EMPLOYMENT TRIBUNALS

Claimant: Mr R Roberts

Respondents: RELX Group Plc and others

Heard at: London South Employment Tribunal

On: 7-8 February 2024 (8 February in chambers)

Before: Employment Judge Musgrave-Cohen

Appearances
For the claimant: In person
For the respondents: Mr S Forshaw (Counsel)

JUDGMENT AND DEPOSIT ORDER

1. This Order arises from the Preliminary Hearing of 8 and 9 February 2024 for which separate case management orders have been promulgated.

2. The allegations or arguments itemised in detail below are struck out as they have no reasonable prospects of success.

3. The allegations or arguments itemised in detail below have little reasonable prospects of success.

4. The Claimant is ordered to pay a deposit of £60 for each of the 77 arguments or allegations listed below not later than 21 days from the date this Order is sent by the Tribunal to the parties as a condition of being permitted to continue to advance those allegations or arguments. The numbering follows the numbering of Appendix 1 before the Tribunal at the Preliminary Hearing.

5. If the Claimant chooses to pay the deposit orders in respect of some, but not all, arguments or allegations listed below, he is to specify in writing by the same date, which arguments or allegations he is making the payment in respect of by listing:

a. The issue number he pursues.
b. The allegation he pursues within that issue.
c. The Respondent name / Company name that he proceeds against.

List of orders made (by reference to numbering in Appendix 1)

Claim against R1 No order made.

Issue 1 No order made.

Issue 2 No order made.

Issue 3 No order made.

Issue 4 No order made.

Issue 5a £100 for the claims of direct discrimination because of race, age and / or gender brought against each of the 3 Respondents = 9 x £100 = £900.

Issue 5b No order made.

Issue 6a £100 for the claims of direct discrimination because of race, age and / or gender brought against each of the 3 Respondents = 9 x £100 = £900.

Issue 6b No order made.

Issue 7 £100 for the claims of direct discrimination because of race brought against each of the 6 Respondents = 6 x £100 = £600.

Issue 8 £100 for the claims of direct discrimination because of race brought against each of the 6 Respondents = 6 x £100 = £600.

Issue 9 Allegation is struck out.

Issue 10 No order made.

Issue 11 No order made.

Issue 12 No order made.

Issue 13 No order made.

Issue 14 No order made.

Issue 15 No order made.

Issue 16 No order made.

Issue 17a, b and d	No order made in respect of the allegations against Ms Laporte, R1 and R2. Allegations of direct discrimination because of race, age and/or gender against Ms Hill struck out.
Issue 18	No order made in respect of the allegations against Mr O'Donoghue, R1 and R2. Allegations of direct discrimination because of race, age and/or gender against Ms Hill struck out.
Issue 19	No order made.
Issue 20	No order made.
Issue 21	No order made.
Issue 23	No order made.
Issue 24	No order made.
Issue 25	No order made.
Issue 26	£100 for the claims of direct discrimination because of race brought against Mr O'Donoghue, Ms Hill and Ms Laporte = 9 x £100 = £900 Allegations of direct discrimination because of race, age and/or gender against Ms Jackman struck out.
Issue 27	No order made.
Issue 28	Second part of the allegation reading "and the nature of the alleged act of wrongdoing" struck out.
Issue 29	No order made.
Issue 30	No order made.
Issue 31	No order made.
Issue 32	No order made.
Issue 33	No order made.
Issue 34	No order made.
Issue 35	No order made.
Issue 36	No order made.
Issue 37	No order made.

Issue 38 No order made as to allegations against Mr Jones, R1 and R2. Allegations of victimisation and whistleblowing detriment against Ms Jackman and Ms Meredith struck out.

Issue 39 No order made.

Issue 40 No order made.

Issue 43 No order made.

Issue 44 Allegation is struck out.

Issue 45 £100 for the claims of victimisation and whistleblowing detriment against the Companies = 2 x £100 = £200.
Allegations of victimisation and whistleblowing detriment against Ms Smyth and Mr Udow struck out.

Issue 46 Allegation is struck out.

Issue 47 No order made.

Issue 48 Allegation is struck out.

Issue 49 £100 for the claims of victimisation and whistleblowing detriment against Ms Smyth, Mr Engstrom, Mr Udow and the Companies = 10 x £100 = £1000.

Issue 50 £100 for the claims of victimisation and whistleblowing detriment against Ms Smyth, Mr Engstrom, Mr Udow and the Companies = 10 x £100 = £1000.

Issue 51 £100 for the claims of victimisation and whistleblowing detriment against Ms Smyth, Mr Engstrom, Mr Udow and the Companies = 10 x £100 = £1000.

Issue 52 £100 for the claims of victimisation and whistleblowing detriment against Mr Ramage and the Companies = 6 x £100 = £600.
Allegations of victimisation and whistleblowing detriment against Ms Smyth and Mr Jones struck out.

Issue 53 No order made.

Issue 54 No order made in respect of the claims of victimisation and whistleblowing detriment against Ms Smyth and the Companies
Allegations of victimisation and whistleblowing detriment against Mr Engstrom and Mr Udow struck out.

REASONS

Relevant Legal Provisions

1. Strike out: At a preliminary hearing, if an Employment Judge considers that any specific allegation or argument in a claim or response has "no reasonable prospect of success" they may strike out the part of the claim or response (rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013.

2. The power to strike out has been described as draconian and only to be used in rare circumstances (Tayside Public Transport Co Ltd v Reilly [2012] IRLR 755). Discrimination cases are commonly fact sensitive and should only be struck out in the clearest of cases (Mechkarov v Citibank [2016] ICR 1121. Paragraph 14 of Mechkarov reads:

   "14. On the basis of those authorities, the approach that should be taken in a strike out application in a discrimination case is as follows (1) only in the clearest case should a discrimination claim be struck out; (2) where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence; (3) the claimant's case must ordinarily be taken at its highest; (4) if the claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and (5) a tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts."

3. While the threshold of striking out discrimination claims is high it may be appropriate where there is a legal bar to the claim being pursued; the claim is inconsistent with undisputed contemporaneous documentation (Ezsias v North Glamorgan NHS Trust [2007] IRLR 603); there is no proper basis for supposing the claim will succeed at trial (ABN Amro Management Services Ltd v Hogben UKEAT/0266/09/DM); or the Tribunal is satisfied that there is no reasonable prospect of the facts necessary to liability being established, notwithstanding that it has not heard the evidence in full (Ahir v BA Plc [2017] EWCA Civ 1392).

4. Deposit order: At a preliminary hearing, an Employment Judge may make an order requiring the party to pay a deposit to the Tribunal, as a condition of being permitted to advance the allegation or argument if the Judge considers that the specific allegation or argument has "little reasonable prospect of success" (rule 39(1) of the Employment Tribunals Rules of Procedure 2013.

5. The test is not as rigorous as the "no reasonable prospect of success" test (Van Rensburg v Kingston upon Thames UKEAT/0096/07; UKEAT/0095/07). The Tribunal may make a provisional assessment of the credibility of a party's case when deciding whether to make a deposit order (Ezsias).

6. Nonetheless, the Tribunal should be wary of making an assessment of the strength of a party's case from a review of documentary evidence where key facts are in dispute. In such cases, merits can often only be determined at a substantive hearing after hearing all the evidence.

7. A H v Ishmail UKEAY/0021/16/DM sets out the consequences and the purpose of a deposit order as follows:

   10. A deposit order has two consequences. First, a sum of money must be paid by the paying party as a condition of pursuing or defending a claim. Secondly, if the money is paid and the claim pursued, it operates as a warning, rather like a sword of Damocles hanging over the paying party, that costs might be ordered against that paying party (with a presumption in particular circumstances that costs will be ordered) where the allegation is pursued and the party loses. There can accordingly be little doubt in our collective minds that the purpose of a deposit order is to identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs ultimately if the claim fails. That, in our judgment, is legitimate, because claims or defences with little prospect cause costs to be incurred and time to be spent by the opposing party which is unlikely to be necessary. They are likely to cause both wasted time and resource, and unnecessary anxiety. They also occupy the limited time and resource of courts and tribunals that would otherwise be available to other litigants and do so for limited purpose or benefit.

   11. The purpose is emphatically not, in our view, and as both parties agree, to make it difficult to access justice or to effect a strike out through the back door. The requirement to consider a party's means in determining the amount of a deposit order is inconsistent with that being the purpose … ."

