



EMPLOYMENT TRIBUNALS

Claimant: Miss D Olbinson

Respondent: The Chief Constable of Greater Manchester Police

JUDGMENT

The claimant's complaints at paragraphs 2.1.1, 2.1.2, 3.1.1, 3.1.2 and 4.2.1 of the claim as set out in the List of Issues annexed to this Judgment are struck out on the ground that there is no reasonable prospect of her establishing at final hearing that the complaints were brought in time, formed part of a course of conduct extending over a period of time and no reasonable prospect of the extension of time on just and equitable grounds.

REASONS

Background

1. By a claim form dated 8 July 2022 the claimant brought complaints of direct sex discrimination, harassment and victimisation. There were case management hearings before Employment Judge Dunlop on 28 March 2023, Employment Judge Horne on 11 May 2023, Employment Judge Dunlop on 9 June 2023 and Employment Judge Shotter on 6 December 2023. By a letter dated 28 February 2020 the respondent applied to strike out the harassment complaint, the direct discrimination complaint and part of the victimisation complaint on the basis that the claimant had no reasonable prospect of establishing that the Tribunal had jurisdiction to hear those complaints, having been lodged out of time.

2. The claimant responded to the respondent's written application of the strike out by a letter dated 3 March 2024.

Today's hearing

3. There was a bundle of 167 pages which contained within it at Annex B Employment Judge Dunlop's Order of 9 June 2023 which set out the list of issues. It is the numbering in that order that the parties followed in the application today.

4. We agreed to proceed by way of submission only with the respondent making its application, followed by the claimant responding to it, then an adjournment for decision making and reconvening for my decision.

5. The respondent applied to strike out the complaints at paragraphs 2.1.1, 2.1.2 (harassment), 3.1.1, 3.1.2 (direct discrimination) and 4.2.1 (victimisation).

Relevant Law

The power to strike out

6. The power to strike out all or part of a claim is contained in Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013:

37 Striking out

- (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).
- (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.
- (3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.

A two-stage test

7. The power to strike out is discretionary and is to be applied in a two stage test. **HM Prison Service v Dolby [2003] IRLR 694, EAT**. At the first stage the Tribunal must find that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the Tribunal to decide as a matter of discretion whether to strike out the claim or response. Failure to exercise the discretion at the second stage may lead to the strike out decision being overturned. In *Hasan v Tesco Stores Ltd UK EAT/0098/16*, Lady Wise found that the second stage is 'a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit'.

Clarify the complaints first

8. The EAT in **Cox v Adecco UKEAT/0339/19, [2021] ICR 1307** considered striking out with complaints brought by litigants in person. HHJ Tayler said 'You can't decide whether a claim has reasonable prospects of success if you don't know what it is.' There has to be a reasonable attempt at identifying the claims and the issues before considering strike out. Reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case'. As HHJ Tayler observed: 'When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing'. They judge, whilst remaining impartial, will assist a litigant in person in articulating his complaints.

Complaints should be struck out as an exception not the rule

9. The power to strike out on the grounds of no reasonable prospect of success will only be exercised in rare circumstances **Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly [2012] IRLR 755**.

Fact sensitive cases should not be struck out

10. In particular, cases should not be struck out on this ground when the central facts

are in dispute **Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330, [2007] IRLR 603** and a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts **Mechkarov v Citibank NA UKEAT/0041/16, [2016] ICR 1121**.

11. In **Anyanwu and Another v South Bank Student Union and Another and Commission for Racial Equality [2001] UKHL 14** a case which addressed an appeal against a strike out application of race discrimination claims brought under s33 of the Race Relations Act 1976, Lord Steyn at paragraph 24 underlined "*the importance of not striking out such claims.....except in the most obvious and plainest cases*". He continued, "*Discrimination cases are generally fact sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other then bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.*"

12. Lord Hope in **Anyanwu** added "*the risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The Tribunal can then base its decision on its findings of fact rather than on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence*"

Claims may be struck out on assessment of the documents alone

13. In some cases the assessment on strike out can be made on the documents alone. In **Shestak v The Royal College of Nursing and others UKEAT/0270/08** the EAT set out that where the facts sought to be established are totally and inexplicably inconsistent with undisputed contemporaneous documentation it may be appropriate to strike out.

