



# EMPLOYMENT TRIBUNALS

**Claimant:** Sahidur Rahman  
**Respondent:** London Borough of Tower Hamlets  
**Heard at:** East London Hearing Centre  
**On:** 16 February 2024  
**Before:** Employment Judge Housego

## Appearances

**For the Claimant:** Represented himself  
**For the Respondent:** Sophie David, of Counsel

## JUDGMENT

The claim is struck out.

## REASONS

1. This hearing was listed at the request of the Respondent to seek strike out or deposit orders in respect of claims for unfair dismissal and disability discrimination brought by the Claimant.
2. In the hearing I discussed with the Claimant, at length, the basis of his claims, in order to establish what he was alleging. My record of proceedings records what he said, and the submissions which followed. The Claimant's case is set out in my reasons below.

### The law

3. In discrimination cases the Claimant's case has to be taken at its highest if strike out is being considered, and that requires the Judge to go to great lengths to find

out what the case is before concluding that it has no reasonable prospect of success<sup>1</sup>. There are limits to the lengths to which the Tribunal is obliged to go<sup>2</sup>. It is unhelpful to require a litigant in person to file further and better particulars of a claim, and better practice to elicit in a case management hearing exactly what the Claimant's case is<sup>3</sup>. That is what I tried to do in this hearing, as did the Judges in the three previous Case Management Hearings ("CMH")

4. As a general principle, discrimination cases should not be struck out, save in the clearest circumstances. The Claimant's case is to be taken at its highest. There are sound public interest reasons for the test being a high threshold. Ahir v British Airways Plc [2017] EWCA Civ 1392 provides clear guidance to be applied in applications such as this. I have read and considered that guidance in coming to my conclusions. I note that this is only to be done in the clearest of cases and is an exceptional course<sup>4</sup>. Nevertheless, it would be to shirk judicial responsibility not to do so in an appropriate case<sup>5</sup>.
5. The provision of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 (as amended) under consideration is Rule 37:

***"Striking out***

**37.—(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).*

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<sup>1</sup> Tayler J in Daniel Cox v Adecco & Others UKEAT/0339/19/AT(V) "You can't decide whether a claim has reasonable prospects of success if you don't know what it is. Before considering strike out, or making a deposit order, reasonable steps should be taken to identify the claims, and the issues in the claims. With a litigant in person, this involves more than just requiring the claimant at a preliminary hearing to say what the claims and issues are; but requires reading the pleadings and any core documents that set out the claimant's case.

<sup>2</sup> Marrufo v Bournemouth Christchurch And Poole Council (PRACTICE AND PROCEDURE) [2020] UKEAT 0103\_20\_0312 (about amendment, but §39 is relevant)

<sup>3</sup> For example §20 of Morgan v DHL Services Ltd (STRIKE OUT) [2020] UKEAT 0246\_19\_1812

<sup>4</sup> §11 of *Ahir*, and I note that §14 does not render a judgment unsound because it does not cite all the cases, as long as the relevant principles are applied.

<sup>5</sup> §16 of *Ahir*

*(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.”*

6. In this claim the consideration is whether the whole of the claim should be struck out as not being actively pursued, for non-compliance with Tribunal orders, or as having no reasonable prospect of success.
7. Discrimination claims should not be struck out for non-compliance with Tribunal orders unless a fair hearing is no longer possible<sup>6</sup>.

## Decision

8. I have concluded that the disability discrimination claim meets the high threshold applicable to such applications to strike out discrimination cases and that this is an exceptional case.
9. I have also concluded that the unfair dismissal claim also has no reasonable prospect of success, and strike that out also.
10. I did not strike out the claims for failure to comply with Tribunal orders. While the Claimant has been very tardy in doing so, he has, ultimately complied with most of them, and the hearing dates of 11-13 October 2024 are not in jeopardy as a result of his failures. The Claimant has still not provided consent to the release of his occupational health reports, but that is to his detriment, as whatever they say the Respondent cannot have knowledge of it since it has not seen them.
11. I did not strike out the claims for want of prosecution because the Claimant attended today (although he failed to attend the last hearing without good reason), and has been participant in the process throughout, even if that participation has not enabled the issues in the claim to be elucidated with any clarity or even at all.
12. I gave a full ex tempore judgment at the conclusion of the hearing, and this written decision sets out and amplifies the reasons given on the day. That the conclusion is set out at the start of this judgment is therefore not to be taken as any suggestion of prejudgment.