8. If a Tribunal does consider a deposit order is appropriate as the allegation or argument has little reasonable prospect of success, it may make such an order not exceeding £1,000 as a condition of continuing to advance that allegation. Whether or not to make a deposit order is a matter of discretion for the Tribunal and does not follow automatically from a finding that a claim has little reasonable prospect of success. When making deposit orders, the Tribunal must make reasonable enquiries into the paying party's ability to pay and must take this into account in fixing the level of the deposit. The purpose of the deposit order is not to effectively strike it out via the back door. Hence the Tribunal must take a step back and look at the overall sum ordered to ensure it has the purpose of pursuing the legitimate aim of discouraging the pursuit of claims with little reasonable prospect of success without making it so difficult for the paying party to pay that it is effectively struck out.

9. If the paying party fails to pay the deposit by the date specified by the Tribunal, the specific allegation or argument to which the deposit order relates will be struck out (rule 39(4) Employment Tribunal Rules).

10. I am grateful for, and have carefully considered, the parties submissions on the law before moving on to consider the Respondent's application.

Parties Submissions

11. It is the Respondent's case that all allegations should be struck out as having no reasonable prospect of success or, alternatively, a deposit order of £1,000

should be made per allegation, per Respondent, for all remaining allegations. The Respondent addresses each allegation in turn explaining why, frequently by reference to multiple documents, the particular allegation should be struck out.

12. The Claimant objects to the application and contends that all his allegations have prospects and should be permitted to proceed without any strike out or deposit order having been made. The Claimant responds in respect of each allegation. In addition, he makes several overarching points which I have considered. He says that his complaints are not wholly contained in the documents and that the live evidence on disputes of fact and credibility must be heard and tested. He also says that the Respondents rely on redacted documents which he says are obstructive and point away from it being appropriate to strike out the allegations or make a deposit order.

13. The Claimant suggests that the application is premature having been originally made prior to the concluded list of issues. I note that at the point that the Tribunal is now considering the application, the claims and the issues before the Tribunal are now clear, not least as several Tribunal days have been spent and correspondence passed clarifying the issues. I make my decisions and give judgment on this application following my decisions on the various amendment applications.

14. The Claimant asked the Tribunal to particularly take into account the authority of X v Y, UKEAT/0322/12/GE, paragraphs 35 and 36. I have reviewed the paragraphs the Claimant highlighted in yellow in the case of X v Y including the references to Quereshi v Victoria University at Manchester [2001] ICR 863 and Anya v University of Oxford [2001] ICR 847. The case is authority for the proposition that the Tribunal that it is important to take a holistic view of all the relevant facts and to look at the matter in the round when considering whether the allegations of discrimination are made out. I note that whatever my decision on the strike out and deposit order application, the Claimant will still be able to invite the Tribunal to make relevant findings of facts as to those issues and ask the Tribunal to view them holistic with all other findings of fact when considering the remaining allegations of discrimination.

15. This has not been an easy application to consider. It is highly unusual for Respondents to contend that each and every allegation presented by a Claimant is appropriate to be struck out and / or a deposit order made. It places a huge burden on an already stretched Employment Tribunal to ask that it consider an application of over 70 pages accompanied by many hundreds of pages of evidence.

16. I have not considered it appropriate or proportionate to read all the bundle of documents that the Respondents have provided me with which, on an initial review, appear to be the majority of the documents in the investigation and disciplinary process including witness statements, investigation interviews, disciplinary hearing, appeal, appeal interviews, hearing and decision. To contend that the Tribunal need to read all of these documents in order to make my decision on the application appears akin to asking the Tribunal to

conduct a mini-trial on the documents without hearing the evidence. The case law expressly cautions against doing so.

17. The Claimant is encouraged to carefully review the Respondents' application and documents and take a sensible view himself of the merits of his case regardless of the decision I reach. Likewise, the Respondents are encouraged to read the detail of the Claimant's objection to the application so as to further their understanding of the basis of why he says the matters he complains of were discriminatory in order that their amended defence, disclosure and witness statements address the allegations.

18. At this point I add that the Claimant's approach to speak in derogatory and personal terms about his opposing Counsel throughout his objection to this application do him no favours. While I understand his strength of feeling about his case, I encourage him now, as I did at the Preliminary Hearing, to adjust his tone to a tone of respect. Doing so will make it easier for the trial Judge to focus on his arguments and the evidence rather than be distracted by personal attacks.

Strike out order and/or deposit orders made

Complaint against individuals

19. The Respondents maintain that the Claimant has no reasonable prospect of showing that those Respondents who were neither employed by the First or Second Respondents can be held liable under the Equality Act 2010. They say that no claims pursuant to s.110 EqA 2010 can be brought against the following:

    a. Mr Engstrom (CEO of RELX plc)
    b. Ms Jackman (formerly employed by RELX (UK) Ltd)
    c. Ms Meredith (employed by RELX (UK) Ltd
    d. Mr Udow (Chief Legal Officer of RELX (UK) Ltd
    e. Ms Hill (employed by RELX (UK) Ltd).

20. I do not repeat the submissions here but I have considered the definition of agency under the Equality Act 2010, the extract from Bowstead & Reynolds on Agency as to the common law meaning of agency and also the authority of Kemeh v Ministry of Defence [2014] ICR 625. Paragraph 43 of the latter reads:

    "I would respectfully agree that the fact that someone is employed by A would not automatically prevent him from being an agent of B, and I would not discount the possibility that the two relationships can co-exist even in relation to the same transaction. But in my judgment there would, particularly in the latter case, need to be very cogent evidence to show that the duties which an employee was obliged to do as the employee of A were also being performed as an agent of B. It is in general difficult to see why B would either want or need to enter into the agency relationship. That is so whichever concept of agency is employed."

21. The Respondents say that none of the above named Respondents were acting as agents for Reed (R2), the Claimant's employer, and that they only ever acted in their capacity as employees of the own employer within the RELX Group Plc group of companies.

22. I do not consider the Respondent's position to be a complete answer such that I can conclude that the Claimant has no or little reasonable prospect of establishing the agency relationship in respect of specific individuals and specific allegations. The authority of Kemeh expressly recognises the potential that an individual may be both an employee of one company and an agent of another at the same time. There would need to be cogent evidence to show that the duties of an employee were also being performed as an agent of another employer.

23. It seems to me therefore that each specific allegation pursued against someone who is not an employee of R2 needs to be considered in turn to determine whether there is, or is any prospect that there may be, such cogent evidence that the agency relationship exists in respect of the alleged discriminatory act which is being complained about. It remains open to the Respondents to pursue a broader legal point at trial as to whether it is possible for employees of R2 to be agents of R2 in any circumstance.

Complaint against RELX Group Plc

24. The Respondents rely on their explanation of the relevant legal principles as described in the previous paragraphs. They say that the Claimant's employer was clearly Reed Exhibitions Ltd, R2, and that RELX Group Plc, R1, were the Parent Company and not acting as agent for R2. They say that R2 could not have expressly or impliedly manifested assent that R1 act on its behalf so as to affect his legal relationship with the Claimant. They say that R1 is the parent company of R2 and not its agent. I have not been directed to any authority which I consider conclusively addresses this issue.

25. If I understand correctly, in response the Claimant says that his contract of employment was signed by RELX, R1, and not by Reed, R2. He says that various aspects of his employment contract, including his post termination non-compete clauses are there to protect R1 and that R1 had a lot of involvement with his employment and its termination, including his being invited to appeal to RELX, R1. He contends that despite the wording of his contract of employment, it may infact me that R1 was his employer and not R2. He said that it was a matter for trial as to who his employer actually was.

26. Whichever of R1 or R2 is not the employer, the Claimant relies on an agency relationship to contend that they remain liable for the matters he complains of. The Claimant said that R1 has some control over R2 and can move people around between the companies as they choose. He says that various named Respondents had reporting lines to both R1 and R2. He says there is a fiduciary and supervisory relationship between the Companies.

27. I consider this is a matter for trial and not for summary judgment. I can not conclude that the Claimant has no or little reasonable prospect of succeeding in his complaint against R1. This matter will need to be determined once all the evidence is heard.

Issue 1 – Between 29.09.22 and 09.12.22, Kevin O'Donoghue withheld exculpatory information:

(a) Firstly, that he had spoken to Katie King on the 29 September 2022 before the social event and had considered that she was drunk.

(b) Between 29.09.22 and 09.12.22, Kevin O'Donoghue withheld exculpatory information: Secondly, that he had felt uncomfortable with her comment that many of our black team members had all congregated at one table.

