EMPLOYMENT TRIBUNALS

Claimant: Dr C Gabi
Respondent: Trafford College Group

Heard at: Manchester (by cloud video platform) **On: 14 & 22 May 2024 (in chambers 31st May 2024)**
Before: Employment Judge Sharkett

REPRESENTATION:

Claimant: **In person**
Respondent: **Mr A Sugarman of Counsel**

JUDGMENT ON PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. The allegations of direct discrimination listed below as 3, 4, 5 and 6 are stuck out. The claimant is no longer allowed to rely on these allegations.

2. The allegations of victimisation listed below as 7, 8, 9, 11, 12 and 14 are struck out. The claimant is no longer allowed to rely on these allegations.

3. The allegations of whistleblowing listed below as 15, 16, 17, 18 and 19 are struck out. The claimant is no longer allowed to rely on these allegations.

4. Allegations: 1, 10 and 13 are allowed to proceed. The claimant is allowed to rely on these allegations which will be determined at the final hearing.

5. A further Preliminary Hearing will be held to make such further case management orders as are necessary. Notice of this Hearing will be sent to the parties.

REASONS

1. This is the Respondent's application to strike out a number of the claimant's claims of direct race discrimination, victimisation and whistleblowing detriment. The respondent also pursues an application in the alternative that the claimant be required to pay a deposit, in respect of each of the allegations

that form part of this application, as a condition of him being able to pursue each one of the aforementioned allegations.

2. The claimant's ET1 submitted on 27th December 2022 pursues claims of unlawful discrimination on the protected characteristic of race. The claimant remains in the employment of the respondent and by email of 27 February 2023 he sought permission to amend his claim to include one of whistleblowing detriment and further allegations of ongoing discrimination. At a preliminary hearing the claimant's application to amend his claim was allowed.

3. This application was initially submitted by the respondent's previous representatives. Mr Sugarman of counsel now appears on behalf of the respondent and is instructed by new representatives. On the afternoon of 13th May, Mr Sugarman filed a skeleton argument setting out the basis on which the application is now pursued. The claimant has objected to the filing of this written submission; he also objects to the cast list and chronology that was also filed later that day. On the morning of the hearing the claimant made a written application for a strike out of the respondent's defence and a postponement of this preliminary hearing. The claimant told me that the skeleton argument amounted to a fresh application because if differed from the original application and that he had not been given an opportunity to consider the new application. He also complained that it was unfair that this and the other documents had been served in breach of the requirement set out in the Notice of Hearing of 28th July 2023. That requirements was that that written representations should be served not less than seven days before the hearing. Mr Sugarman explained that the application remained broadly the same save for the fact that some of the allegations listed for consideration as part of the first application were no longer part of this application. He explained that this was because the respondent accepted that evidence would need to be heard at the final hearing and they were not suitable for consideration of either being struck out or a deposit order being made. I refused the application for a postponement as I determined that the skeleton argument would assist both the Tribunal and the claimant, as would the cast list and chronology. I determined that the claimant was not disadvantaged by the change in the application made by the respondent as it did not contain anything that he had not already been aware of since September 2023. I also gave the claimant time to read the skeleton argument and after hearing the respondent's application stood the case down to give the claimant an opportunity to fully consider the basis on which the application/s had been made and decide how he wished to respond.

4. In respect of the application to have the response of the respondent struck out, I determined that whilst written submissions and any other documents should have been served no less than seven days before the hearing, according to the notice of hearing, it was clear that a fair hearing was still possible in this case and that it would be wholly disproportionate to strike out the respondent's defence.

5. When the hearing resumed on the afternoon of the 13th May, the claimant withdrew a number of the allegations which formed part of the application. In order to assist the claimant I took some considerable time taking the claimant

through each of the relevant allegations in turn, explaining the law in respect of each allegation and the applicable legal test. This exercise took some considerable time which resulted in the hearing being part-heard; however the claimant did express that he had found it helpful. I had thought through discussions with the parties that it had also been possible to resolve some of the claimant's concerns about documents on which the respondent intended to rely which he considered had been fraudulently altered.

6. Fortunately it was possible for the hearing to resume on 24th May 2024. Although the claimant had made submissions in response to the application at the last hearing, on 22nd May he filed a 16 page written submission to the application which he asked to be accepted in lieu of, or alongside his previous oral arguments. The basis for his application was that he continued to argue that the filing of the skeleton argument was a new application and that he had not been given a fair opportunity to present his argument against the application. He further objected to the manner in which his response was heard by my assisting him in respect of each allegation, and submitted that he considered that this had breached his common law right to present his case in respect of his argument against the application. He asked to restore all the allegations which had previously been withdrawn and submitted that the application should be allowed in order to save costs, time and effort in possible appeals. In oral submissions the claimant said that he did not understand whether the allegations and his ET1 were different things and that he did not understand the legal basis of withdrawing his claims. He thought that because the hearing had not concluded he would have the opportunity to change his mind about what he considered to be a hasty decision.