## The hearing

13. The hearing was listed for 10:00 am, and I brought the parties in. The Claimant was accompanied by his sister and his brother. His brother is disabled (and uses a motorised wheelchair all the time.)
14. The Claimant said that he needed more time to prepare his submissions. He said that he found it difficult to articulate what he wished to say and wanted time to note down what he wished to say to communicate his account better. He wanted to email a note of his submissions to the Tribunal. I enquired why it was that this

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<sup>6</sup> T v Royal Bank of Scotland PLC (PRACTICE AND PROCEDURE - Striking Out) [2023] EAT 119

had not been done in advance of the hearing, which had been listed a substantial time ago. The Claimant said that he struggled to sleep, and that “things come at me” and that it was important for me to know what he had to say: he wanted time to prepare a visual aid – a speaking note.

15. I asked the Claimant what disability he said that he had: he said that he would put this in the document he wished to prepare. I asked him what it was. He replied that it was borderline personality disorder (“BPD”). He asked that I refer to the NHS website for a full description of it with an overview of symptoms and the issues it gave rise to, including not being able to articulate properly. I asked if this had been mentioned before. The Claimant said that he had raised it in the case management hearings before EJs O’Brien and Jones. (This is so, as set out above. The Claimant did not mention the other matters said in earlier hearings to be disabilities.)
16. I asked why he had not attended the last hearing (for which by chance I was the Judge). The Claimant said that he would put this in the document as well. I asked him to give me some idea. He referred me to an email of 17 January 2024. I asked if he could tell me in the hearing, now. The Claimant said that he could not now remember, but that it might have been connected with his younger brother, whose health was deteriorating, who had cerebral palsy, and was overweight and had diabetes. Counsel indicated that it seemed that the Claimant had said that he had got a new job and was working on 11 January 2024. The Claimant agreed that this was the case. He apologised for his non-attendance at the last hearing. The Respondent said that the Claimant had indicated to them that he had been at work on 11 January 2024, the day of the last hearing. The Claimant accepted that that was correct.
17. The Claimant said that he had applied for a reconsideration of the Orders made by me at the last hearing, on 11 January 2024. I had struck out part of the claim (Part 1 of the Particulars of Claim. This was an alleged incident on 19 February 2016, when the Claimant had worked in a different office, which he had left five years before issuing this claim, and with different people. I gave reasons in §18 of that Case Management Order (“CMO”). In essence the reasons were that there was no conceivable link with anyone connected with any recent allegation, so that this was not part of a series of actions, that the claim was long out of time, that there was no reason why a claim in respect of it could not have been lodged at the time, that memories would be impaired after such a long period and that it was not just and equitable to extend time for this allegation to proceed. The application for reconsideration was not with the Tribunal file.
18. Counsel said that she would email that to me. She was applying to strike out the claims as too vague, for non-attendance at the last hearing and because of non-compliance with Tribunal orders. The full detail of the Respondent’s application is in the CMO of 11 January 2024 at §3.
19. At 10:20 I asked the Claimant how long he would like to prepare. He asked for 20 minutes, or ½ hour. I gave him a 40 minute break and asked the parties to return at 11:00. I made the consulting room next to the Tribunal room available to the Claimant throughout the day.