14. In suitable cases an application for strike out may save time expense and anxiety to all parties, but in cases that are heavily fact sensitive the circumstances in which a claim will be struck out are likely to be rare. **Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108 EAT**.

15. Again in the Court of Appeal, Underhill LJ in **Ahir v British Airways plc [2017] EWCA Civ 1392**, said "*where there is on the face of it a straightforward and well documented explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so. The employment judge cannot be criticised for deciding the application to strike out on the basis of the actual case being advanced.*"

Caution but no fetter, no blanket ban

16. Langstaff J in **Chandhok v Tirkey [2015] ICR 527** said that there is no blanket ban on the power to strike out in discrimination cases but that the discretion should be exercised with greater caution than in other less fact-sensitive cases. The exercise of the discretion should be sparing and cautious.

Strike out and time issues

17. **E v X, L and Z UKEAT/0079/20** the EAT considered the striking out of a claim in the context of an argument that the conduct complained of constituted 'conduct extending over a period'. The judgment of Ellenbogen J gave detailed guidance on considering a strike out application where some of the matters complained of may be out of time.

50. **With the qualification to which I have referred at paragraph 47 above, from the above authorities the following principles may be derived:**

- 1) In order to identify the substance of the acts of which complaint is made, it is necessary to look at the claim form: Sougrin;
- 2) It is appropriate to consider the way in which a claimant puts his or her case and, in particular, whether there is said to be a link between the acts of which complaint is made. The fact that the alleged acts in question may be framed as different species of discrimination (and harassment) is immaterial: Robinson;
- 3) Nonetheless, it is not essential that a positive assertion that the claimant is complaining of a continuing discriminatory state of affairs be explicitly stated, either in the claim form, or in the list of issues. Such a contention may become apparent from evidence or submissions made, once a time point is taken against the claimant: Sridhar;
- 4) It is important that the issues for determination by the Tribunal at a preliminary hearing have been identified with clarity. That will include identification of whether the Tribunal is being asked: (1) to consider whether a particular allegation or complaint should be struck out, because no prima facie case can be demonstrated, or (2) substantively to determine the limitation issue: Caterham;
- 5) When faced with a strike-out application arising from a time point, the test which a Tribunal must apply is whether the claimant has established a prima facie case, in which connection it may be advisable for oral evidence to be called. It will be a finding of fact for the Tribunal as to whether one act leads to another, in any particular case: Lyfar;
- 6) An alternative framing of the test to be applied on a strike-out application is whether the claimant has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an on-going state of affairs: Aziz; Sridhar;
- 7) The fact that different individuals may have been involved in the various acts of which complaint is made is a relevant, but not conclusive, factor: Aziz;
- 8) In an appropriate case, a strike-out application in respect of some part of a claim can be approached, assuming, for that purpose, the facts to be as pleaded by the claimant. In that UKEAT/0079/20/RN UKEAT/0080/20/RN -33- A B C D E F G H event, no evidence will be required — the matter will be decided on the claimant's pleading: Caterham (as qualified at paragraph 47 above);
- 9) A Tribunal hearing a strike-out application should view the claimant's case, at its highest, critically, including by considering whether any aspect of that case is innately implausible for any reason: Robinson and paragraph 47 above;
- 10) If a strike-out application succeeds, on the basis that, even if all the facts were as pleaded, the complaint would have no reasonable prospect of success (whether because of a time point or on the merits), that will bring that complaint to an end. If it fails, the claimant lives to fight another day, at the full merits hearing: Caterham;
- 11) Thus, if a Tribunal considers (properly) at a preliminary hearing that there is no reasonable prospect of establishing at trial that a particular incident, complaint about which would, by itself, be out of time, formed part of such conduct together with other incidents, such as to make it in time, that complaint may be struck out: Caterham;
- 12) Definitive determination of an issue which is factually disputed requires preparation and presentation of evidence to be considered at the preliminary hearing, findings of fact and, as necessary, the application of the law to those facts, so as to reach a definitive outcome on the point, which cannot then be revisited at the full merits hearing: Caterham;
- 13) If it can be done properly, it may be sensible, and, potentially, beneficial, for a Tribunal to consider a time point at a preliminary hearing, either on the basis of a strike-out application, or, in an appropriate case, substantively,, so that time and resource is not taken up preparing, and considering at a full

