



EMPLOYMENT TRIBUNALS

Claimant: Carly Nelson

Respondent: The Commissioner of Police of the Metropolis

Preliminary Hearing

Heard at: London South (By CVP)

On: 7 June 2024

Before: Employment Judge Cox

Appearances

For the Claimant: In Person

For the Respondent: Mr Isaacs (Counsel)

Judgment

The complaints of sex discrimination and harassment

The following parts of the claimant's claim (as clarified in her 'List of Incidents' dated 13 March 2024) are struck out because the Tribunal has no jurisdiction to determine the claimant's complaints and they therefore have no reasonable prospects of success:

- 1.1 In relation to the complaints of direct sex discrimination and harassment on the grounds of sex, the claims identified in the Tribunal's draft List of Issues dated 28 February 2024 in paragraphs 2a) i) ii) iv) and vii) and (in so far as it relates to matters falling outside of her employment relationship) paragraph 2(xi).

The claimant's application to amend her claim to include clarifications of those claims is refused. In so far as they are relied upon by the claimant for the purpose of her claims for sex discrimination and harassment permission to amend to rely on the following paragraphs in the claimant's document entitled 'List of Incidents' dated 13 March 2024 is refused:

- 1.2 The paragraph dated 7 September 2022 relating to the attendance of police officers (sex discrimination);
- 1.3 The words "I was given the guest house which was not suitable which is why they said.." in the paragraph dated 13 September 2022;
- 1.4 The paragraphs dated 5 and 6 October 2022 relating to the Texas App;
- 1.5 The paragraph dated 26 November 2022;
- 1.6 In the first paragraph dated Sunday 27 November 2022 the paragraph beginning with the words "I contacted 101" and ending with "attended my address".
- 1.7 The second paragraph dated 27 November 2022;
- 1.8 The paragraph dated 6 December 2022 (constructive dismissal);
- 1.9 In the paragraph dated 13 January 2023 the words "A police officer was in attendance" and the words from: "The officer asked my friend" to the end of the paragraph (sex discrimination/constructive dismissal)

Save as provided for above permission is granted to amend the claimant's claim in relation to sex discrimination and harassment the claimant's claim is amended in the form of the document entitled "List of Incidents" dated 13 March 2024.

The Claimant is ORDERED to pay a deposit of £137.50, not later than 21 days from the date this Order is sent, as a condition of being permitted to continue to advance the claims of discrimination and harassment.

The complaint of unfair constructive dismissal

Permission is refused for the claimant to amend the claim to rely on the matters pleaded in the paragraphs dated 10 March 2023 to 16 November 2023 inclusive.

For the purposes of the complaint of unfair constructive dismissal permission is granted to the claimant to amend her claim form to include the following paragraphs in the claimant's List of Incidents document, ON CONDITION THAT the claimant pays a deposit of £25 not later than 21 days from the date this Order is served. If no such deposit is paid, the claimant's application to amend to include these paragraphs is refused. The paragraphs are those dated:

- 1.10 23 November 2022;
- 1.11 28 November 2022;
- 1.12 30 November 2022;
- 1.13 13 January 2023;
- 1.14 16 January 2023;
- 1.15 10 March 2023 (all three paragraphs of that date)
- 1.16 11 October 2023;
- 1.17 16 November 2023.
- 1.18 These appear to relate to the following paragraphs in the Tribunal's draft List of Issues: 2(a) (v); (viii).

Reasons

1. The Claimant was employed by the Respondent between 24 April 2006 and 22 March 2023 as a caseworker within its Referencing and Vetting Unit. The Claimant resigned on notice on 22 February 2023. ACAS Early Conciliation took place between 12 April 2023 and 14 April 2023.
2. The claimant presented her complaint on 25 April 2023. She brings complaints of
 - a. Unfair Constructive Dismissal S 95(1)(c) of the Employment Rights Act 1996)
 - b. Direct Sex Discrimination (s 13 of the Equality Act 2010)
 - c. Harassment related to Sex (s 26 of the Equality Act 2010)