28. The Claimant's case is that Mr O'Donoghue could and should have given this information earlier. He says he relies on unconscious discrimination as being the reason for this. Without hearing the evidence, I am unable to conclude that these allegations have no or little reasonable prospect of success. No order made.

Issue 2 – On 29.09.22 and 19.01.23, Katie King commented that the black colleagues were sat together.

29. The Respondents offer an explanation for why Ms King raised this issue and says it was obvious no offence was intended. I am not able to agree or disagree without the evidence being tested. It is not for me to simply accept the Respondents' explanation any more than it is for me to comment on whether the comment says something about institutional racism as the Claimant says. Without hearing the evidence, I am unable to conclude that this allegation has no or little reasonable prospect of success. No order made.

Issue 3 – On 09.12.22, 19.01.23, and 09.03.23, Mr Tim Ramage expressed the view that it was non or anti racism for Ms King to have commented on black people sitting together.

30. The Claimant challenges Mr Ramage's view and says he reached it because of race and gender. This is a matter for trial. There is no evidence before me from which I could conclude that the allegation has no or little reasonable prospect of success. No order made.

Issue 4 – Between 29.09.22 to 06.04.23, Kevin O'Donoghue did not tell anyone that he had seen the Claimant swapping seats with the complainant consensually so that she could sit next to him (ie next to himself, O'Donoghue).

31. The Claimant's case, as expressed in writing to the Respondents, is that Mr O'Donoghue did see a seat swap. His allegation is that this information would have assisted him and Mr O'Donoghue withheld this information because of the Claimants race, age, and/or sex. I see no obvious evidence of a conscious connection to the Claimant's protected characteristics, but the Claimant says that the discrimination was unconscious.

32. The Respondents apply to strike this allegation out in reliance on Mr O'Donoghue's evidence during the appeal investigation. Strangely, the application does not say whether the Respondents deny or accept the Claimant's case as to what Mr O'Donoghue saw. It seems to me that there is a dispute of evidence on this point about what Mr O'Donoghue saw and whether or not he gave full information or withheld information. I cannot form a view as to prospects of this allegation without the evidence being tested. No order made.

Issue 5a – Between 03.10.22 to 28.10.22, Cathy Laporte failed to investigate the following matters which may have suggested that the complaint against the Claimant should not have been upheld: What it was that the complainant had told Lamaite she proposed to do (as described by Lamaite in interview on 13.10.22).

33. The extract relied on is at 668 of the bundle before me. The Claimant says that interviewee Ms Lamaite was speaking in the present tense, ie at the date of interview of 13.10.22, when she said that "she does not feel good disclosing it to anyone without her". He suggests that Ms Laporte failed when she did not ask Ms Lamaite what the complainant proposed to do in the future, ie, after 13.10.22.

34. I find the Claimant's analysis to be at odds with the record of the meeting before me which I understand is not disputed. The lengthy extract from Ms Lamaite which begins with "Ok, so there was a marketing talk …" and ends with "Kerry said that she's going to take action". Reading the paragraph as a whole, it is plain that it is a description of the events of the night in question and not a proposal for action after 13.10.22.

35. I consider that the Claimant has little reasonable prospect of succeeding in his complaint that there Ms Laporte failed in her investigation in this respect or that in doing so she treated the Claimant less favourably because of his race.

36. For these reasons, the claim has little reasonable prospect of success and the issue of a deposit order would be in the interests of justice.

Issue 5b *– Between 03.10.22 to 2810.22, Cathy Laporte failed to investigate the following matters which may have suggested that the complaint against the Claimant should not have been upheld: What witnesses Prince, Rago, Agbalaya and O'Donoghue thought had happened between the Claimant and the complainant in conversation that had led her to leave the table.*

37. The Respondents present an analysis of the accounts given by each witness and say there was nothing further for Ms Laporte to investigate. The Claimant disagrees with those analysis. I do not consider it is appropriate for me to make a decision on the prospects of the allegation based only on the extracts the Respondents present. Unlike issue 5a which related to a self contained extract of the interview, I consider that to reach a view on the prospects of this allegation would require me to read each of the 4 interviews in full. I consider this is straying too far into conducting a mini-trial and I decline to do so. No order made.

Issue 6a – Between 03.02.23 and 09.03.23, Tim Ramage failed to investigate the following matters which may have suggested that the complaint against the Claimant should not have been upheld: What it was that the complainant had told Lamaite she proposed to do (as described by Lamaite in interview on 13.10.22).

38. I recognise that Mr Ramage may have interpreted the interview extract in a different way to Ms Laporte but this does not fundamentally alter my view of the prospects of success.

39. For the same reasons as in respect of issue 5a, the claim has little reasonable prospect of success and the issue of a deposit order would be in the interests of justice.

Issue 6b – Between 03.02.23 and 09.03.23, Tim Ramage failed to investigate the following matters which may have suggested that the complaint against the Claimant should not have been upheld: What witnesses Prince, Rago, Agbalaya and O'Donoghue thought had happened between the Claimant and the complainant in conversation that had led her to leave the table.

40. For the same reasons as in respect of allegation 6b, no order made.

Issue 7 – Respondent failed to appoint, and or omitted while having fiduciary duty to see to appointment of, a race sub-leader in its Diversity & Inclusion Employee Resource Group.

41. The Respondents contend that this allegation is misconceived as the Claimant's complaint is that there was no race subleader at all, therefore this affected everyone regardless of race and hence there was no less favourable treatment of the Claimant.

42. I note that the Claimant defines his protected characteristic of race very broadly, as being "black or west Indian or persons of African ancestry or BAME or Afro Caribbean". He says everyone within this group, and therefore him as well, would be treated less favourably by a failure to appoint a race sub-leader.

43. The Claimant must show that the failure he complains of was because of the protected characteristic, that race had a "significant influence" on the failure to appoint a race sub-leader. He has not suggested anything, in his documents or July 2023 tables which explains why he considers this to be the case, other than an acknowledgement that there were "pockets of discrimination" across the Respondents.

44. The Claimant has brought a complaint of direct discrimination in this regard and I consider that there is little reasonable prospect that he will establish that he was subjected to less favourable treatment because of his race. The issue of a deposit order is in the interests of justice and I make such an order in respect of the allegation against each named Respondent.

45. I can not say that there is no or little reasonable prospect of Mr Engstrom being responsible given that I do not know whether the Diversity & Inclusion Employee Resource Group is a group specific to R1 or R2, and so I do not know whose responsibility it was to determine the make up of the group

Issue 8 – Respondent failed to carry out an equity audit and/or omitted, while under fiduciary duty, to see that one was conducted.

46. For the same reasons as in respect of issue 7, I consider that there is little reasonable prospect of this allegation of direct race discrimination succeeding and a deposit order is in the interests of justice. I make such an order in respect of the allegation against each named Respondent.

47. As above, I do not know where responsibility for an equity audit lay, whether at Parent or Company level, and so do not know whether Mr Engstrom, who the allegation is brought against, had any responsibility at all, as agent or otherwise.

48. I note that regardless of whether the Claimant elects to pay the deposit order to proceed with this allegation or not, the failures or otherwise alleged in issues 7 and 8 may be relevant evidence which the Claimant may still rely on.

Issue 9 – A.Smyth omitted referring to Black West Indians and all persons of African ancestry in her RELX biography on the public company website and then persisted in that omission after this was repeatedly brought to her attention in and since November 2022.

49. This allegation appears to me to be made up of two allegations or arguments, firstly the omitted reference to specific ethnic groups and secondly the failure to change the biography once it was brought to Ms Smyth's attention.

50. As to the first part, the omission of the ethnic groups from the biography, I firstly note that, in contrast to issues 7 and 8, in respect of issue 9, the Claimant contends that Ms Smyth's alleged omission was a failure to refer to a subset of the protected characteristic he relies on, that of Black West Indians and all persons of African ancestry rather than the full broadly defined race he relies on. This aspect of the allegation seems almost certain to fail given that Ms Smyth referred to just 8 nationalities on her webpage and did not refer to any ethnic groups at all. There were a significant number of nationalities and ethnic groups not represented in the selection that she did include. The Claimant says that the omission would be to the detriment of those omitted, however the group of persons omitted is a wider group than those in the racial group he relies on. It is also apparent that the list of nationalities Ms Smyth cites does include nationalities from within the racial group the Claimant relies on. The allegation is not coherent.

51. I consider the Claimant has no reasonable prospect of showing that the reason she did not include a reference to Black West Indians and all persons of African ancestry was because of race as relied on by the Claimant, that being the broad definition described above and articulated by the Claimant in the November 2023 PH.