7. Whilst Mr Sugarman did not object to the claimant filing the written submissions he objected in the strongest terms to the claimant's application to resurrect the previously withdrawn claims. Mr Sugarman submitted that at the previous hearing the claimant had carefully been taken through each individual allegation and that I had explained to him what it was that the respondent said about why each of the individual allegations has no prospects of success. It was only when it was clear that the claimant understood the basis of the respondent's argument in respect of each allegation that he was asked about whether he wished to continue with the allegation or withdraw the same. In respect of those that he said he no longer wished to pursue, Mr Sugarman submits it is not open to him to resile from the same as the withdrawal took effect from the time of withdrawal even if there was no formal dismissal of the same. In support of his argument Mr Sugarman relies on Campbell v OCS Group UK Ltd and anor 2017 ICR D19 EAT and Segor v Goodrich Actuation Systems Ltd [20120 2 WLUK 345

The Law in relation to withdrawal

8. Under Rule 51 of the Employment Tribunal Rules of Procedure (2013), where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim or part of it is withdrawn, the claim or part of it comes to an end subject to any application that the respondent may make for costs.

9. Rule 52 provides that once a claim or part of it has been withdrawn under rule 51 the Tribunal shall issue a judgment dismissing it…… unless

a. The claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so, or

b. The Tribunal believes that to issue such a judgment would not be in the interests of justice.

10. The Presidential Guidance on General Case Management at paragraph 22 is clear that when a claimant withdraws the claim, it comes to an end and the tribunal must issue a judgment under rule 52 unless for some reason this is inappropriate. It is clear therefore that although dismissal must automatically follow the claimant's notification of withdrawal, the Tribunal does have a discretion under Rule 52(a) or rule 52(b). If neither of the exceptions apply the effect is an absolute bar to the resurrection of the withdrawn claim (or part of it) The Rules do not specify any timeframe within which the tribunal must issue its judgment dismissing the claims or part thereof. In this case no judgment had yet been issue because the hearing had not concluded and, given that all the allegations had not been addressed by the claimant, there may well have been others withdrawn by him to add to any judgment.

11. In reaching my decision on this matter I have had regard to the rules and presidential guidance as set out above. I have also had regard to Arvenescu v Quick Release (Automotive) Ltd EAT 0135/16 and the need to record the dismissal of a withdrawn claim formally in a judgment, and the authorities relied on by Mr Sugarman (Campbell v OCS Group UK Ltd and anor 2017 ICR D19 EAT and Segor v Goodrich Actuation Systems Ltd [20120 2 WLUK 345 (Segor)

12. In Segor Langstaff P, said at para 11

> *" What we should say however, is this. A Tribunal will always want to take care where a litigant, particularly one who is self-represented or who has a lay representative, seeks to concede a point or to abandon it. It may be a matter of great significance. Though it is always for the parties to shape their cases and for a Tribunal to rule upon the cases as put before it , and not as the Tribunal might think it would have been better expressed by either party, it must take the greatest of care to ensure that if a party during the course of a hearing seeks to abandon a central and important point that that is precisely what the individual wishes to do, they understand the significance of what is being said, that there is clarity about it, and if they unrepresented, that they understand some of the consequences that may flow. As a matter of principle we consider that a concession or withdrawal cannot be properly be accepted as such unless it is clear unequivocal and unambiguous"*

13. Whilst the claimant, a highly educated person, did clearly indicate that he did not wish to continue with certain of the allegations that formed part of the application, he now states that he did not fully understand the consequences of what he was saying. He submitted that he wanted to be seen to be co-operating with the process and had thought that as the hearing had not concluded it would be open him to revisit his concessions later in the hearing.

I am mindful that had his retraction of his concession occurred during the course of the hearing on 14th May, it is likely that in the interests of justice, I would have allowed him to do so. I am also mindful of the fact that a dismissal on withdrawal judgment has not yet been issued, as the hearing remained part heard and not all the allegations forming part of the application had yet been addressed by the claimant. Whilst I am surprised that the claimant submits that he was unaware of the consequences of his actions on 14th May and that he was confused about what formed part of his claim in respect of a list of allegations and his claim form, I am not satisfied that the full consequences of his actions was made known to him at that time and that on the balance of probabilities he did believe that he would have an opportunity to revisit the same because the hearing had not yet concluded.