3. The grounds of the harassment claim are the same as those relied upon for the discrimination complaint.
4. In broad summary the claimant says that she was the victim of assaults by her former partner in September and November 2022. She complains about the conduct of police officers who attended call outs. She complains about the decision to remove her Laptop from her and about decisions made in relation to her laptop and she complains about conduct by line managers and other staff towards her and to a lack of support and inadequate responses to her complaints and her grievance.
5. Her claims were discussed at a Preliminary Case Management hearing before EJ Self on 28 February 2024. In the course of that hearing she discussed and articulated further details of the claims set out in her claim form ET1. On the basis of those discussions EJ Self formulated a draft 'List of Issues' which were agreed by the parties as being the issues to be determined.
6. EJ Self directed that the claimant must set out the precise ways in which the claimant sought to amend her ET1 form with these details by 13 March 2024, and any application to amend and the form of the draft List of Issues was to be discussed further before me at this hearing. The claimant set out her proposed amendments in a document dated 13 March 2024 entitled 'List of Incidents'.
7. Mr Isaacs who appeared for the respondent opposed the proposed amendments. He argued that I should exercise my discretion against allowing the amendments, and if I did that they should be allowed only on condition that the claimant pay a deposit in respect of them. He also argued that some of the underlying complaints to which certain proposed amendments related should be struck out under rule 37(1)a) of the Employment Tribunal Rules of Procedure on the grounds that the Tribunal had no jurisdiction to determine them or because they had no real prospect of success.
8. I heard and have taken into account oral submissions by the claimant and oral submissions and a skeleton argument by Mr Isaacs.

Strike Out Application

9. I considered the strike out application first. It was agreed with the parties that for the purpose of simplifying the discussion I should treat the amendments which purported to clarify the targeted complaints as notionally having been allowed, and those claims (as notionally amended) would then considered for the purposes of striking out/jurisdiction.
10. The parts of the claimant's claim which Mr Isaacs argued should be struck out were:
 - a. in relation to the complaint of constructive unfair dismissal the claims identified in the Tribunal's draft List of Issues dated 28 February 2024 in paragraphs 1a) i) ii) iv) and vii); and

- b. In relation to the complaint of direct sex discrimination the claims identified in the Tribunal's draft List of Issues dated 28 February 2024 in paragraphs 2a) i) ii) iv) and vii) and (in so far as it relates to matters falling outside of her employment relationship) paragraph 2(xi).
11. The following paragraphs in the claimant's document entitled 'List of Incidents' dated 13 March 2024 which related to the claims which it was argued should be struck out were:
- a. The paragraph dated 7 September 2022 relating to the attendance of police officers (sex discrimination);
 - b. The words "I was given the guest house which was not suitable which is why they said.." in the paragraph dated 13 September 2022;
 - c. The paragraphs dated 5 and 6 October 2022 relating to the Texas App;
 - d. The paragraph dated 26 November 2022;
 - e. In the first paragraph dated Sunday 27 November 2022 the paragraph beginning with the words "I contacted 101" and ending with "attended my address".
 - f. The second paragraph dated 27 November 2022;
 - g. The paragraph dated 6 December 2022 (constructive dismissal);
 - h. In the paragraph dated 13 January 2023 the words "A police officer was in attendance" and the words from: "The officer asked my friend" to the end of the paragraph (sex discrimination/constructive dismissal)

The sex discrimination and harassment complaints

12. As regards the claims of direct sex discrimination and harassment, Part 2 of the Equality Act 2010 (EqA) sets out the key concepts of protected characteristics) (section 4) including sex (section 11). Part 2 Chapter 2 proscribes the prohibited conduct including direct discrimination (s 13) and harassment (s 26).

Part 3 of the Equality Act 2010 is concerned with and prohibits discrimination in the context of the provision of services to the public or the exercise of public functions.

Section 28 (a) provides expressly that Part 3 does not apply to discrimination, harassment or victimisation that is prohibited by Part 5 (work).

Section 29 provides

- a. (1) A person (a "service-provider") concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.