52. Shamoon v Chief Constable of the RUC [2003] IRLR 285, HL, remains good law and is authority for the proposition that an unjustified sense of grievance cannot amount to a detriment. The Claimant recognises in his submission that the Tribunal will consider both he subjective and objective view of the treatment and will ask "whether the treatment is of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment." I consider the Claimant has no reasonable prospect of persuading a Tribunal that listing 8 nationalities, even where they do not include a nationality that is Black West Indian or African ancestry, is, viewed objectively, to the Claimant's detriment.

53. I order that the first part of the allegation be struck out as having no reasonable prospect of success.

54. The second part of the allegation is the failure to change the biography to include a reference to Black West Indians and all persons of African ancestry once it was brought to her attention. Given my decision that the Claimant's complaint about the content of the biography has little reasonable prospect, I consider the complaint that Ms Smyth failed to chance the biography to also have no reasonable prospect of success and I order it be struck out.

Issue 10. On 29.09.22, Kevin O'Donoghue shut the Claimant down when he tried to tell him that the bar tender had told him to "Go back to Rwanda"

55. I decline to strike this allegation out or make a deposit order. The allegations concern issues of fact that turn to any extent on oral evidence.

Issue 11 – On 9 December 2022, when describing the incident in allegation 10, Kevin O'Donoghue: (c) He referred to the Claimant as having a "plummy posh accent and he was talking very loudly" and (d) Described the bar tender as being "very flustered and blushing" in contrast to describing me as unnecessarily berating.

56. The Claimant asserts that Mr O'Donoghue's choice of language to describe him was less favourable treatment by comparison to others and is evidence of unconscious discrimination. These allegations should be tested in evidence and are not appropriate to strike out as having no or little reasonable prospect of success.

Issue 12 – Respondent failed to investigate the Claimant's complaint of mistreatment by the barmaid on 29.09.22 as raised by the Claimant on 14 October, 31 October, 4 November and 3 February 2022.

57. The parties disagree about whether the Claimant complained of mistreatment by the barmaid on the four dates in question and about whether any duty to investigate arose. This is a matter for trial and I decline to make any order.

Issue 13 – On 29.09.22, Ms King said to the Claimant "you can't use that word ever" in response to overhearing him using the "n" word in conversation with another colleague.

58. The parties disagree about the content of this conversation and whether and why it is said to amount to less favourable treatment because of race. This is a matter for trial and I decline to make any order.

Issue 14 – On 30.09.22, Ms King described the Claimant as "the male was black and in his 50's and new to the company" and others normalised and condoned it.

59. The Respondents say this allegation should be struck out as Ms King was simply describing physical features of the Claimant so that he could be identified. The Claimant says this is incorrect and she was infact racially profiling him which was to his detriment as it led to adverse outcomes for him.

60. This is a core component of the Claimant's case and I do not consider it appropriate to strike this out without the evidence being heard.

61. I am less persuaded that the Claimant has prospects of showing that others normalised and condoned what he says is racial profiling, particularly those who were not employees of R2. However, it is not proportionate for me to carry out an analysis of each named Respondents' knowledge of the descriptor, the context in which it was used and so on. Those are matters for the trial and I decline to make an order.

Issue 15 – Between 30.09.22 and 30.11.22, the Respondent refused to give the Claimant a copy of the complaint made by Miss King on 30.09.22

62. The Respondents make their application for strike out saying that they acted in this situation in the same way as they do in all similar situations. They do not provide any evidence of this and I have no way of assessing the strengths of their defence or the Claimant's claims. I decline to make an order in respect of the complaint of direct discrimination.

63. I decline to make an order in respect of the victimisation claim as the Claimant presents a sensible reply to the Respondents application which needs to be tested in evidence.

64. I have considered the agency arguments of the Respondents but, without reviewing the documents closely, I do not have sufficient information as to precisely who refused the complaint on what date and its relevance to the whole picture to determine the issue.

Issue 16 – On 30 September 2022, Mr O'Donoghue treated the complaint as fact rather than an allegation.

65. The Respondents rely on the fact of suspension and Mr O'Donoghue's comments in the interview of 09.12.22. Were those the only times that the Claimant relies on as evidencing that Mr O'Donoghue treated the complaint as fact then I would have been more persuaded of the Respondents application. The suspension appears on the face of it to be a neutral act. The Respondents' application draws my attention to a whole paragraph of Mr

O'Donoghue's interview in which he does refer to the complainant's feelings and whether or not it was true. I do not read the paragraph as him saying that he took the allegation as fact.

66. However, the Claimant does not limit himself to these occasions, he also relies on what he says was Mr O'Donoghue's failure to lift the suspension once corroboration failed; intervention to prevent lifting and returning to work on 25.10.22; adverse involvement in questions of sanctions and evidence in the investigation report, as all showing that he treated the complaint as fact. This requires testing in evidence and can not be determined by reference to only the two documents the Respondents have brought to my attention. I decline to make an order.

Issue 17 – Ms Laporte treated the Claimant less favourably when she: (a) Made the finding that the alleged events did take place and made her recommendation that there was a disciplinary case to answer. (b) Accepted the complainant's false view that KOD was not a material witness. (d) Failed to make an independent decision about appropriate recommendations but rather was influenced or co-decided with KOD and others

67. The reasons for the decisions made by the key decision makers is at the heart of the Claimant's case and I am unclear why the Respondents consider that the allegations are appropriate for strike out or deposit order. I do not consider they are. I decline to make an order against the decisions of Ms Laporte.

68. I consider that the complaints against Ms Hill have no reasonable prospect of success. Allegation 17 is an allegation against the conduct of Ms Laporte and not against Ms Hill. Whatever Ms Hill's involvement may have been, she was not the decision maker. Any complaints against Ms Hill must be pursued against her directly as they are in numerous other allegations.

69. I note the Respondents will also say that Ms Hill was not an employee of R2. However, I make my decision without resolving the agency issue as, even if she was acting as agent, it is Ms Laporte who is to be held responsible for Ms Laporte's decisions, not Ms Hill.

Issue 18 – Kevin O'Donoghue involved himself in the investigation and withheld that from the Claimant

70. I am unclear on how the Claimant says that Mr O'Donoghue involved himself in the investigation and withheld that from the Claimant. However, other than reading all the investigation documents, which I am not going to do as the same would stray into a mini trial on the documents only, I am unable to form a view on the prospects of this allegation against Mr O'Donoghue. I do not make an order.

71. The position is different in respect of Ms Hill. For some reason, Ms Hill is added as named Respondent to this allegation. She cannot be held responsible for Mr O'Donoghue involving himself in the investigation and withholding that from the Claimant. The Claimant's allegations against Ms

Hill's alleged wrongdoing are properly pursued against her directly as they are under allegation 23. It follows that I consider this allegation has no reasonable prospect of succeeding against Ms Hill and I strike it out in that respect only.

Issue 19 – EE, AS, HJ, KOD and the companies failed to treat the Claimant's complaints as a grievance. The Claimant relies on complaints raised on the following dates, 21 November 2022 to HU, 25 November 2022 to HU, 16 January 2023 to EE, 23 January 2023 to AS, HJ and EE, 13 February 2023 to HJ, EE and HU, 15 February 2023 to EE,

72. I decline to make an order in respect of this allegation. It is not possible to do so without conducting a mini trial considering what was said by the Claimant on each of the dates in question and how the Respondents replied.

73. Whether or not Mr Engstrom was an agent of R2 or R1 is a matter for trial and I do not consider I can conclude that the Claimant's case has no or little reasonable prospect without further evidence and argument.

Issue 20 – AS, JJ, KM permitted Ms King to amend her grievance complaint throughout the investigation process in contrast to the Claimant who was held to a set of questions sent on 01.11.22 as constituting his grievance complaint.

74. I decline to make an order. It is not possible to do so merely on the basis of the parties assertions.

75. I do not know the extent of Ms Meredith's involvement and am unable to assess whether or not she was acting as an agent of otherwise.

Issue 21 – Mr Salman Muneer was removed as the disciplinary hearing manager, for what Respondents later claimed was Claimant's own good, despite Claimant's ignored objections at the time.

76. The parties are in dispute about the reason Mr Muneer was removed. The Claimant challenges the authenticity of the Respondents' explanation by reference to what he says are inaccuracies in the explanation given at the time. It is not appropriate to strike out a case with such a clear dispute of evidence.