14. I therefore consider whether in accordance with rule 52 b it would be in the interests of justice to exercise the discretion given under the rule to not issue a judgment on dismissal. In doing so I consider the interests of both parties and the balance of hardship in allowing or refusing the application. In the circumstances, notwithstanding the clear indication by the claimant that he no longer wished to continue with those allegations referred to, I consider it would be in the interests of justice to allow him to retract the concessions made, which will now be re-entered into the list of allegations for consideration of strike out or deposit order.

15. Having heard full submissions on each part of the strike out application on 14th May, I invited Mr Sugarman to make any further submissions he wished to make. The claimant wished to rely on his written submission and added little further to the same.

16. I indicated that given the time spent already it would be necessary to reserve my decision on the matter and invited the claimant to produce evidence of his means that I should consider in the event that I decided that it would be appropriate to make a deposit order in respect of any or all of the allegations that formed part of the respondent's application. It took some time for the claimant to produce this information notwithstanding that he had been informed of the need to do so both at the hearing of 14th May and at an early stage of this reconvened hearing. When the claimant did produce the documents he refused to allow a copy to be seen by Mr Sugarman on the basis that he did not trust the respondent. The claimant had asked for a private audience with me which I refused. As I means of progressing a hearing that had already taken a disproportionate amount of time, Mr Sugarman reluctantly agreed to proceed with my suggestion that I read out to him the evidence of the means available so that he could make such enquiry or submissions as appropriate.

17. In approaching my decision as to whether the claimant's claims have little or no prospect of success and whether any should be struck out or the claimant be required to pay a deposit as a condition of continuing with any particular allegation, I have addressed each one in turn in the order set out in the skeleton argument of Mr Sugarman. It is the order in which these allegations are set out which must be followed in any further matters relating to this application and not any previous iteration of the same.

18. The relevant allegations are as follows:

Direct Race Discrimination

1. **Amanda Vardy took over the claimant's core Course Leader responsibilities by devising the course calendar from 05.09.2022**

2. **The respondent removed the claimant's book from the reading list for the Level 6 and Semester 2 Level 5 research module handbook**

3. **The claimant's request to attend a CPD course was refused by Paula Hastie- Roberts, John Simpson and Vicky Roth**

4. **The respondent unlawfully shared the claimant's personal data with Karen Coombes without his explicit consent**

5. **On 14th October 2022, Jane Nickisson singled out the claimant in respect of unfounded student complaints**

6. **Karen Coombes unlawfully handled and obtained the claimant's personal data, including email correspondence, his appraisal form and publications**

Victimisation. The respondent accepts that the submission of the ET1 amounts to a protected act under the Equality Act 2010

7. **Naomi Harrop wrote an unfair/insufficient reference for the claimant without his nomination and failed to answer specific questions about whether she had followed it up by phone and whether she/HR had written a reference for the claimant in the last 3 years**

8. **Helen Wood did not uphold the claimant's grievance**

9. **Kal Kay did not uphold the claimant grievance appeal on 23.04.2024, against the finding of Helen Wood**

10. **Anthony Gribben-Lisle did not respond to the claimant's DSAR made on 10.11.2022**

11. **Jackie Braithwaite conducted surveillance on the claimant as she sent an email to the claimant on 01.03.2023 informing him that student work was visible on Teams.**

12. **John Simpson micro-managed and conducted surveillance on the claimant as he sent a message to the claimant on Teams querying whether he was on campus**

13. **John Simpson told the claimant during a 1:1 meeting with him on 19.05.2023, that he had said things to the internal investigator that the claimant would not be happy with**

14. John Simpson micro-managed the claimant on 19.05.2022 and 26.05.2022

15. Jamie Briggs "down played" C's concerns set out in PD1 in emails dated 14.10 22 and 2.11.22 stating "limited information has been shared"

16. Anthony Gribben Lisle did not respond to C's complaint in PD3 (on 2.11.22) about the infringement of his right to give explicit consent

17. John Simpson did not respond to C's email dated 12.4.23 (PD6

18. Jamie Briggs downplayed C's concerns on 13.1.23 (PD4) and 25.1.23 (PD5) by making "assessment and moderation processes subject to undue disciplinary proceedings

19. R's solicitors shared the bundle for the Preliminary Hearing on 13.4.23 the day before the PH

19. In respect of the whistleblowing detriment allegations Mr Sugarman submits that the manner in which the claimant has adopted a scattergun approach and treated every perceived wrong that has happened to him as occurring because he made a qualifying disclosure, shows the hallmarks of a speculative and weak case. He submits that it is highly implausible that as appears to be suggested by the claimant, that twelve individuals acting either collectively or independently of each other were aware of the disclosure relied upon and individually or collectively subjected the claimant to detriments because of this.