- b. (2) A service-provider (A) must not, in providing the service, discriminate against a person (B)...(c) by subjecting B to any other detriment.
 - c. (3) A service-provider must not, in relation to the provision of the service, harass a) a person requiring the service, or (b) a person to whom the service-provider provides the service.
- (6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.

S 31 Interpretation and exceptions provides:

- d. (1) This section applies for the purposes of this Part
- e. (3) A reference to the provision of a service includes a reference to the provision of a service in the exercise of a public function.
- f. (4) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

Part 5 is the part of the EqA which applies to work and employment matters. Sections 39 and 40 provide in effect that an employer must not discriminate against or harass workers of employees.

Part 8 Sections 108-112 deal with amongst other things vicarious liability of employers for the acts and omissions of their employees.

Part 9 is concerned with enforcement. Part 9 Chap 1 para 113 requires that proceedings relating to a contravention of the Act must be brought in accordance with Part 9 (subject to certain irrelevant exceptions).

Part 9 section 114 1) a) provides that the County Court has jurisdiction to determine a claim relating to a contravention of Part 3 (services and public functions) and sub-paragraph e) extends that to related claims of vicarious liability.

Part 9 section 120(1) provides that an employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to a contravention of part 5 (work) and related vicarious liability claims

The respondent referred me to London Borough of Waltham Forest v Martin [2011] Eq LR 1067 as establishing the principle that where a public authority is acting as such, complaints that its conduct is discriminatory or amounts to harassment under the act must be brought in the county court. That is true even if the public authority is also the employer of the person towards whom the discriminatory conduct is directed, and even though the conduct might have consequences for the claimant's future employment

The Waltham Forest case was concerned with provisions of the Race Relations Act 1976 but the Court of Appeal in Tiplady v City of Bradford Metropolitan DC [2020] IRLR 230 at paras 35-40 held that the principles established in the Waltham Forest case apply to the EqA.

In light of these authorities, and also as a matter of interpretation of the statutory language in Part 9 in particular and structure of the EqA it is clear that the intention of the EqA is that (subject to irrelevant exceptions) the jurisdictions under Parts 3 and 5 are intended to be mutually exclusive.

I am satisfied that the conduct referred to by the claimant in relation to Issues 2a) i ii iv and vii concern conduct by the respondent by way of the provision of a service (policing) to a member of the public and/or concern the Commissioner's functions as a public authority. The incidents of conduct relied upon are the attendances of police officers in response to contacts by the claimant or social services for police assistance, the provision of a safe house and the provision of an app to victims of domestic violence which facilitates the logging of incidents of domestic violence.

The claimant submitted that the respondent failed to arrest her abusive partner, and when she was assaulted for a second time she was forced to go into work with injuries because her laptop had been taken away and when she complained to the Department of Professional Standards (DPS) she was told incorrectly that she could not complain because she was an employee and that the DPS inquiry also carried out an investigation into her, without her knowledge.

None of these points change the analysis above in relation to the matters which constitute the provision of public services as distinct from errors or omissions or discriminatory conduct in connection with her employment.

13. Accordingly I find that the Employment Tribunal lacks jurisdiction under the EqA to consider or grant remedies in respect of the conduct identified in paragraphs 2a) i) ii) iv) and vii) and (in so far as it relates to matters falling outside of her employment relationship) paragraph 2(xi) of the draft List of Issues and in so far as they are clarified or set out in the paragraphs listed above of the List of Incidents document. The conduct relied upon constitutes the provision of services by a public authority or the exercise by the Commissioner of public functions falling within Part 3 of the EqA.

14. Rule 37(1) a) empowers a tribunal to strike out a claim which has no reasonable prospect of success. Mr Isaacs reminded me that in exercising the discretion to strike out claims under Tribunal Rule 37(1)a) the bar is a high one: Balls v Downham Market High School and College [2010] IRLR 217, and that discrimination claims should not be struck out except in the plainest and most obvious cases: Anyanwu v South Bank Students' Union and South Bank University [2001] IRLR 305. However, I consider that this is a plain and obvious case in which it is appropriate to exercise the discretion to strike out, applying the guidance in Ahir v British Airways [2017] EWCA Civ 1392.