77. The Claimant has explained why he considers Ms Smyth was responsible for this allegation. Again, there is a dispute of evidence and I decline to strike out the claim.

Issue 23 – Between 30.09.22 - 09.03.23, Naomi Hill failed to treat the Claimant in an even handed way by comparison to her treatment of Ms King: (a) Lied to the Claimant in relation to the involvement of KOD as manager of the process and as a co-suspender of the Claimant. (b) Led the Claimant to believe that KOD was an interviewee and a witness within the process. (c) Hid the fact that KOD was not a witness by redactions in the investigation report sent to the Claimant.

78. There is a dispute of evidence and I decline to make an order.

79. Ms Hill provided HR support in relation to the investigation process that took place in relation to the Claimant. She was not an employee of either R1 or R2. Whether or not Ms Hill carried out her work as agent within the meaning of s.110 EqA 2010 is a matter for trial and not an issue I can resolve in a summary basis. This applies in respect of each allegation which is pursued against Ms Hill.

Issue 24 – On 5 October 2022 at 7:30am, an employee of the Respondent monitored the Claimant's whereabouts
And
Issue 25 – On 5 October 2022 at 2:17pm, an employee of the Respondent asked when it would be appropriate to treat the Claimant's absence as awol and reach out to his next of kin.

80. The Claimant considers that the emails reveal that he was being subject to surveillance, harassed and mocked. He felt the emails were disingenuous. It is not appropriate for me to strike out the allegations based on my own, out of context, reading of the emails. The language could be read as the Claimant reads it and it will be for the Tribunal hearing the case to decide if the Claimant's interpretation is right and if the emails were discriminatory. I decline to make an order.

Issue 26 – KOD, NH and CL maintained the suspension of the Claimant despite the evidence of Ashweena Reebye given on 06.10.22 or 07.10.22

81. The Claimant adjusts this allegation to refer to 06.10.22 or 07.10.22. His point being that he says after the interview of Ms Reebye it was discriminatory not to lift the suspension. I have adjusted the issue accordingly.

82. I note that the parties give slightly different explanations as to why the Claimant was suspended. Whatever the reason for suspension, the allegation that had been made was serious and, in my experience, it would be highly unusual for a Respondent to lift a suspension based on the account of one of the first witnesses to be interviewed, regardless of whether that individual vindicated the Claimant or supported the complainant.

83. The Claimant has little reasonable prospect of proving that the Respondent elected not to lift the suspension because of the Claimant's race, age and/or sex as opposed to because the investigation was incomplete and the issue of a deposit order is in the interests of justice.

84. I have not been told who was responsible for making decisions as to lifting or maintaining the suspension and I am equally not told why the Claimant proceeds with this allegation against three named Respondents. I order a deposit be paid to bring this allegation against each named Respondent.

85. I strike out the allegation against Ms Jackman. In his wording of the allegation, the Claimant does not suggest that she was responsible for maintaining the suspension of the Claimant despite the evidence of Ashweena Reebye and as

such there can be no reasonable prospect of the complaint against her succeeding.

Issue 27 – On 06.10.22, NH asked Ms King for her opinions on appropriate sanctions when she asked how Ms King would feel if the Claimant was permitted to return to the office

86. There is a dispute of evidence and I decline to make an order. The Claimant says that Ms King understood she was being asked for her opinion as she referred to not knowing "what the appropriate punishment would be". There then followed a discussion in which final warnings, dismissal and returning to the office were discussed. He says this was different to how he was treated and cites an extract from his meeting with Ms Hill. I have not read the meeting notes in full. That will be a matter for trial.

Issue 28 – Between 6-13.10.22, the Respondent failed to tell the Claimant the name of the complainant and the nature of the alleged act of wrongdoing.

87. It is true that the Respondent did not tell the Claimant the name of the complainant in this window. The parties are in dispute about the reason for that and whether or not it was less favourably treatment because of a protected characteristic. That matter must go to trial.

88. I am unclear on the roles of each of the Respondents named in this allegation and, without a careful review of the documents, I would not be able to determine who had responsibility for this alleged failure or whether they did so as employee or agent. It is not appropriate to strike out or order a deposit order in respect of any specific named Respondent.

89. As to the second part of the allegation, the Respondents did tell the Claimant the "nature" of the alleged act of wrongdoing. They told him that it was alleged that he had "inappropriately touched a female colleague". Whether or not Ms Hill later described this as "vague" does not mean that it was not a description of the "nature" of the allegation. It seems that the Claimant wanted full details at this early stage but that is not the allegation he has brought. The allegation is that he was not told the nature of the alleged act of wrongdoing but he evidently was.

90. I note that greater specificity was provided in writing on or around 13 October 2022 when the Claimant was invited to the investigation. But this does not meant the "nature" of the allegation was not provided beforehand.

91. I consider it appropriate to strike out this latter part of the allegation such that the allegation will now read "Between 6-13.10.22, the Respondents failed to tell the Claimant the name of the complainant" only.

92. In his response to the Respondents application, the Claimant says that the factual issue for trial, that he asks to be stated in the list of issues for trial, is that the Respondents jointly and severally and consistently treated me less favourably throughout the disciplinary process. It is understood that this is

what the Claimant complains of, however for the purposes of the list of issues, each and every instance in which the Claimant says the Respondents treated him less favourably must be specified.

Issue 29 – Failed to remove suspension entirely on 17.10.22

93. The Respondents' explanation may be sensible but the Claimant disagrees and sees this is as one part of the whole disciplinary process that he says was less favourable treatment of him. This dispute can not be resolved on the documents without testing the evidence and I make no order.

94. I am unclear on the roles of each of the Respondents named in this allegation in respect of the suspension and, without a careful review of the documents, I would not be able to determine who had responsibility for this alleged failure or whether they did so as employee or agent. It is not appropriate to strike out or order a deposit order in respect of any specific named Respondent.

Issue 30 – Failed to notify the Claimant on 25.10.22 that the investigators had recommended that the Claimant's suspension be lifted.

95. The Respondents have not admitted this allegation as the Claimant appears to suggest. It is correct that they have not addressed why they are applying for the allegation to be struck out or a deposit order made. I decline to make an order.

Issue 31 – On 25.10.22 Respondent's decision not to follow the recommendation of Ms Laporte to lift the suspension and not to inform the Claimant of the same

96. The Respondents explain the first part of their decision but not the second. The Claimant says he is learning new information in the Respondents' application which he says is supportive of his case. It seems to me that the evidence must be disclosed and heard and, where necessary, challenged, before this allegation can properly be assessed. I decline to make an order.

Issue 32 – 24.10.22 – 10.11.22, the Respondents did not give the Claimant information about why the suspension remained in place.

97. If I understand correctly, the Claimant's complaint is that he was not told why his suspension would remain in place, only that it would. The Respondents say they considered this at length and on advice before deciding to maintain the suspension. I am not clear on why the Claimant says that was a less favourable decision because of his protected characteristics, but nonetheless without reading and hearing the evidence I am unable to assess the prospects. I decline to make an order.

Issue 33 – On 28.10.22, NH sent an email to KOD, copied to CL, which led CL to believe that NH had not already discussed matters with KOD.

98. I understand this complaint to be a continuation of the allegation that Ms Hill unduly influenced the investigation process. This is disputed by the

Respondents. It is a matter suitable to be determined at trial. I decline to make an order.

Issue 34 – On 10.11.22, Jonathan Jones dismissed the Claimant with a taunt and treating his West Indian identity as "relevant" to innocence or otherwise of disputed conduct.

99. This is at the heart of the Claimant's claim. I am unclear why the Respondents consider I can strike out this allegation without conducting a mini trial and forming my own view on the appropriateness or otherwise of Mr Jones' decision without hearing the evidence. To do so would be inappropriate.

100. The Respondents can address the additional allegation of a taunt and relevance of the West Indian identity in evidence. It is clear there is a dispute of evidence and it not appropriate for me to deal with it summarily.

Issue 35 – On 10.11.22, Jonathan Jones made a finding, without prior notice or discussion of such charge, that the Claimant had sexually harassed Ms King

101. For the same reasons as above, I decline to make an order in respect of this allegation.

102. If I understand correctly, the Respondents say that the Claimant was given notice of a charge of sexual harassment because the investigation report includes an extract from the RELX Code of Conduct and Business Ethics which reads:

"We do not tolerate any form of harassment, including sexual harassment or harassment of any kind based upon any of the protected characteristics listed above. Harassment can be verbal, physical, visual, or other behaviour that creates an offensive, hostile, or intimidating environment."