The Law

20. Rule 37 Employment Tribunal Rules of Procedure provides that

> *(1)* (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, vexatious or has no reasonable prospects of success …….*

21. The case of Anyanwu -v- Southbank Student Union [2001] ICR 391 provides general authority for the principle that Tribunals should be slow to strike out claims of discrimination unless it can be satisfied that the claim has no reasonable prospects of success. In particular I note the well known observation in that case that:

> *"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 the bias in favour of the claim being examined on the merits or de-merits of its particular facts is a matter of high public interest"*

22. In Morgan v Royal Mencap Society [2016] IRLR 428 Mrs Justice Similar reminded Tribunals at paras 13 & 14 that although the threshold for strike out is high, there are cases where if one takes the claimant's case at its highest, and it cannot succeed on the legal basis on which it is advanced then it will be appropriate to strike out. In Ahir v British Airways PLC [2017] EWCA Civ 1392, Underhill LJ said,

"[16] … *Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary case is met in a particular case depends on an exercise of judgment, and I am not sure that exercise is assisted by attempting to gloss the well understood language of the rule by reference to other phrases or adjectives or by debating the difference in the abstract between 'exceptional' and 'most exceptional' circumstances or other such phrases as may be found in the authorities. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be 'little' reasonable prospect of success*

[19] *However in a case of this kind, where there is an ostensibly innocent sequence of events leading to the act complained of, there must be some burden on a claimant to say what reason he or she has to suppose that things are not what they seem and to identify what he or she believes was, or at least may have been, the real story, albeit (as I emphasise) that they are not yet in a position to prove it"*

23. The key principles that emerge from the authorities on striking out claims are as follows:

a. Only in the clearest case should a discrimination case be stuck out

b. Where there are core issues of fact that turn to any extent on oral evidence they should not be decided without hearing oral evidence;

c. The claimant's case must ordinarily be taken at its highest

d. If the claimant's case is "conclusively disproved by" or is 'totally and inexplicably inconsistent" with the undisputed contemporaneous documents it may be struck out; and

e. A Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputes.

24. Rule 39 Employment Tribunal Rules of Procedure provides that

(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the

paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response has been presented as set out in rule 21.

(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the same reasons given in the deposit order: -

a. *The paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown, and,*

b. *The deposit shall be paid to the other party (or if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded.*

(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.

25. Mr Sugarman submitted that the claimant is asking the Tribunal to find that at least 12 different individuals across the respondent's organisation, between October 2022 – May 2023, individually made decisions to discriminate or victimise him for having done a protected disclosure or act, or alternatively acted in some way in concert to collectively discriminate or victimise the claimant. such a contention is inherently implausible and would require cogent facts/supportive evidence to make it good. Mr Sugarman submits that the claimants claims He submits that the claimant's claim has all the hallmarks of a weak and speculative claim; the allegations are far-fetched and amount to no more than bare assertions of unfavourable or unfair treatment. In addition, he submits that claimant does not provide any sensible basis for his claims nor detail explaining the alleged link to race, a protected act or disclosure.

26. In his written submissions the claimant makes clear his dissatisfaction with the manner in which his claim has been portrayed before the Tribunal. He submits that his claims do not exist as singular acts or within a vacuum and that to look at them in that way deprives them of their collective strength. The claimant submits that the respondent seeks to rely on documents that create a false context and are 'a pure work of fiction'. The claimant submits that the

manner in which the respondent dealt with matters relating to him were not in accordance with policies and procedures in place at the respondent and that other staff were not treated in the same way.

27. I set out below each of the allegations which form part of this application, with further details of the parties' submissions where relevant. All references to page numbers are references to pages in the bundle of documents provided for the purposes of this hearing unless otherwise indicated.

Direct Race Discrimination

1 Amanda Vardy took over the claimant's core Course Leader responsibilities by devising the course calendar from 05.09.2022

29 The respondent argues that this allegation is destined to fail because it is a fact that Amanda Vardy as Programme Leader was responsible for sending out the calendars (p275 & 277) as set out in the job description for the role (p296). In his written submissions the claimant argues that the respondent has not shown evidence that other white colleagues were also sent course calendars and that he does not agree that the job description provided shows that this was the role of Amanda Vardy. The claimant submits that there is a difference between timetabling and writing a course calendar. In the document provided by the claimant setting out further details of his claim the claimant relies on three comparators; Jackie Braithwaite, Nicola Kirkham, and Jane Stirling. I note that the email from Amada Vardy, relied on by the respondent, is addressed only to the claimant and not other course leaders. I am not satisfied that taken at its highest this allegation can be said to have no prospects of success. Further evidence will need to be heard to establish the facts in respect of any change that the claimant was subjected to and whether this amounted to less favourable treatment which was because of his race. **This allegation is allowed to proceed.**