15. The complaints under the EqA for sex discrimination and harassment in respect of this conduct are struck out under Employment Tribunal Rule 37(1)(a) because they have no reasonable prospect of success due to the Tribunal's lack of jurisdiction and because it is in the interests of the overriding objective to do so (although, as I explained to the claimant, that is not to say that the conduct cannot be mentioned in evidence or in the claim form as part of the relevant factual matrix of events, but they cannot found claims for a remedy in this tribunal) and permission is refused to amend the claimant's claim by the inclusion of the paragraphs listed above.

Constructive Unfair Dismissal

Mr Isaacs submitted that the claimant's reliance on the same conduct for the purposes of a claim for unfair constructive dismissal suffers from a different, but equally fatal defect.

These are the claims in relation to the complaint of constructive unfair identified in the Tribunal's draft List of Issues dated 28 February 2024 in paragraphs 1a) i) ii) iv) and vii), (and the proposed amendments under the paragraphs of the List of Incidents listed above).

By s 94 of the Employment Rights Act 1996 ("ERA 1996") an employee has a right not to be unfairly dismissed. S 95(1) (c) of the ERA 1996 defines dismissal as including constructive dismissal. By s 111 an employee is entitled to present a claim for Unfair Dismissal to an Employment Tribunal.

Mr Isaacs correctly pointed out that the complaint by the claimant is that she was entitled to resign and treat herself as constructively unfairly dismissed because on the grounds that the implied term of trust and confidence between employer and employee had been breached by the date of the 'last straw' incident (of non-communication with the claimant about the return of her laptop) on 22 February 2023.

He referred me to the observations in Malik v Bank of Credit and Commerce International SA [1997] ICR 606 at 611 regarding breach of the implied term of trust and confidence: *"The conduct must, of course, impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at all the circumstances"*.

He submitted that the implied term arises in the context of the relationship between employer and employee and that in considering all the circumstances when deciding if a term of that relationship had been breached, a relevant circumstance is that in respect of the conduct alleged in the above paragraphs the respondent was acting as a public authority and not in relation to the claimant as her employer.

This is a compelling submission but I was not satisfied that I should conclude that as a consequence the claimant's constructive dismissal claim (as clarified by the proposed paragraphs) had no reasonable prospect of success. The requirement to consider all the circumstances requires the tribunal at trial to consider all the circumstances in the round. Although I think that the grounds relied upon in the proposed paragraphs/ the paragraphs in the List of Issues have little prospect of adding weight to a finding that the respondent acted in breach of the implied term, it is not in the interests of the overriding objective at this stage to shut them out of consideration of all the circumstances.

I therefore refuse the respondent's application to strike out the claims in paragraphs 1a) i) ii) iv) and vii) of the Tribunal's draft List of Issues dated 28 February 2024 and allow the proposed amendments under the paragraphs of the List of Incidents listed above subject to the following condition.

In the exercise of my discretion under Tribunal Rule 39 I consider that the specific allegations in the paragraphs listed above have little reasonable prospect of success for the reason argued by Mr Isaacs. If the paragraphs were already pleaded I would exercise my discretion in favour of making a deposit order in respect of them. Since the claimant seeks to amend her claim to include them, I consider that I should make permission to amend subject to a condition that the claimant pay a deposit in respect of them. I deal with the deposit order below.

If the deposit is not paid by the date set out in the deposit order, the claimant's claim will proceed without amendment to include those paragraphs and the related paragraphs in the List of Issues are to be deleted.

Amendment Application

In this section I consider the claimant's application to amend in respect of the remaining paragraphs of her List of Incidents not dealt with above.

The claimant told me that she had discussed certain details of the proposed amendments with the Judge at the preliminary hearing on 24 February 2024 which informed the content of the draft List of Issues, and that the List of Incidents which forms her formal written application to amend included further details of her original claims and additional matters which had come to light in the course of her grievance which she wanted to include. She said she had received that information only in January 2024. Her application was made in line with the deadline set by the tribunal of 13 March 2024.