20. The day before the hearing the Claimant had emailed in 71 pages of emails. I had the Tribunal clerk print them all for the Respondent and for me. He also provided an in-depth analysis of all Employment Tribunal claims brought against London Borough of Tower Hamlets (“LBTH”) over the last few years, and a case report of Z Kamaly v LBTH (3202681/2019) in which that claimant had been awarded £15,000 for injury to feelings and psychiatric injury (plus uplift and interest). I had these printed out also.
21. Accordingly, I had:
- 21.1. The ET1 claim form with Particulars of Claim
  - 21.2. The ET3 response with Grounds of Resistance
  - 21.3. Case management orders from hearings on 23 June 2022 (EJ O’Brien), 30 June 2023 (EJ Jones) and 11 January 2024 (my order). EJ Jones had not prepared a CMO from the hearing of 27 November 2023, but the parties had noted her directions and largely complied with them. That Order had given the Claimant until 15 December 2023 for the Claimant to make application to amend. No such application had been made.
  - 21.4. Two sets of emails provided by the Respondent from 05 and 11 May 2020 from the Claimant’s manager Kabir Uddin to others in the office concerning a laptop for the Claimant to work at home.
  - 21.5. A paper from the Claimant headed “Response to CMO 17 January 2024”.
  - 21.6. Case report Kamaly v LBTH (as above).
  - 21.7. 71 pages of emails provided by the Claimant.
  - 21.8. The file had very extensive GP notes sent in by the Claimant since the hearing of 17 January 2024, on 05 February 2024.
22. I rose at 10:26 and the hearing resumed at 11:15 when the Claimant was ready. The claim was discussed until noon, at which time I offered the Claimant a break, asking if 15 minutes until 12:15 would be enough for him. The Claimant said that it was, but that he wished to attend Friday prayers. I asked when he would need to leave to do so. He said 12:45. I asked how long he would need. He said two hours, which he reduced to one hour, without question from me. I asked if a lunch break from 12:45 to 2:00 would be adequate. He said that it would. I rose from noon until 12:15. The Respondent then addressed me until 12:35. I told the Claimant that he did not have to finish what he had to say in 10 minutes. The Claimant told me about his claim until 12:45. I then reminded him of the time, and indicated that the choice was his, to continue if he wished, or to break until 2:00 as I had agreed. The Claimant asked if he could carry on and finish what he had to say. I agreed. He concluded what he had to say at 12:56. I asked if 2:00 was still a suitable time for him to resume. He said that it was, and so there was a lunch break between 1pm and 2pm. I had said we would resume then, or soon thereafter. At 2 pm the Claimant’s sister was not in the Tribunal room. The Claimant said that she was still eating, in the consultation room next to the Tribunal room, which I had made available to the Claimant. I waited until she

returned, about 2:10. I then gave an ex tempore decision, striking out the claim in full. The hearing ended at 2:30.

### History of claim

23. The claim form was lodged on 18 September 2022. Box 8.1 had ticks against claims for unfair dismissal, disability discrimination, holiday pay and other payments. (The parties advised that the claims for holiday pay and other payments were no longer live issues.)
24. On 30 June 2022, before EJ O'Brien at a CMH a substantive hearing was listed for 4 days, 10, 11, 12 & 13 October 2023, in person (not by video). EJ O'Brien recorded that the claims, particularly the disability discrimination claim, were very unclear. He stated (§11) that it appeared that an application to amend would be made. The Claimant was ordered to provide a chronological list of all the allegations he made relating to disability discrimination and public interest disclosure and detriments said to arise from them. A list of exactly what detail was to be provided was set out. The Claimant was to identify which of the allegations were said by him to be within his existing claim, and which required amendment to include them. If he wished to bring a religion or belief claim he was to say what religion or belief he said he relied upon. The Claimant was ordered to make any application to amend by 03 November 2022, and to provide the further and better particulars by that date. It is apparent that matters were very unclear before this hearing and that it was not possible for EJ O'Brien to gain clarity during that hearing.
25. The Claimant did not comply with the order to provide further and better particulars and made no application to amend.
26. On 23 June 2023 there was a further CMH before EJ Jones. The CMO was issued on 23 September 2022. It stated that the hearing dates would need to be vacated, although at the date of this hearing it remains listed for those dates. The hearing ran out of time, and it was not possible for the issues to be identified. The Claimant confirmed that the existing claims were for:
  - 26.1. unfair dismissal;
  - 26.2. direct disability discrimination;
  - 26.3. direct disability discrimination by association, related to his father and brother &
  - 26.4. holiday pay and other payments (as set out above, no longer live issues).
27. He indicated that he wished to amend to add claims under S15 Equality Act 2010, for public interest disclosure detriment, sex discrimination, discrimination on the grounds of religion or belief. He was ordered to make application by 01 October 2023. He was to state:
  - 27.1. why these were not included in his claim form;
  - 27.2. when he said he was subject to religion or belief discrimination, what happened and who did it;

