



# EMPLOYMENT TRIBUNALS

**Claim**  
G Few

v

**Respondent**  
(1) CSH Surrey  
(2) S Flannagan

**Heard at:** Reading Tribunal  
**Before:** Employment Judge Anderson

**On:** 6 December 2023

## **Appearances**

**For the Claimant:** R Morton (counsel)

**For the Respondent:** M Islam-Chaudhury (counsel)

## **JUDGMENT**

1. The claim against the second respondent has no reasonable prospects of success and is struck out.

## **REASONS**

1. By way of a claim issued on 12 April 2022 the claimant brings a claim of unfair dismissal against the first respondent and a claim of disability discrimination against the first and second respondents. The respondents made an application to strike out the claim against the second respondent on the grounds that it has no reasonable prospect of success. In the alternative the respondents seek a deposit order against the claimant. The application is set out in a skeleton argument filed on 17 November 2023.
2. At a hearing on 6 December 2023 counsel for both parties made submissions on the application. Mr Islam-Choudhury, for the respondent, said that the claimant had set out no clear allegations of discrimination by the second respondent other than an unparticularised allegation that he derailed the grievance appeal. He also noted that at the previous case management hearing on 2 October 2023 the claimant had said that the reason the second respondent was named was because the first respondent may become insolvent. Ms Morton, for the claimant, said that the claimant was entitled to name the second respondent, CEO of the first respondent, as a respondent where he oversaw decisions relating to the claimant's case. She relied on the case of *Timis v Osipov [2018] EWCA Civ 2321*. She said the second

respondent was a key decision maker and had individual liability. She said that potential insolvency was not the basis for including him as a respondent.

3. Under Rule 37 of schedule 1 to the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* the tribunal has the power to strike out a claim or part of a claim on the ground that it has no reasonable prospect of success. In *Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391, HL*, it was held that discrimination cases are generally fact sensitive, and any issues should usually only be decided after all the evidence has been heard. In *Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT*, the EAT's guidance was that where prospects of success turn on factual disputes it is unlikely strike out will be appropriate and with help of the parties the tribunal should try to identify the issues.
4. In this case, after many months of the claimant and her lay representative trying to particularise the claimant's claim, counsel has been instructed and has completed that particularisation in a document filed on 4 December 2023. The document identifies a number of facts and allegations against specific people. None of the allegations are against the second respondent. Ms Morton said only that disclosure had not taken place and his involvement may then become apparent.
5. I agree with Mr Islam-Choudhury that where the claim has now been clarified with the assistance of counsel and there are still no specific allegations of discrimination against the second respondent, the claim has no reasonable prospects of success. No dispute of fact has been identified. No facts at all have been identified. While clearly there can be named individual respondents to a discrimination claim, and the fact that the second respondent is a CEO does not protect him from this, in my view the time has now passed for the claimant to set out her claim against Mr Flanagan and she has failed to do so. I do not accept that *Osipov* is relevant here where there is no clear allegation of individual wrongdoing by the second respondent.
6. For these reasons the claim against the second respondent is struck out.

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Employment Judge Anderson

Date: 8 December 2023

Sent to the parties on: 23/1/2024

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For the Tribunal Office