2 The respondent removed the claimant's book from the reading list for the Level 6 and Semester 2 Level 5 research module handbook

30 The book referred to above is one which is co-authored by the claimant. The respondent submits that there had been a suggestion that the book should be moved to additional reading as opposed to essential reading in the module handbook. When the claimant found out that his book had been relegated to the additional reading list he raised it with Amanda Vardy who instructed that it be put back on the essential list. The final module that went out to the students had the claimant's book re-instated in the essential reading list. It is the claimant's case that this was only done after he had complained. The claimant explained that he was the Level 6 course leader yet he had not been involved in any discussion about the change to the reading materials on the course nor invited to any meeting where such discussions took place. He submitted that the email he received, which was copied into all staff, clearly identified the document as a final version and not, as is now submitted by the respondent, a draft version. Whilst it is not disputed that the final version of the module handbook did have the claimant's book listed as essential reading, it does not explain the claimant's complaint that led up to the change. **Evidence would**

need to heard before this allegation could be said to have no prospect or little prospect of success and this allegation is allowed to proceed.

3 The claimant's request to attend a CPD course was refused by Paula Hastie- Roberts, John Simpson and Vicky Roth

31 It is the claimant's case that he was denied permission to attend this course because he had teaching responsibilities that day and was required to be present to carry out an assessment on his students that day. The claimant initially relied on Nicola Kirkham as a comparator as she had been allowed to take 2 days off to move house. It is clear that Ms Kirkham is not a suitable comparator and it is not suggested that her students were not undergoing assessments when she was given leave. The claimant submits that the assessment would not have taken the whole day and that he could have taken some of the students to the course with him. I have had regard to the pleadings and the documentary evidence in respect of this allegation. It is clear that the respondent would be able to show a non-discriminatory reason for the refusal of the claimant's request, which was a reason that was open to it to make despite the claimant's objections. **Taken at its highest, this claim had no reasonable prospects of success and is struck out**.

4 The respondent unlawfully shared the claimant's personal data with Karen Coombes without his explicit consent

32 The claimant has taken issue with the fact that Ms Coombes was employed within a company affiliated with the respondent's original representatives. I have assured him that many organisations have separate HR companies who deal with investigations into disciplinary and grievance matters and that this is not unusual. The respondent believed an external HR consultant would be better placed to carry out the investigation into matters relating to the claimant because of concerns about bias that had been expressed by the claimant. Ms Coombes was appointed to do this. To assist her in carrying out that investigation she was provided with details and documents which the respondent considered necessary to the investigation she would carry out. The respondent data protection policy provides for disclosure of documents without the need for explicit consent. The pleadings and documentary evidence provided indicate that the respondent can show that it had a legitimate and non- discriminatory reason for its actions and that those actions were permitted under the relevant policy. **Taken at its highest this allegation had no prospects of success and is struck out**

5 On 14th October 2022, Jane Nickisson singled out the claimant in respect of unfounded student complaints

33 The respondent does not dispute that this matter did not result in any disciplinary action being taken by the respondent. It will say that this was simply a matter of a student complaint/s being investigated. The claimant objected to the fact that the matter was dealt with by Ms Nickisson who is the Assistant Principal when it is his case that it should have been dealt with under the HE Student Complaints and Policy Programme Handbook. The claimant also complains that prior to any investigation being carried out he was subjected to a lesson observation by Ms Nickisson and required to

provide her with his module handbook and teaching resources. Although the claimant submits that he has never seen this complaint, there is a copy of the same contained within the bundle (p269). It is a complaint brought on behalf of a whole cohort of students and primarily relates to the claimant's method and style of teaching which the students complained would impede their learning (p269) The claimant does not provide any comparator on whom he seeks to rely. Taken at its highest the claimant has no prospect of showing that in circumstances such as these he was subjected to less favourable treated by reason or because of his race. The respondent was under a duty to investigate this complaint and can evidence a clear non-discriminatory reason for its actions. **The allegation has no prospect of success and is struck out.**

6 Karen Coombes unlawfully handled and obtained the claimant's personal data, including email correspondence, his appraisal form and publications

34 This allegation is entirely misconceived. Ms Coombes was an external HR consultant who was retained to investigate concerns raised by and against the claimant. She provided with background information including personal data, to enable her to do so. and act as a data controller on behalf of the respondent in handling those materials. **The allegation has no prospects of success and is struck out**.

Victimisation.