103. It will be for the Trial Judge to decide whether this amounts to prior notice of the charge.

104. I pause here to note that the relevance of the Claimant's reference to Burchill and Roldan standards is unclear, this being a discrimination case and not an unfair dismissal case (the Claimant not having 2 years' service).

Issue 36 – On 09.03.23, Tim Ramage treated the Claimant less favourably by: (a) Extended the benefit of the doubt to the complainant but not to Claimant. (b) Placed the burden of proof on the Claimant rather than the complainant. (c) Favoured the evidence of KOD in respect of the Claimant's interaction with the bar tender. (d) Failed to deal with the Claimant's grievance about treatment by the bar tender. (e) Upheld the decision to dismiss the Claimant. (f) Tim Ramage failed to acknowledge that KOD had been racist when describing the Claimant as having a "plummy, posh accent" and "talking very loudly".

105. The Respondents invite me to assess the findings of Mr Ramage to find that each of the Claimant's challenges against that decision have no or

little reasonable prospects of success. I can not do so without conducting a mini trial and so I decline to make an order.

106. The Claimant asks me to note the following in respect of allegation (c). The Respondents are asked to take it into account in as much as it assists them to understand further the Claimant's complaints:

"It is less that KOD differed with the Claimant on any evidence or any fact than that KOD and Ramage (as well as Jones and Laporte) admitted the racism and yet still legitimated the racist bartender's supposed discomfort by gift of their solidarity and sympathy. They thereby associated the respondents [well beyond the failed and distinguishable facts of Conteh v Parking Partners 2010]. They both disregarded the bartenders UNDISPUTED mistreatment by telling me "Go back to Rwanda" and refusing water, conduct respondents DO NOT DENY occurred (hence no difference upon evidence). That is my discrimination case, with the bartender as a comparator for this purpose."

Issue 37. Labelled the claimant's questions of 01.11.22 as a grievance

107. The Respondents say they were entitled to do this. The Claimant says they were not and that he expressly told them he did not want his questions to be considered as a grievance but they pressed ahead regardless. The evidence needs to be carefully reviewed and challenged to determine whether the complaints the Claimant wished to make were inappropriately restricted to the questions of 1.11.22 despite him saying this was not his grievance and if so, if that amounted to less favourable treatment and further if so whether that restriction was because of the protected characteristics relied on.

108. The Claimant explained in his tables why he brings this claim against Ms Hill, Ms Jackman and Ms Meredith. It seems the latter two's role was to restate Ms Hill's decision but more than that also to be the point of contact to discuss the decision with the Claimant. Whether that means they too discriminated against the Claimant as he suggests will be a matter for trial. I decline to make an order.

109. I am unable to summarily assess the agency question without understanding the detail of the allegation and steps taken in response to the Claimant's questions of 01.11.22 in greater detail. I decline to do so.

Issue 38 – On 2.11.22 and 4.11.22, Mr Jones required the Claimant to address his response to a data breach during the investigation into his conduct on 29.09.22.

110. It does not seem unusual to me for an employer to ask an employee to delete a document sent in error. It may be more unusual to do so in the middle of disciplinary process. The Respondent suggests the explanation for their conduct is innocent. The Claimant disagrees. It is not appropriate for me to strike out the case when such a dispute exists and neither can I find that the allegation has little reasonable prospect of success without reviewing the full detail of what happened in respect of the redacted report. To do so is to

stray into a mini trial.

111. The complaint is explicitly against the actions of Mr Jones. The Claimant may wish to make complaints against Ms Jackman and Ms Meredith for things they did or omitted to do or for how they may have influenced Mr Jones, but the Claimant does not do so within the wording of this allegation as particularised during the Preliminary Hearings

112. In a case of discrimination there must be a particular individual or agent who has the necessary discriminatory mindset. It is not sufficient to "add together" the mindset of one employee or agent with the acts of another in order to establish liability (Reynolds v CLFIS (UK) Ltd [2015] ICR 1010 at para 36).

113. I also note that I have not given permission to pursue issue 41 which complains about the actions of Ms Meredith in relation to the redacted email and attachment.

114. I consider that the Claimant has no reasonable prospect of succeeding in his complaint of issue 38 against Ms Jackman and Ms Meredith and accordingly I strike it out. The allegation does not relate to their actions, it relates to the actions of Mr Jones on two specific dates.

Issue 39 – Between 04.11.22 and 05.12.22 Mr Jones and other Respondents refused to provide the claimant with the witness statements from the investigations

115. I decline to make an order in respect of this allegation. The Respondents assert that it was their usual practice to withhold witness statements during the investigatory stage. I have seen no evidence of this and it is not for me to simply take the Respondents at their word. The Claimant challenges the Respondents position. It will be for both sides to make out their case at trial.

116. I do not understand the basis of bringing this complaint against those who were not employed by the Claimant's employer. However, without looking at all correspondence in the month long period mentioned, I am unable to consider the refusals relied on by the Claimant. I decline to make an order in respect of any specific Respondent.

Issue 40 – On 04.11.22, Jonathan Jones demanded that the claimant hand back the unredacted investigation report.

117. As with issue 38, I decline to make an order in respect of this allegation.

Issue 43 – Failed to arrange a continuation of the part-heard hearing of 04.11.22 and instead moved straight to a decision on 10.11.22

118. The Claimant suggests that various matters remained outstanding at the end of the disciplinary hearing not least because it was a combined disciplinary and grievance hearing. The Respondents have identified extracts

which they say show that Mr Jones understood his purpose after the investigation meeting to be to finalise the investigation and come to a decision. I understand that. However, the extract form p.782 reads that Mr Jones will "respond to questions you asked". The Claimant says that he left the meeting believing it was part heard and the meeting would be resumed at a later date for him to hear the answers to the questions. This dispute of evidence requires the evidence to be heard and tested in order to be resolved. I decline to make an order.

119. Ms Meredith was employed by RELX (UK) Ltd as an Employee Relations Specialist and provided HR support in relation to the disciplinary and grievance process that took place in relation to the Claimant. I understand it was Ms Meredith who notified the Claimant of the second hearing on 10.11.22. I am unable to summarily assess whether she did so as agent or say that such a contention has little reasonable prospect of success.

Issue 44 – Appointment of respondent's solicitors to resist the claimant's complaints and sustain over several weeks refusal to hand over complainant's complaint and witness statements

120. I can not be said to be to the Claimant's detriment that the Respondents appointed solicitors following the Claimant having sent a letter before action. It is the Respondents who are responsible for the decision about when to hand over the complainant's complaint and witness statement. The solicitors may advise, but that is a matter between them and their client, it is the Respondents who make the final decision.

121. The Claimant says that he is not objecting to the appointment of the solicitors but rather "the gist of the complaint is the refusal and not the solicitors, who manifestly corrected the refusal". It seems that even on the Claimant's own explanation, he is not infact complaining about the actions of the Respondents' solicitors. That is however what the wording of the issues says he complains about and it is not for me to rewrite the allegation based on what the Claimant now says, not least given there have been 3 days of face to face Preliminary Hearings in this matters. It is the allegation as currently worded that I am considering in respect of the allegation for strike out.

122. Based on the Claimant's case and the evident right of a party to appoint solicitors, I consider this allegation has no prospect of success and I consider it in the interests of justice that the claim is struck out. It is not in anyone's interest for a manifestly unfounded complaint to proceed to trial. The Claimant may of course raise the issue that he believes he only received the documentation he sought when he threatened legal proceedings in evidence, but not as a complaint about the appointment of the solicitors.

123. I note that the Respondents' decision not to provide the witness statements from the investigations between 04.11.22 and 05.12.22 is already a subject of complaint in issue 39. He has not chosen to otherwise complain about any failure or delay in providing the complainant's complaint as an act of discrimination or victimisation.

Issue 45 – Appointment of Mr Ramage, another white male, to conduct the appeal process in context where Mr Muneer (BAME) had been removed without explanation as disciplinary chair

124. The Respondents say that the allegation is wrongly brought against Ms Smyth and Mr Udow as neither were involved in the appointment of Mr Ramage. I note that from the outset of the case the Respondents have always maintained that Ms Smyth and Mr Udow were not involved in the decision-making process in the investigations, disciplinary and grievance and/or appeal processes that took place in relation to the Claimant (see paras 23 and 32, ET3).

125. The Claimant's explanation for their involvement in the allegation is that he had complained to them about the exclusion of Mr Muneer from the disciplinary investigation stage and that he later required the "belated installation" of Mr Muneer as appeal officer, presumably after Mr Ramage had been appointed.