merits hearing, complaints which may properly be found to be truly stale such that they ought not to be so considered. However, caution should be exercised, having regard to the difficulty of disentangling time points relating to individual complaints from other complaints and issues in the case; the fact that there may make no appreciable saving of preparation or hearing time, in any event, if episodes that could be potentially severed as out of time are, in any case, relied upon as background more recent complaints; the acute fact-sensitivity of discrimination claims and the high strike-out threshold; and the need for evidence to be prepared, and facts found (unless agreed), in order to make a definitive determination of such an issue:

Appeal against strike out

18. The decision of a Tribunal to strike out, or not strike out, all or part of a claim or response, will only be disturbed on appeal if there is an error of legal principle in the Tribunal's approach, the Tribunal has failed to take into account a relevant factor or has taken into account an irrelevant factor, or the decision is perverse (**see Riley v Crown Prosecution Service [2013] IRLR 966**).

Applying the Law

19. The claimant went to ACAS on 18 June 2022. Everyone agreed that matters prior to 19 March 2022 were potentially out of time. The complaints had been clarified into an agreed list of issues which was Annexed to the order of Employment Judge Dunlop on 9 June 2023 and referred to as annex B.

The Kelly Chilton actions

20. The complaints at paragraphs 2.1.1 harassment, 3.1.1 direct discrimination and 4.2.1 victimisation were allegations of sex discrimination by Ms Kelly Chilton.

21. At 2.1.1 and 3.1.1 it was alleged that on 17 June 2021 Ms Chilton had criticised the claimant for not having completed a level IV qualification in good time. The claimant challenged this criticism in front of team members and described herself to Ms Chilton as “seething” as a result of it.

22. At 4.2.1 it was alleged that in September 2021 Ms Chilton had been part of a shortlisting panel that had failed to shortlist the claimant.

23. Following the guidance in E v X, L & Z the Tribunal looked at the way the claimant put her case and whether there was a link between the acts, irrespective of the fact that there were different species of discrimination.

24. They would need to form part of a course of conduct with an act that was in time in order to bring them into time. The claimant relied on the allegation at 4.2.10 in July 2022 (in time) that Kelly Chilton produced a training planner allocating the claimant an unusually high 19/25 days as training days.

25. Having regard to the law in Hendricks the Tribunal finds that the claimant had no realistic prospect of establishing that the acts above by Ms Chilton formed part of a course of conduct extending over a period of time. Apart from being decisions or remarks of the same person, there was nothing other than the identity of the perpetrator, to link the acts. The Tribunal accepts the submission of the respondent that the identity of the perpetrator is a relevant but not determinative factor. There was no reasonable prospect of establishing an ongoing discriminatory state of affairs, rather the acts would be seen as isolated acts; the first being a comment on training and the second a shortlisting decision and the third (in time) a work allocation decision.