- 27.3. when he said he was subject to sex discrimination, what happened and who did it;
- 27.4. whether he wished to pursue a claim for detriment arising from public interest disclosure and if so what disclosure he said he had made; and
- 27.5. what did he say arose from his disability, and what discrimination did he suffer as a result of that which arose from that disability.
28. The Claimant stated that he had the following disabilities – anxiety and depression, diagnosed in 2016 and with associated irritable bowel syndrome, an adjustment disorder from sometime before 2019, and borderline personality disorder, diagnosed in 2019.
29. The Claimant was ordered to provide details of his claimed disabilities by 17 October 2023. By the same date he was to provide his GP records.
30. At the next CMH on 27 November 2023 EJ Jones ordered him to provide those records by 15 December 2023. They were supplied on 09 February 2024. They are very extensive, running to many pages of closely typed records of his involvement with his GP.
31. The Claimant was also required in the CMH of 27 November 2023 to obtain a letter from his GP by 06 November 2023 setting out the diagnoses of the Claimant’s medical conditions, with dates, medications prescribed for him, the prognosis for each condition, and how each affected the Claimant’s ability to undertake daily tasks. No such letter has been provided.
32. During his employment the Claimant was referred to the Respondent’s occupational health provider. He declined to allow their report to be sent to the Respondent. EJ Jones ordered (§14) that he permit the Respondent access to all or any occupational health report. The Claimant voiced concerns about confidentiality. EJ Jones dealt with that in some detail (§15) and stated that the reports were crucial to his case. The Claimant has not complied with that Order.
33. The CMO after the hearing on 23 June 2023 said that the next hearing would consider any application to amend made by the Claimant.
34. The next CMH was on 27 November 2023, again before EJ Jones. The CMO has not yet been produced, but the parties made notes of the directions given, and partially complied with them. EJ Jones was not able to take any further forward the issues in the case. No application to amend had been made by the Claimant prior to that hearing.
35. The Claimant submitted an application to amend on 15 December 2023, the last date by which he was ordered to do so by EJ Jones on 27 November 2023. This applied to add religion or belief discrimination but gave little detail. It stated that the Claimant “may have been” subject to direct discrimination but gave scant detail. He also wished to add sex discrimination to his claim. He wished to bring a public interest disclosure claim. That part of the CMO of EJ Jones of 23 June 2023 requiring him to set out why these were not in the claim form and to account for the delay was not covered by the application.

36. On 11 January 2024 I took a CMH, and the CMO was sent to the parties on 17 January 2024. The Claimant did not attend that hearing, and no reason was apparent on that day as to why he did not do so. I granted an application made by the Respondent to strike out paragraph 1 of the Particulars of Claim, as it related to an alleged incident years ago (2016) when the Claimant worked at a different office with different people. It was out of time, it was not part of a series of events and it was not just and equitable to extend time. I refused the applications to amend.
37. I directed a further CMH be held to decide the Respondent's applications to dismiss the claim, or to order a deposit to be paid, for non-compliance with Orders of the Tribunal, not actively pursuing the claim (non- attendance without reason at that hearing) or as having no reasonable prospect of success as too vague or intrinsically unsound (such as not having a risk assessment).
38. The Claimant asked that I reconsider the decision to refuse his application to amend but gave no reasons why I should do so prior to this hearing.

#### The claim form

39. The claim form has a brief statement at box 8.2:  
*"claim for unfair constructive dismissal and direct discrimination in relation to disability and breach of contract. I do not know how to write this as I have not received any legal advice on how to write this part out and so forth. I do believe this needs to be pursued. I hope that I can add to this later on in this matter. Thank you."*
40. The Claimant annexed a four page document to his claim form. This has an introduction of 4 paragraphs. The third paragraph starts: *"I believe I have been subjected to direct discrimination due to my long term disability... which led to me being unfairly constructively<sup>7</sup> dismissed..."* and that this affected his caring responsibilities for his father and brother.
41. There are then 21 detailed numbered paragraphs. These set out a chronology of where he worked from 2016 onwards. There is reference to depression in §3. The Claimant sets out issues with management, and then refers to Covid-19. He felt he was mismanaged and raised a grievance about it. He says they took over 3 months to investigate. He said policies were years out of date. He said that he was scapegoated as a result of asking to work from home, which he did because of his ill elderly father and disabled brother who was to "shield" because of his health conditions. He was referred to human resources and that exacerbated his disability of depression (§15). He felt that his dismissal was because of his depression (§19). In §21 he stated that this was connected to his religious faith, as *"in my faith parents are everything and to serve them. I believe this belief had not been respected"*.
42. There is nothing in this document about sex discrimination. There is a reference to policies being out of date, but the entirety of this document is about the

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<sup>7</sup> The references to constructive dismissal are misplaced: the Respondent dismissed the Claimant.



Claimant saying that his depression has not been well handled by the Respondent and was the reason for his dismissal, and that his working from home request was connected with his father and brother (and so possibly associative discrimination), but the Claimant associates no detriment with his working from home requests.