35 The respondent accepts that the submission of the ET1 amounts to a protected act under s27 Equality Act 2010. The claimant was asked to provide detail of any other protected act/s relied on for the purposes of s27(2) Equality Act 2010. The document he provided by email of 12 September 2023 sets out at paragraph 2.3 of that document. The acts relied on thereunder do not relate to any of the protected acts set out under s27 Equality Act but rather would appear to be potential protected disclosures. Mindful of the fact that the claimant is a litigant in person we discussed any other protected acts that could be evidenced from his pleadings/additional information that might pre-date the accepted protected act of 27 December 2023. Mr Sugarman referred me to the claimant's additional information at 5.2.1 (p102) in which he makes reference to complaints made of race discrimination to Naomi Harrop of 16 September 2022. For the purposes of this application I have taken this to be the first protected act and therefore any allegations of detriment that precede this date cannot succeed.

7 Naomi Harrop wrote an unfair/insufficient reference for the claimant without his nomination and failed to answer specific questions about whether she had followed it up by phone and whether she/HR had written a reference for the claimant in the last 3 years

36 The respondent's policy was to provide only short factual references for employees and managers were informed that all references had to be provided through HR and not by managers. The Tribunal was provided with examples provided for other employees in similar style to that provided for the claimant on 22 September 2022. The claimant has not identified another employee, in the same or equivalent position as he or any other who has received a more

comprehensive reference than he was given. Taken at its highest the claimant cannot show any difference in treatment to that of any other staff. **The allegation has no prospect of success and is struck out.**

8. Helen Wood did not uphold the claimant's grievance

37 The claimant raised a grievance about the reference provided above. He also complained about the lack of consistency and clear guidelines around the standardisation of references and that the disclaimer attached to his reference had caused him concern due to the length and wording. The claimant also complained that because of an ongoing complaint he had been treated unfairly by Naomi Harrop when she completed the reference. The grievance hearing would usually have been heard by the claimant's line manager but it was agreed Ms Wood, an Associate Principal, would hear the same at the claimant's request. The outcome letter (p255) set out set out the respondent's response to each of the claimant's complaints. In particular it was found that this was standard practice at the respondent and that it was in accordance with ACAS guidelines. The respondent found that the guidance for managers in respect of references could be clearer but was overall satisfied that managers were sufficiently aware and informed by HR in respect of the position of giving references. Ms Wood found that the disclaimer was needed to mitigate any liability arising from the reference and was standard practice in many organisations. In addition she was able to confirm that Naomi Harrop had not completed the reference herself, but rather it was a template used by others. It was accepted that the template should reflect that it was a document pp'd on behalf of Ms Harrop. The claimant was not satisfied with the outcome and appealed the decision. In submissions he highlighted the fact that there was a difference in the letter he had received following his appeal and the one produced to the Tribunal, in that in respect of the matter relating to clarity of guidance one of the documents said it was partially upheld. The claimant accepted that the facts contained in the documents remained the same. Before considering whether this allegation has any prospect of success I have considered the appeal raised by the claimant against this decision below.

9 Kal Kay did not uphold the claimant grievance appeal on 23.04.2024, against the finding of Helen Wood

38 Mr Kay the Chief Finance Officer of the respondent heard the claimant's appeal. The basis of the claimant's appeal remained the same as his original grievance in that he believed he had received an unfair reference and that he wanted an acknowledgement that centralising the reference process to the respondent HR was not appropriate. Mr Kay did not uphold the claimant's appeal for overall the same reasons as Ms Wood. I have had sight of the grievance outcome and appeal letter, and copies of other references provided by the respondent as mentioned above. This was a policy that was applied to all staff and not just the claimant. The claimant submits that Naomi Harrop signed the reference and that he got special attention from those in position of power in respect of this reference. He submits that taken with facts showing collusion to victimise him without additional explanation, shows or infers discrimination on the basis of race. In the circumstances **I find that this allegation and Allegation 8 above have no prospects of showing that the claimant was subjected to detriments on**

either occasion by reason of him carrying out the protected act of 1 September 2023

10 Anthony Gribben-Lisle did not respond to the claimant's DSAR made on 10.11.2022

39 On 10 November 2022, the claimant made a Subject Access Request. By response of 29th November Mr Gribben-Lisle, the data protection officer, identified the request made as set out below and informed the claimant that a search had been commenced. The claimant was also informed that the respondent would be exercising its right to extend the deadline for a response by two months in order to ensure it had sufficient time to respond. The claimant was informed that the deadline for a response would therefore be 10 February 2023.