26. The complaints were out of time. The Tribunal then considered whether or not the

claimant would have a reasonable prospect of a just and equitable extension of time. The Tribunal had regard to the extent of delay. The complaint at 2.1.1 and 3.1.1 was brought nine months late. The claimant had been working during that time and able to bring a grievance. The Tribunal had regard to the general merit of the complaint. This was the remark about the qualification. There was nothing in the remark that related to gender. The claimant could not explain why she said the allegations were related to her sex other than that she was a woman. She said she had been targeted by Ms Chilton and Sgt Robertshaw *after the remark* because she had challenged Ms Chilton's remark about the training in June 2021. She did not say that the remark itself was made because she was a woman, only that as a woman, a single mother with three children undertaking a qualification, she was "seething" and had found the remark offensive. The allegation was weak in that the claimant would have no reasonable prospect of showing a prima facie case of sex discrimination, either in direct discrimination or harassment, in relation to this remark.

27. The shortlisting decision complaint at 4.2.1 was 6 months out of time. The decision was made by a panel of three. The claimant made no allegation against the other two scorers. The respondent took the Tribunal to a document which showed that the panel had scored the applications of a number of candidates including the claimant anonymously. The respondent says assuming Ms Chilton to have given the lowest score, that is taking the claimant's case at its highest, even if Ms Chilton's score had been replaced with the same score given to the claimant by the other two scorers, the claimant would still not have ranked high enough to progress when compared with other candidates. The claimant said that the scorers must have known which of the anonymised candidates she was as the application forms were shown to them and part of the application form was not redacted. The claimant could not answer the point about how, even if the lowest scores were replaced, her not progressing was sex discrimination. The documents in this case showed there to be no realistic prospect of success in meeting the first stage test on burden of proof on this complaint so I assessed the merits as weak.

The Sergeant Robertshaw actions

28. The complaints at 2.1.2 and at 3.1.2 took place on 11 February 2022. The allegation was that there had been an altercation in a morning briefing (this detail was in the narrative attached to the claim form) which had continued outside to a location at a photocopier in which Sgt Robertshaw's stance, body language, raised voice, rushing off, "pulling rank" and remarks about her not going to a meeting because she was not in the right frame of mind and continuing the conversation in public, amounted to direct sex discrimination and harassment. This complaint was one month out of time. There was no later complaint against Sgt Robertshaw to bring this complaint into time. The respondent submitted that this was a powerful factor in support of strike out as there was no reasonable prospect of the claimant establishing a course of conduct. The Tribunal accepts this submission. The incident on 11 February 2022 was the only occasion on which the claimant alleges that Sgt Robertshaw discriminated against her.

29. The complaint was out of time and not part of a course of conduct. The Tribunal then considered prospects of achieving an extension. The potential merits were considered.

30. When pressed as to how the protected characteristic of sex was a factor in the incident the claimant referred to the fact that Sgt Robertshaw was taller than she and her colleague in the incident in February 2022, and that this had made her feel intimidated. He is not alleged to have made any remark that was gender specific. Her complaint amounted to an assertion that he had been unpleasant, that he was a man and she was a woman and that made it both less favourable treatment and unwanted conduct sex discrimination. The claimant would have no reasonable prospect of establishing at Tribunal that it was just and equitable to extend time for her in relation to these out of time allegations that had no reasonable prospect of success. She was able to work and bring

a grievance at the relevant time.

31. At the end of her submissions, I asked the claimant who had said that she was targeted by Ms Chilton and Sgt Robertshaw, why that was? She said *because I had challenged her in front of the team when she had criticised me about the qualification in June 2021*. On the claimant's own assertion there was a reason for the alleged discriminatory treatment that was not related to a protected characteristic.

32. I have exercised caution in considering the strike out of discrimination complaints. The Tribunal takes discrimination very seriously and considers the claimant's allegations at their highest.

33. This is not a case where there is difficulty disentangling time points. These were isolated incidents, brought out of time, with on their merits no reasonable prospect of success, and in relation to time no realistic prospect of establishing that they were continuing acts or that it was just and equitable to extend time. I have had regard to the overriding objective and the impact of striking out on both parties. I find that the respondent would be put to cost in broader factual enquiry, calling more witnesses and a longer hearing if the complaints were to survive. The claimant would lose her ability to proceed in direct discrimination and harassment but could still proceed in her victimisation complaints.