Mr Isaacs did not object to the following paragraphs :

28 November 2022;

6 December 2022 (except the phrase "I attended the office my eye was still bruised";

4,5,6 and 11 January 2023 (second paragraph) 12 January (second paragraph) 17, 24 January (second paragraph)

23 February 2023;

10 and 21 March 2023.

He objected to the other proposed amendments.

In reaching my decision I have taken into account that the ET1 is important as it sets out the claimant's essential case: Chandok v Tirkey [2015] ICR 527 and the well-known principles and the guidance set out in Vaughan v Modality Partnership UKEAT/0147/20/BA incorporating the relevant factors set out in Selkent (nature of the amendment, time limits and the timing and manner of the application). The core consideration is the balance of injustice and hardship to the parties and therefore the parties are expected to make submissions on the specific practical consequences of allowing or refusing the amendment MacFarlane v COPOM [2023] EAT 111.

The claimant explained that the matters referred to in her List of Incidents dated before the paragraph dated 6 April 2023 were additional clarification and detail of the existing claims included in her ET1 which was presented on 25 April 2023. She had not included that detail in her ET1 originally because she was a litigant in person, she had been told by ACAS to fill out her ET1, she did not seek advice and did not know how to do it. She only got clarity about that after discussing the case with the judge at the preliminary hearing. She submitted it would be fair to allow amendments because the respondent had withheld from her a huge amount of detail from her grievance despite her seeking to obtain it.

The claimant resigned on 22 February 2023. In connection with the amendments so far as they related to her claim for constructive unfair dismissal I asked her how she could have resigned in response to matters which occurred after that date (or at least after 22 March 2023 when her employment came to an end). She said that she knew generally that she was not being treated fairly, was not supported and was not provided within formation about her treatment/complaints, her grievance was mishandled and she had been deprived of her laptop access. She was not told that she was under investigation herself and when she found out that confirmed her in her suspicion that the respondent could not be trusted: they were trying to find something against her. She also said that she needed to make the amendments so that the behaviour of the respondent could be exposed in public.

On behalf of the respondent Mr Isaacs objected to the other proposed amendments on the following grounds.

- a. The paragraphs dated 6 April 2023 onwards in the List of Incidents should not be permitted in connection with the constructive dismissal complaint because they post-dated the claimant's decision to resign and therefore could not possibly have had any causative effect on that decision: a merits point.
 - b. He submitted that (taking account of the ACAS extension) the effect of the three-month time limit for bringing complaints is that the tribunal had no jurisdiction to consider complaints relating to matters pre-dating 13 January 2023 unless satisfied that there was a continuing act or that it would be just and equitable to extend time. Amendments relating to events predating 13 January 2023 should be refused: a merits point.
 - c. The application was made late more than a year after the date of her resignation and termination of her employment: a point going to the timing of her application
 - d. The proposed amendments are not clearly expressed even now: an additional factor going to the prejudice which the respondent would suffer if amendment in those terms was granted: a merits/practical prejudice point regarding the manner of the application. He referred to the amendments in paragraphs dated 11 October 2023 and 16 November 2023. These refer to 'sex discrimination' but they do not make clear why what is alleged there has anything to do with the claimant's sex.
 - e. The other paragraphs introduce new incidents or allegations between 5 September 2022 and 16 November 2023, and potentially involve new evidence from new individuals whose memory may have faded: a forensic prejudice point.
 - f. The claimant is seeking to expand and widen her claims. She has already pleaded her key claims in her ET1, the desire to improve on those claims is not a strong factor in favour of granting amendment: a balance of prejudice/practical point.
 - g. If the amendments were granted the respondent would suffer prejudice in the form of increased costs: a practical prejudice point.
16. He also addressed me on the wider merits of the proposed amendments in relation, in particular, to the claims of sex discrimination and harassment. His broad point was that there is nothing pleaded which makes clear why the claimant alleges that the conduct complained of was because of sex, or any facts from which a tribunal could infer that it was. By contrast the respondent's grounds of resistance set out very compelling non-discriminatory explanations for the impugned conduct. I consider these points further below in connection with the Deposit Order