126. I note that Mr Muneer was the Claimant's line manager whereas Mr Ramage was the Global Head of ISG. Even if Mr Muneer had been the appropriate person to investigate the matter at the outset (and I make no observation one way or the other as to that), it is evident that Mr Ramage was more independent from the Claimant and his team and so more suitable for the appeal than Mr Muneer. There is no apparent connection between the Claimant's dissatisfaction at the decision to not appoint or remove Mr Muneer from the investigation with the decision to appoint Mr Ramage for the appeal.

127. I consider this allegation against Ms Smyth and Mr Udow have no reasonable prospect of success. The fact that the Claimant complained about something to these individuals does not in any way connect those individuals to an entirely separate decision about the appointment of someone else. I strike out the allegation against Ms Smyth and Mr Udow.

128. I do not understand the Claimant's case about why it was to his detriment that Mr Ramage was appointment. His complaint is a complaint of race and/or sex and/or age discrimination. He complains that Mr Ramage is a different race and the same sex as him. I do not consider how he can reasonably say that this is to his detriment.

129. The Claimant says that his complaint is not only based on race but is based on what he says is Mr Ramage's extreme dishonesty and unfitness for appeal manager. The Claimant has already complained in other issues about Mr Ramage's handling of the appeal and his ultimate decision. In order to succeed in his issue 45, he will need to show that whoever appointed Mr Ramage knew that he was dishonest and not fit to be an appeal manager and appointed him anyway out of retaliation towards the Claimant for making a protected act and/or disclosure.

130. I consider it unlikely that the Claimant will show the appointment was to his detriment in the way alleged or that it was an intentional decision out of retribution for his alleged protected acts and/or disclosures.

131. For these reasons, the claim has little reasonable prospect of success and the issue of a deposit order would be in the interests of justice.

Issue 46 – Respondent delayed response to the DSAR between 16.12.22 and 16.01.23

132. The time frame for responding to a DSAR is one month. The Respondents appear to have replied either on time or just one day late. The request was extremely large, with multiple requests for data searches including email data from 29 potential custodians (p.1211, para 207). I understand that the Claimant made at least one request for the data to be provided with quickly and insisted that the Respondents did not utilise the full one month provided.

133. I take into account that the Respondents had the option to extend the data provision by 2 months if they were unable to comply within 1 month but they chose not to do so. I also note that the 1 month extended over the Christmas period when it is known that many employees take periods of leave away from work.

134. I have also considered the Claimant's explanation that Mr Ramage was attempting to coerce hm to meet ahead of receipt of the documents. I note that Mr Ramage invited the Claimant to attend an appeal hearing in November 2022, before he made the DSAR. The appeal hearing did not in fact happen until February 2023, after the DSAR materials were provided.

135. I consider that the Claimant has no reasonable prospect of showing that the Respondents delayed the response to the DSAR during this one month period or that this was to the Claimant's detriment. The allegation has no reasonable prospect of success and I consider it in the interests of justice that it be struck out.

Issue 47 – Respondent invidiously redacted documents produced in response to the DSAR

136. The Respondents say that the redactions carried out were standard practice and lawful. The Claimant says they were not. I have no way of determining if this allegation has no or little reasonable prospects of success without considering the redacted and unredacted versions which are not before me.

137. Presumably the documents that are relevant to this allegation and the Claimant's claim will be unredacted and provided to the Claimant as part of the disclosure exercise. It will not for the Tribunal to consider each and every redaction that has been made to assess whether or not it was appropriate made or not or whether it was made because of the alleged protected acts/disclosures. I suggest that, once disclosure is complete, the parties liaise

to prepare a list of redactions the Claimant complains about so that the Respondents are able to prepare their response.

138. The Respondent says that Mr Udow had no involvement in relation to the DSAR process. The Claimant says he did as the letter was co-addressed to him and he appointed the solicitors as joint data controller. I am unable to assess the veracity of either side's contention or take a view on whether or not Mr Udow acted as agent without far greater review of the documentation than is appropriate for a hearing such as this.

Issue 48 – Respondents EE, HU, AS and the companies did not act to ensure the respondents' solicitors replied to the claimant's letter of 15 December 2022 without delay.

139. This allegation is about delay. It is not about the substance of the reply and whether it was or was not complete or even about whether or the Respondents elected to give the undertakings the Claimant sought. The allegation is confined to a complaint about delay.

140. The start of the Claimant's letter of 15 December 2022 says that the Respondent has 14 days to reply and then sets out what information he expects to receive within those 14 days, being 6 January 2023 given the Christmas and New Year bank holidays. Later in his letter the Claimant says that he requires certain undertakings within 7 days, by 22 December 2022 otherwise he intended to approach the High Court for an order.

141. Solicitors for the Respondents replied by 19 December 2022 to explain how they intended to proceed. They said they would reply to the request for undertakings by 22 December 2022 [1642] and did so reply [1646]. They warned that they would be unlikely to be able to comply with the request for a substantive reply by 6 January 2022 given the 75 page letter and 131 page bundle the Claimant had provided [1642]. They provided a substantive response by 12 January 2023 [1652].

142. I consider that the allegation that the Respondents failed to ensure their solicitors did not act without delay has no reasonable prospect of success. The undisputed contemporaneous documentation reveals that the period of time taken to reply is reasonable and was not to the Claimant's detriment. The Claimant's request for undertakings was answered promptly and he was told early on that there may be a delay in respect of the other information he requested. If any pre-action protocols were broken then the remedy for that was in the High Court rather than the Employment Tribunal.

143. The delay seemingly did not impact on the Claimant's appeal process as he was not interviewed until February 2023.

144. I consider that this allegation has no reasonable prospect of success and I consider it in the interests of justice that it be struck out.

Issue 49 – Respondents EE, HU, AS and the companies failed to apologise or retract the findings of sexual harassment made against the claimant

145. The Claimant escalated his complaint about the finding of sexual harassment that had been made against him to Mr Engstrom and Mr Udow and he also says to Ms Smyth. He says that this then compelled them to respond and their failure to respond to retract the finding was to his detriment and was because he had made a protected act and/or disclosure.

146. Whether or not it would have been "highly improper" for any of these individuals to use their positions to overturn the decision of Mr Jones and later Mr Ramage, as the Respondents say, is a matter best considered at trial when the nature of the reporting lines and the relationship between the Parent Company and Claimant's employer will be better understood. I do consider that the Claimant has little reasonable prospect of succeeding in his complaint that the reason why Mr Engstrom, Mr Udow and Ms Smyth acted as they did was because he had made a protected disclosure and/or done a protected act as opposed to because the process of appeal was underway and not yet concluded. Given that the appeal considered the disciplinary finding of sexual harassment [976], I consider it in the interests of justice to make a deposit order in respect of this allegation as pursued against each named Respondent.

147. I do not strike out the allegation as I recognise the serious nature of the finding against the Claimant and that he says he had escalated his concerns about it previously and therefore, he will say, that the senior executives had a fiduciary duty to act. I consider this has little reasonable prospect for the reasons I have explained but I can not say it has no reasonable prospect.

Issue 50 – Respondents EE, HU, AS and the companies failed to investigate claimant allegation that KOD and NH had influenced proceedings.

148. For the same reason as I have made a deposit order in resect of issue 49, I consider it in the interests of justice to make a deposit order in respect of issue 50 and in respect of each named Respondent.

149. Further, the issue of Mr O'Donoghue's influence over proceedings was a part of the appeal [965] as was Ms Hill's influence as her involvement is discussed throughout the appeal findings. The Respondents had appointed Mr Ramage to investigate the Claimant's allegations in respect of Mr O'Donoghue and Ms Hill to see if they were founded such that the dismissal decision should be overturned. It was not to his detriment that his complaint was not also investigated by numerous more senior officials not least because the process and decision was entrusted to Mr Ramage so there is no basis to say that they would have reached a different decision.

150. The Claimant's objection to the Respondent's strike out of this allegation details the importance he sees of being able to question Ms Hill, Mr O'Donoghue and Ms Laporte about his issue. Given the Claimant has brought many allegations about Mr O'Donoghue's involvement and the alleged concealment of the same (including at least issues 17(d), 18, 23(d) and (33)), nothing about my decision will prevent him from doing that.

Issue 51 – Respondents AS, HU, EE and the companies failed to investigate the claimant's complaint of racism sent on 26.01.23

151. The Respondents say that the Claimant's letter of 26.01.23 did not contain an allegation of racism. The Claimant says that the letter was a "stocktaking" letter and by referring to the "race discrimination aspects" he was referring back to successive substantive racism complaints already received by the Respondents. This is his case at its "highest" level and the case I consider.