**The information provided by the Claimant for this hearing**

43. As had Judges in previous hearings I sought to ascertain exactly what the Claimant was alleging. I asked him open questions to try to find out what he was alleging (as opposed to a narrative chronological history of his work) and why it might be unfair (for unfair dismissal) or connected with a disability, and if so what disability.
44. As to disability the Claimant's position has changed. In his claim form it was depression. In this hearing it was BPD. Understandably, the Respondent has made no admissions about the Claimant's claimed disability or disabilities, and it was not reasonable to expect them to analyse the medical records in the few days since the Claimant had sent them in (especially as 09 February 2024 was a Friday).
45. The Claimant said that while it was difficult for him to conduct litigation it was not impossible for him to do so.
46. The Claimant said that he had raised BPD with Ann Corbett, Steven Tinkler, Pat Chan and Sue Hayes just before the meeting at which he was dismissed. He said they should have known of it a couple of months before that, and that when he was diagnosed in 2019 he told his manager Kabir Uddin and Sue Hayes of it.
47. I asked the Claimant to take me through the letter of dismissal. He accepted that the bullet points set out in that letter were factually accurate. He said that in July 2020 he was referred by the Respondent to occupational health. He had asked to speak to a doctor, but the occupational health provider had only allocated him a nurse. I said that the Respondent said that he had not consented to the report being disclosed to them, so they did not know what it recommended. The Claimant said this was not entirely accurate, as he thought there might have been a telephone consultation, but he could not recall any detail. He had not allowed the Respondent access to the report.
48. I asked about the laptop. The Respondent said that they had provided a laptop for him so that he might work from home, but that he had refused to collect it and not permitted them to deliver it to him. The Claimant said that he had requested reasonable adjustments, but these had not been provided. I asked what reasonable adjustments he had requested. The Claimant said that he should have had a workplace assessment and been provided with a desk and chair. As he had broad shoulders he should have been provided with a remote keyboard for the laptop. He should also have been given a separate monitor to link with the laptop. He said that he had asked his manager Kabir Uddin and Sue Hayes for these things at the start of the pandemic, but they had delayed. He had got on well with Kabir Uddin and had asked that he remain his line manager. He said that Kabir Uddin told him that he needed to obtain approval for these to be

acquired. I asked why none of this had been said before. The Claimant said this was for mental health reasons.

49. He had asked to move to the new team where Kabir Uddin worked, and they had told him there was no room there, but this was not true.
50. He accepted that he had a fit note saying that he was able to work. Steven Tinkler had asked to meet him. He agreed that he had refused to do so, and told Steven Tinkler (who was head of service, and so manager of Sue Hayes who had become his manager) that if he persisted, he would complain to the police of harassment. This was because he was grieving for his father who had recently passed away. He said this was associative disability, based on his late father's disabilities of heart problems and Alzheimer's. He did not think it right that Steven Tinkler should have access to information about him that was confidential.
51. In February 2022 he had engaged with a conference call and a return to work plan was discussed. The Claimant said that he had wanted to return to work but wanted his grievance resolved first and so was signed off sick again. He wanted a review of the occupational health referral and an explanation as to why his grievance had taken so long to be investigated.
52. I asked why it was that the grievance process meant he could not return to work. The Claimant said that his health came first. He wanted a clean slate before he would have felt able to return to work. He said this had caused an exacerbation of his anxiety and depression.
53. I asked what he felt he needed, at that time. He said that management needed to fix the relationship issue he had with his manager, Sue Hayes, and with Markov (someone else in management), but, he said, they had neglected that grievance.
54. I said that the Respondent said they had offered changes, but that he wanted more. I asked his view of this. The Claimant said that he was moved to the Shadwell Centre, but that his contract provided for him to work at Bethnal Green. A restructure was due, and he wanted recommendations specific to him. Khalida Bacon had agreed that he would stay in the team managed by Kabir Uddin, but this had not happened.
55. The Respondent said that they believed that he had no trust in senior management and that was part of the "some other substantial reason" for dismissal. The Claimant said that he had a good relationship with some of them but was passed around from one place to another and so it was hard to start a new role in a new place.
56. I asked the Claimant whether he was saying that right through to his dismissal (20 April 2021) he needed to work from home on account of his brother. That was what the Claimant was saying. This was even after the "shielding" period ended. This was because his brother had to stay at home as day centres remained closed and he was the primary carer of his brother.
57. I asked if he had told the Respondent of this at his dismissal hearing. The Claimant replied that the Respondent had mismanaged the situation, by moving

him around. He could not work at home as they had not made the reasonable adjustments he had requested – a workstation, chair, laptop, remote keyboard and monitor. He accepted that there was nothing in the 71 pages of emails he had provided where he asked for any of these things.

### **The Respondent's submissions**

58. Counsel appreciated that it was difficult to strike out discrimination claims, but at the least deposit orders should be made. The Claimant had not complied with many Tribunal Orders over an extended period. I made a full note of the submissions which it is not necessary to set out at length here.