(1) All correspondence (including notes) about you regarding your complaint since it was lodged on 13/09/2022

(2) All correspondence (including notes) made with Karen Coombs (external investigator) and;

(3) All correspondence, (including notes) and records of relevant investigation meetings relating to alleged student complaints that Jane Nickisson alerted to you

40 The claimant will also argue that Mr Gribben-Lisle was acting on the instruction of others who were aware of the claimant's complaint when he failed to adequately respond to the claimant's SAR request. Whilst the claimant may have some difficulty with the evidential burden of showing the link between the protected act and the detriment, It is clear that the claimant has not been provided with a response in the real sense of the word in respect of this request. In the absence of clear evidence showing the reason why that was so, the Tribunal will need to hear evidence. For these reasons I allow the claimant to rely on this allegation at the final hearing. **To Proceed**

11 Jackie Braithwaite conducted surveillance on the claimant as she sent an email to the claimant on 01.03.2023 informing him that student work was visible on Teams.

41 Jackie Braithwaite was the Course Leader for the Foundation Degree Early Years Practice and the claimant taught on that course. Ms Braithwaite emailed the claimant on 1st March 2023 (p261) to tell him that she had concerns about the reflective pieces of work of previous student being available to current students, especially due to the personal nature of many of the reflections and the risk that they may be accessed by people close to those students. The claimant refused her request to take the assignments down (p260) claiming that it was an infringement his academic freedom and practice, which he said was protected by law. He forwarded the email to the Head of HE and Higher Skills, John Simpson, explaining that he felt he was under surveillance and it was making his job difficult. In turn Ms Braithwaite complained to Ms Simpson about the way in which the claimant had

responded to her email (p263) I find that there is no prospect of the claimant being able to show that he was subjected to a detriment because of a protected act (although he does not state which protected act he relies. It is clear that as course leader Ms Braithwaite would have good reason to access materials on the course of which she was the appointed Course Leader. Given the documentary evidence relied on, the claimant has no prospects of showing that asking him to remove materials for a legitimate reason could amount to a detriment. The allegation has no prospects of success and is struck out.

12 John Simpson micro-managed and conducted surveillance on the claimant as he sent a message to the claimant on Teams querying whether he was on campus

42 John Simpson messaged the claimant to ask whether he was on campus as there were a number of students waiting for the HE study plus. The claimant responded indicating that he was and advising Mr Simpson that this session was timetabled for 13.15 and it was currently 12.20. Mr Simpson responded with a thumbs up emoji and nothing more followed (p270). The respondent has accepted that the claimant's ET claim in December 2022 amounts to a protected act for the purposes of s27 Equality Act 2010. Mr Simpson had been having regular meetings with the claimant at the time of this exchange and would have been aware of the claim. However, whilst there is no statutory definition of detriment the ECHR Employment Code provides a summary of what may amount to a 'detriment' This includes "anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage". It also provides that "an unjustified sense of grievance alone would not be enough to establish detriment" This email is a simple query about the claimant's whereabout from a senior member of staff. The claimant has no prospect of being able to show that he was under surveillance or that he was subjected to a detriment when asked this question. **The allegation has no prospect of success and is struck out.**

13 John Simpson told the claimant during a 1:1 meeting with him on 19.05.2023, that he had said things to the internal investigator that the claimant would not be happy with

43 The respondent accepts that the facts of this allegation are disputed and that evidence will need to be heard. This allegation is allowed to proceed.

14 John Simpson micro-managed the claimant on 19.05.2022 and 26.05.2022

44 It is the respondent's case that these meetings were put in place as a support for the claimant. Two documents have been provided to show that on 19 May 2023, Mr Simpson was provided with a list of what are referred to as 'welfare desires' that the claimant wanted to be put in place to assist him at work. Included in this list was a request for more clarity of what would be discussed in 1-1 meetings with Mr Simpson. The claimant has not provided any detail of what he regards as micro management in these meetings or any other detriment relied on. I agree with the submission of Mr Sugarman that 1-1 meetings are normal practice in the workplace especially where support for an

employee has been Identified. In the absence of more than an assertion of micro- management the claimant has no prospect of being able to show that he was subjected to a detriment at either meeting. **The allegation has no prospects of success and is struck out**

Whistleblowing

15 Jamie Briggs "down played" C's concerns set out in PD1 in emails dated 14.10 22 and 2.11.22 stating "limited information has been shared"

45 The disclosure relied on is that on 13 October 2022 the claimant contacted Jamie Briggs by email raising concerns about the sharing of his personal data with an external investigator (Karen Coombes) without his consent (PD1). It is the claimant's case that because he made this disclosure he was subjected to a detriment when in response to his email Mr Briggs downplayed his concerns by stating "limited information has been shared". The correspondence surrounding this incident (p237 &p342) are both documents that clearly demonstrates how the respondent seeks, to respond to, and reassure the claimant, in respect of the sharing of his data. The claimant has no prospect showing that he was subjected to a detriment by the words used by Mr Briggs in either of his emails. **The allegation amounts to nothing more than an unjustified sense of grievance, which has no prospect of success and is struck out**

