to detriment made by the claimant in C1 and C2 are struck out on the ground of "no reasonable prospect of success" Rule 37 (1) Tribunal Rules of Procedure 2013**

(*The numbering follows that agreed with the parties in the PH and refers to the list of allegations/claims/detriments set out at pages 6-29 of Mr Cordrey's written submissions on Strike Out, which cross refers to the List of Issues discussed with EJ Woodhead at the PH in June 2023)*

Item 7. Detriment 30 (page 11). Victimisation (sex) claims against M Kazmi and Julia Layton (an external lawyer). It was agreed that this should be properly dealt with under Claim 3 and so is Struck Out from C1 and C2

Item 8. Detriment 31 (page 11). Direct Race Discrimination claim against M Kazmi and Nicholas Dent (the respondents' lawyer). The claimant accepted that this claim should be withdrawn. She and Ms Kazmi were friends.

Item 9. Detriment 11 (page 13) Direct Sex Discrimination claim against Juliana Souza-Ennis (a prospective colleague) saying that the claimant was "the CEO's favourite". The claimant could not explain why this was a direct discrimination claim. It appeared to be more in the nature of a harassment claim if it was able to make out at all.

Item 12. Detriment 13 (page 15) Victimisation (sex) claims against R2 that he consistently passed the claimant over for promotion. This was not pleaded in C1 or C2 and no application to amend has been made. The claimant accepted that she does not find any reference to this claim in the pleadings (she was allowed time to consider this point). The claimant referred to a paragraph in her Particulars of Claim for C1 (page 24 Strike Out bundle), but this was an allegation against R4 (Sheena Griffiths) assisting R2 and R3 in victimising her. This is too oblique a reference.

Item 17. Detriment 17 (page 20). Direct Race Discrimination claim against R4 (HR professional) that she had influenced R3 to change her decision to allow the claimant to work with the surveillance team. The claimant said it was a "logical conclusion" that R4 had influenced R3 because the change of mind occurred after a conversation between R3 and R4. The claimant said R4 was unsympathetic towards her because she was Italian. I asked the claimant why she thought this. She could not identify any behaviour or comments by R4 other than a comment that R4 had made that she would rather be skiing in Italy than in France. The claimant said she believed R4 was being ironic. There is not enough evidence even on the claimant's highest case that there is a reasonable prospect of showing that this is an act of race discrimination.

Item 18. Detriment 19 (page 20) Direct Race Discrimination claim against R4: that she required the claimant to answer questions relating to her grievance and disciplinary matters even when the claimant was sick at home. I noted that this related more to disability than race and the claimant withdrew this allegation.

Item 19. Detriment 20 (page 21). Direct Race Discrimination claim against R4: that R4 held a conversation (which could be overheard by Adrian Finn) saying that it was planned to make the claimant redundant before her salary went up and referring to her role, position and salary. I questioned why the claimant said this was because of her race and the claimant withdrew the race allegation.

Item 20. Detriment 21. Direct Race Discrimination claim against R4 that she refused the claimant's request to work for a few months during the year in Italy (especially during her daughter's school holidays). The claimant had not mentioned this allegation in C1 although it occurred before she lodged her claim. No actual comparator was cited who had been allowed to work from abroad. When this allegation was pleaded in C2 the claimant had originally cited it as sex discrimination but had altered her allegation to race discrimination during the discussion of the List of Issues with EJ Woodhead. I asked the claimant why she believed this was race discrimination and she said because she was the only Italian mother on the team who lived abroad. There is no reasonable prospect of the claimant succeeding on this allegation as direct race discrimination.

Item 21. Detriment 22 (page 22). Direct Race Discrimination claim against R4; that she sent new employment contracts to other non-Italian colleagues sooner than she sent the contract to the claimant and refused to answer the claimant's questions on the operation of bonuses under the new contract but gave immediate assistance to colleagues of a different race. The claimant accepted that she had probably asked more detailed questions than other colleagues which could explain why the answers took longer to prepare. The claimant was also unable to confirm if the colleagues were of the same status as her as they were in a different department. There is no reasonable prospect of the claimant succeeding on this allegation as direct race discrimination.

Item 22. Detriment 23 (page 23). Direct Race Discrimination claim against R4 concerning the handling of the claimant's grievance and disciplinary processes. The claimant withdrew this allegation.

Item 23. Detriment 23 (page24). Victimisation (sex) against R4 on the same facts but a different discrimination claim. The claimant said that R4 was unhappy that she had made the harassment claim against R2 and so was covering up matters and not assisting the claimant. The claimant did accept that R4 had assisted in changing the claimant's line manager from R2 to R3. This claim has no reasonable prospect of success.

Item 24. Detriment 24 (page24). Victimisation (sex) against R4: that she refused to allow the claimant to work from home for 5 days a week even though several other named colleagues were seldom in the office. When asked to explain why this was a victimisation claim the claimant consistently referred to her need to care for her daughter. I do not accept that this is properly pleaded as a victimisation claim – there is not reasonable prospect of success.

Item 25. Detriment 25 (pages 24 &25). Victimisation (sex) against R4: after complaints were raised against the claimant about her conduct at meetings R4 went straight to a written warning whereas they had only given R2 verbal warnings for worse behaviour. On discussing this claim in more detail with the claimant, she accepted that she had no evidence that R2 had received different disciplinary sanctions and no evidence of R4's involvement in any of the decisions. It also emerged that the claimant had not realised that a verbal warning was a "term of art" and was not the same as R5 referring to the fact that he wanted to speak to R2 about his behaviour. There is no reasonable prospect of this claim succeeding against R4.

Item 29. Discrimination arising from disability against Philip Parsons (page 27). The claimant withdrew this claim, and, in any event, I have decided that the claimant is not disabled within the definition in the EQA.

Item 30. Detriment 2 (page 28). Victimisation (sex) against Andrew Driver: that while the claimant was only holiday A Driver sent multiple messages asking her to exit from an Excel spreadsheet which she was using so that he could access it. The claimant said that she believed this was victimisation because A Driver was a friend of R2 and objected to her complaining about R2's behaviour (the protected act). This claim has no reasonable prospect of success, given the nature of the allegation (ie asking the claimant to exit a spreadsheet is unlikely to be a detriment).

Employment Judge Henderson

JUDGMENT SIGNED ON: 27 October 2023

JUDGMENT SENT TO THE PARTIES ON
27/10/2023

FOR THE SECRETARY OF THE TRIBUNALS