### **The Claimant's submissions during this hearing**

59. His application to amend should be reinstated as he was not present when it was dismissed. He had raised alarming issues about his late father and about his brother. The Respondent knew all about both as they provided care to both of them. His brother had a social worker from the LBTH.
60. His position about occupational health reports had been twisted. The information provided by the Respondent to the occupational health provider was enough to show that they had knowledge.
61. He referred to his list of claims brought against the Respondent by employees. If they were not at fault they would not have so many claims brought against them. He said that I had decided one of them (I have no recollection of doing so, but if that is correct, I do not see that as any issue and nor did either party say that it was). He referred to a case report (*Kamaly*) where a claimant had succeeded in a claim for disability discrimination arising from delay in dealing with a grievance and been awarded £15,000 plus uplift and interest. He said that his claim was similar.
62. He was a victim as he had been moved around multiple times because he had raised his grievance. He had been upheld in his (2016) grievance but they had moved him, and not the perpetrator.
63. He had been moved in the restructure and had to start in a new place with new people and that was difficult and so his reputation was damaged. He had been seen as a problem and not as a victim.
64. His symptoms (of depression) had been exacerbated by mismanagement. There was a new business support officer, but she had no experience. Sue Hayes had taken 6 months to deal with a grievance that she should have dealt with in one month.
65. It was a policy of the Respondent to move people around to stop them making significant connections. When he moved departments he got a negative reception as he was perceived as a troublemaker. It was not true that what they were trying to do was to give him a fresh start, as they said.

66. The Respondent did not know how to deal with his disability and his caring responsibilities for his disabled relatives.
67. There were 6,500 roles in the Respondent, and they could have found a suitable one for him. His negative reputation had spread round the organisation and that had made it difficult for him to find a niche. The Respondent moved people rather than address issues they raised.
68. The Respondent had failed to undertake risk assessments at material times. Had they done so his needs would have been identified and could have been addressed. It was a mandatory requirement to do risk assessments.
69. There was a toxic atmosphere, coupled with mismanagement and senior staff were incompetent. There was a culture of micro aggression towards him.
70. They had not considered reasonable alternatives necessary because of the breakdown in relationships. They should have proposed mediation.
71. The Respondent had given him a poor reference and that had hindered his search for new work.
72. As his father's health declined and his brother's needs increased, his caring responsibilities heightened.
73. His line of communication had been consistent and proportionate, but that was not the case for the Respondent.

**Reconsideration of refusal on 11 January 2024 of Claimant's application to amend**

74. The Claimant provided no reason for not attending at the hearing on 11 January 2024 other than citing his mental health. However, he accepted that he had gone to work that day. He did not, at this hearing, provide any of the reasons in support of his application which were ordered in previous CMOs. There was therefore no reason to revisit my order refusing the Claimant leave to amend his claim to include other heads of claim.

**Analysis of the unfair dismissal claim as described by the Claimant**

75. The essence of this claim can be simply expressed and is not in dispute. There were some difficulties at work. In March 2020 the pandemic disrupted everything. The Claimant worked from home. His father was elderly and suffered heart problems and from dementia. The Claimant cared for him. His condition worsened and eventually he died. The Claimant's younger brother has severe disabilities. The Claimant is his primary carer. His brother needed to "shield". As time passed, the Respondent wanted to resume working more effectively. The Claimant suffered the bereavement of his father's death towards the end of 2020. He refused to deal with the Respondent for some months, threatening a senior manager with a complaint to the police for harassment if he tried to contact him again. Eventually contact was resumed and the Respondent agreed to the Claimant working from home. However, the Claimant refused to collect a laptop

from the Respondent saying that his brother was still shielding (but accepted that he could and did leave the house for other things). He refused to allow the Respondent to deliver the laptop. He did not tell them that the reason was that he needed a workplace assessment, a new desk and workstation, and a monitor and keyboard. The Claimant's reason for not attending work was then not connected with his father, who had died, but with the fact that the day centres his brother had used remained closed, so that his caring responsibilities were heightened. There were relationship difficulties with his manager and her manager.