16 Anthony Gribben Lisle did not respond to C's complaint in PD3 (on 2.11.22) about the infringement of his right to give explicit consent

46 The claimant relied on the disclosure of 22 November 2022, making a formal complaint to Andrew-Gribben-Lisle regarding the sharing of his personal data with an external investigator without his consent (PD3). The Tribunal has had sight of a full response to this complaint from Mr Gribben-Lisle explaining why it was not necessary to obtain the claimant's consent to disclose the information to Ms Coombes. The documentary evidence is clear that the claimant did receive a response. The **Allegation has no prospect of success and is struck out,**

17 John Simpson did not respond to C's email dated 12.4.23 (PD6)

47 The claimant wrote to Mr Simpson alleging that:

a. Framing assessment opinions of management had suppressed divergent academic and professional thought, assessment and moderation vigour;

b. That assessment decisions were not valid or reliable;

c. That moderation should be conducted at the Awarding Institution until the ongoing investigations are concluded.

47 In submissions Mr Sugarman refers me to the respondent's response to the claimant of 26th April 2023. Whilst this letter is in response to the claimant's letter of 17th April 2023 and not the email of the 12th April it clearly makes reference to matters raised at that time set out above. In particular the penultimate paragraph of the letter addresses assessment and moderation, and third party rules and guidance governing that process. It is questionable whether the claimant would be able to meet the test to show that he had made a qualifying disclosure in his email of 12th April or whether he had merely expressed opinions. However, I am satisfied that the letter of 26th April 2023 does provide a response to the issues raised in the claimant's emails. The response may not have been to his liking but a response was provided. In the circumstances the claimant has no prospects of showing that he was subjected to a detriment by reasons of making this disclosure. **The allegation has no prospects of success and is struck out.**

18 Jamie Briggs downplayed C's concerns on 13.1.23 (PD4) and 25.1.23 (PD5) by making "assessment and moderation processes subject to undue disciplinary proceedings

47 The disclosure relied on is that on 13 January 2023, the claimant contacted Jamie Briggs by email regarding alleged breach(es) of academic assessment processes and improper decisions (PD4) namely that:

a. The alleged breaches needed to be reported to the Awarding Institution (Sheffield Hallam University), The Quality Assurance Agency for Higher Education and the Office for Students;

b. The affected grades required revocation pending investigation of the Awarding institute; and

c. The claimant was unable to freely and independently exercise his academic judgment until ongoing investigations are concluded.

48 Mr Briggs' response to the claimant is dated 27th February 2023 (p259) and clearly inform the claimant that there have been no allegations made against him in relation to the integrity of the assessment, grading or moderation process and that there was no investigation in this regard. He was told that what had been alleged was the manner in which he communicated and engaged with a colleague in the course of a standardisation/ moderation process. In submissions the claimant expressed his dissatisfaction in Mr Briggs or anyone from HR being involved in the matter of assessment decisions at all as he believes it is dangerous to academic freedom and the integrity of qualifications. This is an entirely misconceived claim. Mr Briggs was involved in a matter of alleged misconduct which is within the remit of HR. The claimant has has no prospect of showing that Mr Briggs 'downplayed' the claimant's concerns as alleged or at all. It is clear that the respondent will be able to show that the reason the claimant was subjected to disciplinary investigation was because of his conduct towards another colleague and not his concerns about the assessment/moderation process. **This allegation has no prospects of success and is struck out.**

19 R's solicitors shared the bundle for the Preliminary Hearing on 13.4.23 the day before the PH

49 In written submissions the claimant has sought to change the basis of this allegation and says that it is in fact is a claim about how the respondent has interfered with letters addressed to him from the Tribunal. This is not a detriment previously relied on by the claimant and an application to amend his claim will be required if he wishes to rely on it. Any such application must include the protected disclosure he says led to this alleged detriment. In respect of the detriment set out above the respondent's representatives, as were at the time, placed in the bundle such documents as were relevant and had been disclosed by the respondent. I agree with Mr Sugarman's submissions that this is related to the manner in which the litigation is conducted and cannot give rise to a separate claim. The allegation has no prospects of success and is struck out. Whilst the claimant may have been placed at a disadvantage by not having access to post addressed to him at the university (if that is indeed what is alleged) it cannot be said that the bundle of documents voluntarily produced by the respondent's previous representatives brought about such disadvantage or that it arose because of an unidentified protected disclosure. **The allegation has no prospects of success and is struck out.**

50 The parties have been notified of the change to the case management orders already made. A preliminary hearing will now take place to ensure a final list of issues has been agreed and to make such further case management orders as are necessary.

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Employment Judge Sharkett

Date 3rd July 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

Date: 4 July 2024

FOR THE TRIBUNAL OFFICE