34. Considering all the circumstances for the reasons set out above I exercise the discretion to strike out the complaints. The complaints that continue to final hearing are now set out in Annex C attached to this judgment and attached to the case management order of the same date.

Employment Judge Aspinall
Date: 31 May 2024

JUDGMENT SENT TO THE PARTIES ON
21 June 2024

FOR THE TRIBUNAL OFFICE

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

Annex B

Complaints and Issues from Employment Judge Dunlop's hearing 9 June 2023

1. Time limits

- 1.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.1.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?
 - 1.1.2 If not, was there conduct extending over a period?
 - 1.1.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?
 - 1.1.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.1.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Harassment related to sex (Equality Act 2010 section 26)

- 2.1 Did the respondent do the following alleged things:
 - 2.1.1 On 17 June 2021, Kelly Chilton making a comment regarding the time taken by the claimant to complete a qualification. The claimant was attempting to complete the qualification during a period where she was caring for three children, including home schooling (due to covid). She found Ms Chilton's comment, implying that she should be able to complete it more quickly, upsetting.
 - 2.1.2 On 11 February 2022, Sergeant Robertshaw interacting aggressively with the claimant and a colleague (Ms Iqbal). The claimant felt this interaction was threatening to her as a woman due to:
 - (a) Sgt Robertshaw's stance;
 - (b) His aggressive body language – for example banging a document down on top of photocopier;
 - (c) Raised tone of voice, shouting "absolutely" when asked to clarify his role as a sergeant;
 - (d) Rushing off to grab a certificate;
 - (e) Making aggressive comments, in particular. "I am your supervisor", and "I'm pulling rank";
 - (f) Attempting to prohibit the claimant and Miss Iqbal from going to a meeting and saying, "you are not in the right frame of mind";

- (g) Insisting on continuing the conversation in a public place when that was not appropriate.

2.2 If so, was that unwanted conduct?

2.3 Was it related to sex?

2.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the claimant and whether it is reasonable for the conduct to have that effect.

3. Direct Sex Discrimination (Equality Act 2010 section 13)

3.1 What are the facts in relation to the following allegations:

3.1.1 On 17 June 2021, Kelly Chilton making a comment regarding the time taken by the claimant to complete a qualification. The claimant was attempting to complete the qualification during a period where she was caring for three children, including homeschooling (due to Covid). She found Ms Chilton's comment, implying that she should be able to complete it more quickly, upsetting.

3.1.2 On 11 February 2022, Sergeant Robertshaw interacting aggressively with the claimant and a colleague (Ms Iqbal). The claimant felt this interaction was threatening to her as a woman due to:

- (a) Sgt Robertshaw's stance;
- (b) His aggressive body language – for example banging a document down on top of photocopier;
- (c) Raised tone of voice, shouting "absolutely" when asked to clarify his role as a sergeant;
- (d) Rushing off to grab a certificate;
- (e) Making aggressive comments, in particular. "I am your supervisor", and "I'm pulling rank";
- (f) Attempting to prohibit the claimant and Miss Iqbal from going to a meeting and saying, "you are not in the right frame of mind";
- (g) Insisting on continuing the conversation in a public place when that was not appropriate.

3.2 Did the claimant reasonably see the treatment as a detriment?

3.3 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than a man in the same material circumstances was or would have been treated? The claimant relies on a hypothetical comparison.

3.4 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of sex?

3.5 If so, has the respondent shown that there was no less favourable treatment because of sex?

4. Victimisation (Equality Act 2010 section 27)

4.1 Did the claimant do a protected act as follows:

4.1.1 On 17 June 2021 when Kelly Chilcott made the comment regarding completion of a Level 4 qualification. C challenged this by saying, "I'm seething" in view of the challenges she had faced in completing the qualification. She said she felt it was discriminatory.