76. With this short summary it is clear that there was simply no way forward. Understandably the Claimant gives a high priority to the care of his brother, but from the point of view of the Respondent it now had a person who insisted on working from home but would not accept delivery of the work tool necessary to do so and was not told why the Claimant would not accept the laptop (which was not disability related). In addition, the working relationship, on the Claimant's own account, was very bad.
77. It is far from clear that the Claimant could have worked from home in any event, given his caring responsibilities for his brother.
78. The approach of the Claimant did not assist in resolution of difficulty: threatening to report a senior manager to the police for harassment, requiring that he work from home but refusing to accept a laptop to be able to work from home and refusing to allow access to an occupational health report are not conducive to reconciliation or progress.
79. There was no way apparent in which this could be resolved. In these circumstances there is no reasonable prospect of the Claimant succeeding in persuading a Tribunal that the reason for dismissal was not some other substantial reason as the Respondent says, or persuading a Tribunal that the decision was outside the responses of a reasonable employer to the circumstances or was unfair<sup>8</sup>. The Claimant says the decision was unfair but not that the process followed was unfair<sup>9</sup>. As there is no reasonable prospect of the Claimant showing that the Respondent dismissed him unfairly I dismissed that claim.

### **Analysis of the associative disability discrimination claim**

80. The associative discrimination in respect of the Claimant's late father is a claim which cannot succeed. The alleged detriment was that the Claimant was contacted after the death of his father. Put shortly, the Claimant's father ceased to be a disabled person when he became a deceased person.
81. The claim for associative discrimination in respect of the Claimant's brother relates to the time when the Claimant was being asked to return to work as Covid-19 lockdowns ended.

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<sup>8</sup> S98(4) of the Employment Rights Act 1996

<sup>9</sup> So Sainsbury's Supermarkets Ltd v. Hitt [2001] UKEAT 887\_00\_2012 does not assist the Claimant

- 81.1. First, the Respondent agreed to the Claimant working from home, even though (on his case) they had earlier asked him to return to the office. That is not capable of dispute, because the Claimant agrees that the Respondent asked him to collect a laptop computer so that he could do so, and when he refused to do so tried to courier it to him. Accordingly, there was no detriment or less favourable treatment because the Respondent agreed to what the Claimant asked, so that he could look after his brother.
- 81.2. Secondly, the Claimant does not make a claim for associative discrimination for any period before Covid-19 started. The issue arose when lockdowns ended. The issue was that the day centres his brother attended pre-Covid did not reopen (very probably to avoid the possibility of users transmitting the illness to one another or catching it from staff). This meant that the Claimant felt he had to stay at home to care for his brother full time. There is no reasonable prospect of a claim for associative discrimination succeeding where that claim is founded on an employee saying that circumstances now mean that he cannot work because he had to care for a disabled relative. That is the essence of the Claimant's claim for associative disability discrimination in respect of his brother.
- 81.3. Even if that were not right, there was no detriment, because the Respondent did not insist on the Claimant returning to work and tried to get him a laptop so that he could work from home, which is what he wanted to do.
- 81.4. The Claimant's reasons for not taking the laptop are dealt with above, and there is no reasonable prospect of them leading to a successful claim.
- 81.5. Any issues about the grievances raised are unconnected with his brother's disability. They were about alleged generic management failures and time to investigate grievances.

### **Analysis of the direct discrimination claim**

82. This has no reasonable prospect of success for the following reasons:
  - 82.1. The Claimant's asserted disability has not been consistent, but I take the case at its highest so that it is anxiety and depression and BPD.
  - 82.2. The Claimant has not set out what effect he says BPD has upon him. Without some idea of the effect on him of BPD it is not possible to discern any link between BPD affecting the Claimant and anything the Respondent did or did not do. The Claimant says, only, that he has BPD and that he was dismissed. For a claim to have any chance of success he must show a causative link between the disability and the detriment. One does not get to the point of assessing whether there is a chance of a link being established as the Claimant suggests no facts from which this could be inferred<sup>10</sup>. There is, in my judgment, no reasonable possibility of the Claimant satisfying "the reason why" test. (I bear in mind that the test is

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<sup>10</sup> Bahl v The Law Society & Anor [2004] EWCA Civ 1070

that the action was “in no sense whatsoever”<sup>11</sup> infected with unlawful discrimination.)