17. I refuse permission to amend to rely on the matters pleaded in the paragraphs dated 10 March 2023 to 16 November 2023 inclusive for the purposes of the claim for unfair constructive dismissal. The events referred to cannot logically have caused the claimant to resign because they arose after 22 February 2023 when the claimant resigned. The same objection does not apply to bar these amendments in support of the claims for discrimination/harassment.
18. The starting point for the remaining amendments is the ET1. I consider that as a litigant acting in person the I should afford her some latitude in reading the language used in the ET1. In broad summary the claimant complaints as discernible from the ET1 concern:
- a. The response of the police to call outs. I have dealt with this above;
 - b. The confiscation of the claimant's laptop and failure properly to deal with the claimant about that;
 - c. Errors and omissions in the respondent's dealings with the claimant in connection with her complaints and failure to offer her appropriate support.
19. Timing of the application: I am satisfied that the remaining amendments are properly regarded as clarifications and the provision of more specific details of the existing claims. It is desirable in principle that there be clarification of the claims and details at an early stage. Although the claimant could have brought forward the application earlier, she acts as a litigant in person and at least some of the information did not come to her attention until January 2024. Thereafter she complied with the tribunal's timetable to submit her written amendment application.
20. Manner of the application: I accept Mr Isaac's criticisms that at least some of the proposed amendments lack clarity – for example some do not clearly identify which head of claim they relate to. Given the early stage of the proceedings I consider that these criticisms can be addressed by directing clarification questions and answers before settling an agreed List of Issues based on the clarified responses. I made clear to the claimant that she was not permitted to add new averments or facts in her responses.
21. Time Limits: I accept that some of the amendments relate to the period before 13 January 2023. However, the question of whether prior conduct amounts to a continuing act and if not whether to extend time on the just and equitable ground are complex matters best left to the tribunal at the full hearing. It was not clear to me at this stage that such arguments would inevitably or fail or even have little prospect of success.

22. The forensic prejudice to the respondent is, I find, modest. It was not suggested that the respondent is now or has been unable to obtain witness evidence from any of the individuals named in the List of Incidents document. Much of the information relevant to the issues will also have been the subject of documentary records which, if not determinative, will assist witnesses with their memory of events.
23. The practical prejudice to the respondent is, I accept, that the costs of preparation for, and of conducting the hearing will be increased if the amendments are granted.
24. As against this, if the amendments are not permitted, the claimant will be unable to rely on the specific incidents and conduct set out in her List of Incidents. This will or may limit the way she puts her case. This is a significant prejudice to her. They are, in the main, clarifications and particulars of matters already pleaded in broad terms. I reject, though, the claimant's submission that the amendments should be allowed because they should be exposed to publicity. The function of the tribunal is to consider and determine legal claims and provide appropriate remedies for wrongs. It is not a vehicle for publicity.
25. Having regard to the balance of prejudice, subject to the merits of the discrimination and harassment claims which I address below in connection with my consideration of deposit orders, I consider that that balance falls in favour of permitting the remaining amendments (subject to those post-dating 22 February 2023 relating to the claim of unfair constructive dismissal). The minor clarification issues affecting some of them are the subject of separate case management directions.

Deposit Order

26. Rule 39(1) of the Employment Tribunal Rules empowers the tribunal to make a deposit order where it considers that any specific allegation or argument in a claim has little reasonable prospect of success.
27. The deposit order regime is not as rigorous as the strike out regime. The tribunal has a broad discretion, not limited to purely legal questions. It may also have regard to the likelihood of the party being able to establish the facts essential to their case but must have a proper basis for doubting the likelihood of a party being able to establish essential facts: Rensburg v Kingston Upon Thames RBC UKEAT/0096/07. The regime requires the tribunal to conduct a provisional and non-binding review of a case, but not a mini-trial: Hemden v Ishmail UKEAT/0021/16.
28. Mr Isaacs argued that I should impose a deposit order in particular in relation to the EqA claims. He pointed out that there was no evidence of any continuing act, the claims are out of time and there are clear non-discriminatory reasons for why the claimant was treated in the way she was. He referred me to the Respondent's amended Grounds of Resistance for the non-discriminatory reasons.