4.1.2 In February 2022 C raised concerns which included allegations of discrimination on grounds of sex by speaking to Chief Inspector Mark Hargreaves.

4.1.3 In March 2022 C raised a written grievance which included allegations of discrimination on grounds of sex.

4.2 Did the respondent do the following things:

4.2.1 During September 2021 C was unsuccessful in being shortlisted for a training position when KC was on the panel. She contends this was due to her protected act on 17 June 2021.

4.2.2 The respondent "coerced" (in the claimant's view) C into engaging in mediation as a way to resolve the issues raised in the grievance. In particular, in the Step 2 outcome letter received on 31 May 2022, it was stated by DS Ben Ewart that the claimant may be put on a conduct development plan if she did not consent to mediation.

4.2.3 The respondent failed to appoint a genuinely independent person as a Step 2 grievance manager, which was in contravention of their own policy. C says she was therefore denied access to a fair and transparent grievance investigation.

4.2.4 The Stage 2 outcome letter was disseminated to individuals who should not have received a copy (or should have received redacted copies with information limited to the parts which concerned them), specifically, Kelly Chilton and Sgt Robertshaw.

4.2.5 DS Ewart confining his investigation to interviewing those who were the subject of complaints and managers, failing to interview any of the list of eighteen individuals that C suggested could support her allegations.

4.2.6 By an email dated 11 April 2022, DS Ewart proposing a temporary reassignment of the claimant, which the claimant considered to be an inappropriate response to the situation in which she was the complainant.

4.2.7 DS Ewart ignoring additional concerns relating to victimisation, health and safety breaches and lack of stress management, raised by C in an email dated 14 April 2022, which should have been added to the remit of the grievance investigation.

4.2.8 On 13 June 2022, at a team meeting, the staff of the Professional Development Unit were informed by Anne Clayton that they would all be moving and the unit would cease to exist in 6-12 months. Anne Clayton stated, "If we don't go willingly, we will be forced". The claimant believes that this decision in respect of the team was directly linked to the grievance she had raised.

4.2.9 The respondent failed to hold a grievance appeal meeting, and

subsequently to produce an appeal outcome, within the timescale set out in the respondent's policy.

4.2.10 Around the end of June/beginning of July 2022 the respondent produced a training planner which allocated the claimant 19 days of training (out of 25 working days) for the upcoming period. The claimant says that this was an unusually high number of delivery days and other team members were not given as many. (The claimant believes that Kelly Chilcott was responsible for the allocation of training in this period).

4.2.11 The respondent delayed in issuing a letter to the claimant notifying her of the date her pay would reduce to half pay (24 January 2023). This was issued on 12 January 2023, instead of two months prior to the relevant date as stipulated by policy.

4.2.12 On 29 January 2023 the claimant submitted a pay appeal. On 31 January 2023 the respondent (Cheryl Chadwick, Head of HR) rejected the claimant's pay appeal.

4.2.13 Cheryl Chadwick failed to respond to an email sent by the claimant on 3 February 2023 raising concerns about return to work.

4.3 By doing so, did it subject the claimant to detriment?

4.4 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?

4.5 If so, has the respondent shown that there was no contravention of section 27?

5. Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

5.2 What financial losses has the discrimination caused the claimant?

5.3 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

5.4 Has any discrimination found by the Tribunal caused the claimant personal injury (namely, work-related stress which caused the claimant to be signed off sick from work from September 2022 until February 2023, and/or an exacerbation of a pre-existing condition of endometriosis) and how much compensation should be awarded for that?

5.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.6 Did the respondent or the claimant unreasonably fail to comply with it?

5.7 If so, is it just and equitable to increase or decrease any award payable to the claimant?

5.8 By what proportion, up to 25%?

5.9 Should interest awarded? How much?

Annex C
Post strike out hearing 31 May 2024
Complaints and Issues
(For Final Hearing in October 2024)

4. Victimization (Equality Act 2010 section 27)

4.1 Did the claimant do a protected act as follows:

4.1.1 In February 2022 C raised concerns which included allegations of discrimination on grounds of sex by speaking to Chief Inspector Mark Hargreaves.