152. Nonetheless, for the same reasons as I have described in respect of the previous 2 allegations, I consider that the Claimant has little reasonable prospect of persuading a Tribunal that the reason why the Respondents failed to investigate his complaint was because he had made a protected disclosure and/or done a protected act rather that because, as the Respondents say, Mr Ramage had been tasked with the matters raised in objection to the investigation and disciplinary process and decision.

153. The Claimant's complaints of race discrimination clearly were part of the appeal and dealt with as part of the appeal. The appeal letter cites numerous ways in which the Claimant has complained of racism and gives findings and decisions in respect of them. Whether or not Mr Ramage's process of conducting the appeal and his decision was itself less favourable treatment is considered in other issues.

154. For the purposes of this allegation, I consider that the Claimant has little reasonable prospect of success in his contention that the Respondents acted to his detriment or because of his alleged protected acts and/or disclosure and I consider it in the interests of justice to make a deposit order in respect of each and in respect of each named Respondent.

155. I encourage the Claimant to consider carefully his other allegations related to failed duties of senior executives before deciding whether or not to pay a deposit order, noting that there appears to be some duplication, such as with issue 19. It is a matter for him whether he wishes to proceed with the allegations that I have ordered a deposit order in respect of.

Issue 52 – Respondents EE, HJ, AS, TR and the companies denied the claimants requests of 27.01.23 that KOD attend the appeal hearing and that it be recorded.

156. The Respondents disciplinary policy says that "electronic recording, by you or your companion, of the proceedings of any meeting is not permitted under any circumstances' [1681]. The denial of the request was in line with that policy.

157. Mr O'Donoghue was said to be on indefinite sick leave at the time and so was unable to attend the appeal hearing [1677]. There is no evidence, even to date, that this was incorrect. It did not infact matter if Mr Ramage may have also refused his attendance as not being appropriate or necessary as the indefinite sick leave determined the reason for his absence in any event.

158. I do not consider the strike out application to be an attempt by Mr Ramage to shield the fiduciary HR director from questioning as is now suggested as Mr O'Donoghue will presumably attend Tribunal to give evidence and respond to the allegations he faces in his personal capacity.

159. I consider that the Claimant has little reasonable prospect of succeeding in his complaint that the real reason for denying him Mr O'Donoghue's attendance and a recording was because he had made a protected disclosure or done a protected act and I consider it in the interests of justice to make a deposit order.

160. Mr Ramage had been appointed as the appeal officer and I consider that the Claimant has no reasonable prospect of showing that the other Respondents had any involvement at all in refusing the Claimant's requests, that they denied the arrangement he requested or that they did so because of his protected disclosures and/or acts. The Claimant may say their failure is their omission to involve themselves in the arrangements for the appear hearing. However, unlike issues 49 and 51, which related to serious issues of sexual harassment and racism, this issue relates to the procedural arrangements being made for the appeal hearing. I consider that the Claimant has no reasonable prospect of succeeding in his complaint against Mr Engstrom, Ms Smyth or Mr Jones and I consider it in the interests of justice to strike out part of this allegation, being the allegation against those three Respondents.

Issue 53 – Respondents EE, HJ, AS, TR and the companies secretly recorded, and or authorised and or afterwards condoned and thus further concealed recording, of the appeal hearing.

161. I do not understand the basis of why liability for this allegation is said to fall on each of the Respondents other than Mr Ramage who was at the appeal hearing. However, I note that the allegation is more than simply the recording but also the alleged condoning and further concealing which I appreciate may have been the decision of others. Given the extent of the disputed evidence in respect of this allegation and as it is not appropriate for me to try to fathom what has happened on the papers alone, I decline to strike it out.

162. I do not understand the Claimant's final comment at page 127 of his submission, page 252 submissions bundle. In as much as the Claimant is suggesting that I strike out the Respondents' defence then I decline to do so, the basis of why I am invited to consider doing so being wholly unclear from the Claimant's description.

Issue 54 – Respondents AS, EE, HU and the companies delayed provision of the claimant's P45 following his dismissal on 10 November 2022 such that it had still not been filed with HMRC or sent to the claimant by 18 April 2023

163. The Claimant has explained why the delayed P45 was to his detriment and why he felt the Respondent was being in some way obstructive in not producing it. I can not say that he has no or little reasonable prospect of

showing that his employer failed in its duty to provide him with a P45 in a timely manner and that the reason for that was because he had made protected disclosures and/or acts.

164. I do however consider that the allegation against the named Respondents has no reasonable prospect of success. Mr Engstrom is the CEO of RELX Plc and Mr Udow is the Chief Legal Officer of Relx (UK) Ltd. I consider it wholly implausible that they are responsible for providing the Claimant with his P45 as opposed to delegating the task. I also consider the Claimant has no reasonable prospect of persuading the Tribunal that they instructed that the Claimant's P45 be delayed and that they did so because the Claimant had made a protected disclosure and/or act. Regardless of the employer's responsibilities under the Income Tax (PAYE) Regulations 2003, the Claimant's complaint is that the Chief Legal Officer and CEO caused a delay intentionally and are responsible for that delay. I consider that allegation is bound to fail.

165. I decline to make the same order in respect of Ms Smyth as the Claimant says he requested the P45 from her on 17.01.23. It is therefore not known whether she had involvement in the delay and if so for what reason.

Claimant's means

166. I exercise my discretion to make an order for deposit orders in this case for the reasons set out above. I remind myself of the authority of Ishmail and the purpose and effect of a deposit order. I consider it appropriate to order a sum of money to be paid as a condition of pursuing the claims having identified a number of allegations which I consider have little reasonable prospect of success. I do not consider that this will prevent access to justice or effect a strike out through the back door. I have endeavoured to set the deposit order at a level that means they are payable if the Claimant chooses but will encourage him to take stock of the merits of those claims which I consider have little reasonable prospect of success and make an informed decision as to how he wishes to proceed.

167. The Claimant was ordered to include evidence of his means for the Preliminary Hearing. The evidence he provided was sparse and was discussed during the Hearing. The Claimant only provided details of his present salary of £34,502 gross per year not telling the Tribunal when he had begun to earn that salary nor of any other income, expenditure, savings or assets. He said his previous salary with the Respondent was £75,000 gross per year. I am aware that he has a young daughter. I have seen his CV showing his wealth of experience and previous consistent employment and academic history. I do not know any other details of his means.

168. Standing back and looking at the total sum ordered and considering the information I have at my disposal as to the Claimant's means, I consider the appropriate sum to be £60 for each deposit order. If the Claimant elects to pay all 77 deposit orders, this gives a total of £4,620.

169. If the Claimant elects to pay some deposit orders and not others, he is asked to specify clearly which allegations he intends to pursue by reference to the issue number in Appendix 1, the cause of action and the named Respondent.

EMPLOYMENT JUDGE MUSGRAVE-COHEN

Dated: **13 May 2024**

Sent to the parties on: **20 May 2024**

…….

For the Tribunal Office:

……..……..

NOTE ACCOMPANYING DEPOSIT ORDER
Employment Tribunals Rules of Procedure 2013

1. The Tribunal has made an order (a "deposit order") requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.

2. If that party persists in advancing that complaint or response, a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

What happens if you do not pay the deposit?

3. If the deposit is not paid the complaint or response to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.

5. If the deposit is not paid within that time, the complaint or response to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation or argument against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.

8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.

9. Payment must be made to the address on the tear-off slip below.

10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.

12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 976 3033. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

13. You have the right to appeal against the decision to make a deposit order if you consider that the decision, or the amount ordered, is wrong in law. The time for appealing is 42 days from the date on which the deposit order was sent out in writing by the Tribunal. Details of how to appeal can be found here:

    HMCTS Booklet T440:

    https://www.gov.uk/government/publications/how-to-appeal-to-the-employment-appeal-tribunal-t440

    The website of the Employment Appeal Tribunal:

    https://www.judiciary.uk/courts-and-tribunals/tribunals/employment-appeal-tribunal/

✂----------

DEPOSIT ORDER

To: **Judicial Fees, Expenses & Payroll Team**
Magistrates' Court & Tribunal Hearing Centre
Marlborough Street
Bristol
BS1 3NU

Case Number _____

Name of party _____

I enclose a cheque/postal order (*delete as appropriate*) for £_____

Please write the Case Number on the back of the cheque or postal order