29. In particular, in summary, Mr Isaacs referred to the fact that her relationship with her abusive partner was a 'High Risk Declarable Association' which had not been declared (which I understood was not denied by the claimant, although she claims that the respondent had known of the relationship since July 2022). This provides, he argued, the reason why:
- a. the claimant was provided with temporary accommodation for her own safety
 - b. her laptop, which contained sensitive information related to her work in the vetting section, was removed and she was subjected to inquiries about it and a requirement to attend an interview before it could be returned to her;
 - c. Comments were made to her as to why she had let her abusive partner know where she was living;
 - d. The respondent was considering a misconduct investigation into the claimant herself.
30. The refusal to consider certain matters in the claimant's grievance were explicable by GDPR restrictions on sharing of personal information and by the fact that a Professional standards investigation was under consideration.
31. The wrongful referral of the grievance to a Mr Slater who was named in it was a simple error.
32. I consider that the conduct complained of should be viewed against the background of the non-disclosure by the claimant of a High Risk Association. This provides on the face of it strong support for the respondent's case that there were non-discriminatory explanations for much of the conduct complained of. As against that, there are no facts specifically identified in the claimant's pleaded case from which a tribunal could infer that the conduct impugned could have been because of sex. The claimant's inclusion of the single word 'misogyny' in her ET1 is not sufficient for that purpose.
33. On the basis of the material before me, and taking account of the parties' submissions, I consider that the claimant has little prospect of successfully establishing that the conduct she complains of was because of sex. I consider that it is appropriate and in the interests of the overriding objective to exercise my discretion to make a deposit order in respect of those claims.
34. ET Rule 39(2) requires me to make inquiry of the claimant's means. Although she had been directed at the case management hearing on 24 February 2024 to provide supporting evidence if she wished to rely on her means in connection with the deposit order application, she had not done so. I nevertheless asked her questions during the hearing about her monthly income and expenditure and net disposable assets. I accepted what she told me about her means.

35. Although Mr Isaacs pressed for a higher sum, I took the view that the potential costs risk provided the main deterrent against pursuing claims which appeared to have little prospect of success. I explained those consequences to the claimant who appeared to understand the risks.
36. Ultimately it was discussed and agreed that a sum of £12.50 per allegation would be an appropriate sum.
37. Accordingly I make a Deposit Order in relation to the following in so far as they rely on sex discrimination/harassment :
38. In the claimant's List of Incidents document, the following paragraphs :
- a. 23 November 2022;
 - b. 28 November 2022;
 - c. 30 November 2022;
 - d. 13 January 2023;
 - e. 16 January 2023;
 - f. 10 March 2023 (all three paragraphs of that date)
 - g. 11 October 2023;
 - h. 16 November 2023.
39. These appear to relate to the following paragraphs in the Tribunal's draft List of Issues: 2(a) (v); (viii), although the List of Issues is no longer comprehensive and requires further consideration as provided for in my related Case Management Order.
40. In addition, for the reasons set out above, in connection with the claim of constructive unfair dismissal I make permission to amend subject to the condition of payment of a deposit. This conditional deposit order is made in respect of the following paragraphs in the claimant's List of Incidents:
- a. The paragraph dated 7 September 2022 relating to the attendance of police officers;
 - b. The paragraphs dated 5 and 6 October 2022 relating to the Texas App;
 - c. The paragraphs dated Sunday 27 November 2022;
 - d. In the paragraph dated 13 January 2023 the words "A police officer was in attendance" and the words from: "The officer asked my friend" to the end of the paragraph;
41. Paragraphs 1a) i) ii) iv) and vii) of the List of Issues relate to some of these allegations.

42. Having regard to the claimant's means the amount of the deposit payable is £12.50 per allegation.

Employment Judge Cox
18 June 2024

Judgment sent to the parties and entered in the Register on: **03 July 2024**

for the Tribunal Office

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