4.1.2 In March 2022 C raised a written grievance which included allegations of discrimination on grounds of sex.

4.2 Did the respondent do the following things:

4.2.1 During September 2021 C was unsuccessful in being shortlisted for a training position when KC was on the panel. She contends this was due to her protected act on 17 June 2021.

4.2.2 The respondent “coerced” (in the claimant's view) C into engaging in mediation as a way to resolve the issues raised in the grievance. In particular, in the Step 2 outcome letter received on 31 May 2022, it was stated by DS Ben Ewart that the claimant may be put on a conduct development plan if she did not consent to mediation.

4.2.3 The respondent failed to appoint a genuinely independent person as a Step 2 grievance manager, which was in contravention of their own policy. C says she was therefore denied access to a fair and transparent grievance investigation.

4.2.4 The Stage 2 outcome letter was disseminated to individuals who should have received a copy (or should have received redacted copies with information limited to the parts which concerns them), specifically, Kelly Chilton and Sgt Robertson.

4.2.5 DS Ewart confining his investigation to interviewing those who were the subject of complaints and managers, and failing to interview any of the list of eighteen individuals that C suggested could support her allegations.

4.2.6 By an email dated 11 April 2022, DS Ewart proposing a temporary reassignment of the claimant, which the claimant considered to be an inappropriate response to the situation in which she was the complainant.

4.2.7 DS Ewart ignoring additional concerns relating to victimisation, health and safety breaches and lack of stress management, raised by C in an email dated 14 April 2022, which should have been added to the remit of the grievance investigation.

4.2.8 On 13 June 20-22, at a team meeting, the staff of the Professional Development Unit were informed by Anne Clayton that they would all

be moving and the unit would cease to exist in 6-12 months. Anne Clayton stated, "If we don't go willingly, we will be forced". The claimant believes that this decision in respect of the team was directly linked to the grievance she had raised.

- 4.2.9 The respondent failed to hold a grievance appeal meeting, and subsequently to produce an appeal outcome, within the timescale set out in the respondent's policy.
- 4.2.10 Around the end of June/beginning of July 2022 the respondent produced a training planner which allocated the claimant 19 days of training (out of 25 working days) for the upcoming period. The claimant says that this was an unusually high number of delivery days and other team members were not given as many. (The claimant believes that Kelly Chilcott was responsible for the allocation of training in this period)
- 4.2.11 The respondent delayed in issuing a letter to the claimant notifying her of the date her pay would reduce to half pay (January 2023). This was issued on 12 January 2023 instead of two months prior to the relevant date as stipulated by policy.
- 4.2.12 On 20 January 2023 the claimant submitted a pay appeal. On 31 January 2023 the respondent (Cheryl Chadwick, Head of HR) rejected the claimant's pay appeal.
- 4.2.13 Cheryl Chadwick failed to respond to an email sent by the claimant on 3 February 2023 raising concerns about return to work.

4.3 By doing so, did it subject the claimant to detriment?

4.4 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or may do, a protected act?

4.5 If so, has the respondent shown that there was no contravention of section 27?

5. Remedy for discrimination or victimisation

5.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

5.2 What financial losses has the discrimination caused the claimant?

5.3 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

5.4 Has any discrimination found by the Tribunal caused the claimant personal injury (namely, work-related stress which caused the claimant to be signed off sick from work from September 2022 until February 2023, and/or an exacerbation of a pre-existing condition of endometriosis) and how much compensation should be awarded for that?

5.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.6 Did the respondent or the claimant unreasonably fail to comply with it?

5.7 If so, is it just and equitable to increase or decrease any award payable to the claimant?

- 5.8 By what proportion, up to 25%?
- 5.9 Should interest be awarded? How much?