- 82.3. In his lengthy discourse about his complaints against the Respondent in this hearing the Claimant did not mention anxiety and depression. When I asked him what disability he relied upon he did not say anxiety and depression. It is, nevertheless, in his claim form, and taking his case at its highest I assume that he was disabled by anxiety and depression at all material times. He was off sick for some time, but he was signed as fit for work by his doctor prior to being called to the hearing at which he was dismissed. His evidence was that it was the breakdown of his relationship with his managers, over being moved from one role to another, over the length of time it took to investigate grievances and over his dissatisfaction about his request to work from home that led to him going off work again. None of these are related to his anxiety and depression (working from home was to do with his brother). Anxiety and depression may have resulted from, or been exacerbated by, these problems, but I am unable to see any suggestion of a causative link between anything the Respondent did and any detriment to the Claimant.
- 82.4. The Claimant says that the management of the Respondent is incompetent. If so, this is not said by the Claimant to be other than generic. That is the consequences affect everyone alike, disabled or not. It cannot be a fact that would sustain a finding of disability discrimination.
- 82.5. The Claimant says that the investigation of his grievance took too long. This could have been a fact that could lead to an inference of disability discrimination but for the fact that the Claimant does not say that it is only disability related grievances that are delayed: he said it applied to all grievances. It is for that reason not capable of being a fact (if proved) that could lead to the drawing of an inference of disability discrimination.
- 82.6. The Claimant suggested no reason why moving him from one workplace to another had any connection with disability. On the contrary, he said the Respondent had a policy of moving people from time to time. That is, all people, disabled or not.

## Conclusions

83. I have done my best to establish from the Claimant the bases of his claims against the Respondent. Even after another long hearing it is opaque. I have done my best to get to the bottom of what the Claimant says and – importantly – why or how it is said to be connected with his disability or the disability of his relatives. I have set it out above. EJ O’Brien tried to establish the Claimant’s case, but could not do so, and gave directions to the Claimant as to what he had to do to get it clear. He did not comply with the Orders of EJ O’Brien. EJ Jones tried twice to

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<sup>11</sup> Igen Ltd v Wong [2005] ICR 931 §1 “It is for the Claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the employer has committed an act of discrimination against the Claimant which is unlawful by [one of the relevant statutes].” (The same test is applicable to other types of unlawful discrimination.)”

establish the extent of the claims and gave directions to assist the Claimant, with which he has not complied. I have tried also, this time in a hearing I listed for a full day. There comes a time when the judiciary has done all it can to assist a litigant in person, and that point has been reached.

84. The Claimant has a deep-seated sense of grievance against the Respondent. However, there is nothing in what he alleges that could lead any Tribunal to find that his treatment and ultimate dismissal was disability discrimination or unfair.
85. For example, the laptop – the Claimant said he would only work from home. That was because he needed to care for his brother. The Respondent accepted this. It asked him to come and collect a laptop. He said that he could not collect it because he did not want to leave the house because of his father and brother. However, he accepted that he left the house, for example to go shopping. He gave no reason why it could not be delivered, other than that he had requested reasonable adjustments which had not been provided. These were a remote keyboard as he has broad shoulders so that a small laptop keyboard was not suitable. He said he should have had a workplace assessment at home, and a work desk and chair should have been provided, and a monitor. He provided no evidence of having asked for such things (they are not referred to in the 71 pages of emails provided today), and even if they were they have no possible link to depression or BPD. He has no physical disability. Failure to risk assess his home for home working has no relevance to his claim for disability discrimination which is dependent on anxiety and depression and BPD. He said that he had not referred to any of this before by reason of his mental health, but he has had a very long time to set out his claim and agreed that he was capable of doing so. He did not attend the last hearing as he was at work, although he first claimed that was because of mental health issues.
86. The breakdown in working relationships is perhaps best illustrated by the fact (the Claimant accepts that it was so) that he threatened to complain to the police of harassment when his manager's manager wanted to contact him, and that he still maintained (at this hearing) that for reasons of confidentiality he would not wish that person (Steven Tinker) to have access to details of his health.
87. It is also demonstrated by the refusal of the Claimant to allow the Respondent access to occupational health reports it commissioned on him, even to the extent of failing to comply with a Tribunal Order to do so. While that is, of course, subsequent to the ending of the employment it demonstrating clearly that the Claimant's attitude to the Respondent means he has no reasonable chance of succeeding in showing that the Respondent's actions were disability discrimination, and not as they say – some other substantial reason leading to dismissal.
88. I observe also that failure to complete risk assessments is not discrimination, although it can assist a claimant if, as a result of not doing one, a respondent fails to take appropriate action for a claimant. The Claimant suggests nothing that the Respondent should have done arising from any disability related risk assessment. Taking the Claimant's case at its highest, the assertion that there should have been a workplace assessment for working from home cannot lead to a finding of disability discrimination as the Claimant has no physical disability.



89. Accordingly, I dismiss the entirety of the Claimant's claims against the Respondent.

**Employment Judge Housego  
Dated: 22 February 2024**