# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant:** Ms Adedeji

**Respondent:** Macintyre Academies

**Heard:** In person, public preliminary hearing

**On:** 9 December 2024

**Before:** Employment Judge Adkin

**Appearances**

For the Claimant: In person
For the Respondent: Mr S Whysall, Solicitor

# JUDGMENT

(1) The Respondent's applications for a strike out or a deposit order in relation to the complaint of automatic unfair dismissal because of a protected disclosure pursuant to **section 103A** of the Employment Rights Act 1996 are **refused**.

(2) All other complaints brought under claim numbers 3302498/2023, 3305599/2023 and 3306029/2023 are struck out.

# REASONS

## Matters to decide

1. There are three matters that I have had to decide in today's hearing:

   1.1. First is the Respondent's application to strike out the claim. The basis for the strike out was originally set out in the letter of application dated 29 July 2024. The Respondent says that it is not possible to have a fair hearing for the proceedings given that the Claimant has on more than one occasion failed to provide details of the claim in compliance with Employment Judge Glennie's orders.

   1.2. Second, alternatively the Respondent asks that there should be a deposit order made in order for the claims to proceed on the basis that there are little reasonable prospect of these claims suceeding.

   1.3. Finally, the Claimant has applied to bar the Respondent relying on certain documents and that is set out in her email dated 2 October 2024. She has characterised that as a strike out but it is probably better characterised as a case management order which prevents the Respondent relying on certain documents.

## Hearing

Recording

2. As a preliminary matter Ms Adedeji has asked me if she can record this hearing.

3. She has explained her concern that historically documents were not copied to her prior to previous hearings as they should have been under Rule 92 of the Employment Tribunal Rules. She feels that that matter was raised at previous hearings but has somehow not been dealt with and for that reason has asked for this hearing to be recorded.

4. That application is opposed by the Respondent. I have explained to Ms Adedeji that if she wants to ask for written reasons for my decision at this hearing she can do so (in fact she did). I recorded my oral judgment and reasons in this hearing although not the hearing generally on my dictaphone, in order to enable for those written reasons to be provided.

5. I am hearing this hearing in a room which does not have any recording facility. It seems to me that the general rule which is that recordings should not be made and that that is a contempt of court for parties to record applies. It does not seem to me that recording this hearing is going to address the concern that has been raised by Ms Adedeji. Having said that if she wants to make it clear that there are documents which she has not received as part of her response to the Respondent's application she can certainly do that in this hearing. I am very happy to hear if she explains that she has not received certain documents

and obviously if Mr Whysall says that she has received them then he may want to reply briefly to state if those documents have been received.

6. In summary I am not going to allow a recording but I am very happy to have Ms Adedeji explain if there are documents she has not received which have a relevance to this application.

Accessing documents

7. The Claimant is visually impaired and has to use a tablet to magnify documents electronically. During the course of this hearing I have made sure that we have had regular breaks, offering the Claimant a break after 20 minutes of reading and allowing her to stay in the Tribunal room while there was a reading break to avoid her needing to clear all of her substantial belongings and personal effects out of the room to find the waiting room.

## Background

Employment

8. The Claimant commenced employment on 16 April 2018 as a Residential Support Worker, working full time.

9. The Claimant submitted a grievance on 16 November 2021 and an email described as the whistleblowing email on 29 January 2022.

10. The Claimant commenced sick leave on 28 March 2022. She did not return to work from this date onward.

11. The Respondent no longer paid sick leave from a date in November 2022.

12. The Claimant resigned on 7 March 2023. That resignation is the basis for her claim of constructive unfair dismissal which she says is an automatically unfair dismissal.

First claim

13. On 13 March 2023 the Claimant presented the first of three claims that one was 3302498/2023 presented in the Watford Employment Tribunal. That claim included complaints of unfair dismissal, disability and an application for interim relief.

Second claim

14. The Claimant presented the second claim which is 3305599/2023 on 22 May 2023. This claim also brought a complaint of unfair dismissal but also discrimination claims because of age, race, disability, sex and a claim for other payments unspecified.

15. In the narrative in that second claim on box 8.2 the Claimant set out automatic unfair constructive dismissal relating to a protected interest disclosure and also the following headings: discrimination arising from disability under s.15 of the

Equality Act, a failure to comply with duty under s.20, discrimination under s.26, breach of s.112, s.19, then a reference to repudiatory breach of contract, monies owed to the Claimant from suspension pay; there are various other matters set out there: employers duty of care, misrepresentation, race discrimination, racism and racial profiling, age and sex discrimination.

16. She states that on 29 January 2022 she notified the Respondent of a "whistle blow" leading to an investigation being commissioned by Kevin Roger in February 2022 with an outcome on 1 April 2022. She states that in April 2022 she escalated the protected disclosure to prescribed person/authorities and regulators and states that on 9 May 2022 in retaliation Gemma Deehan of the Respondent immediately started formal investigation proceedings against her stating that 22 emails found in her personal mail account from her personal device.

17. She claims the maximum compensatory award for an unfair dismissal and an award in the Vento band of £45,600 i.e. an award in the highest band for injury to feeling.

Third claim

18. The third claim 3306029/2023 was received by the Employment Tribunal on 24 May 2023.

19. In that claim form there is significant amount of narrative added in boxes 8.1 and 8.2. There are a couple of references to 32 legal issues and then various lists some of which seem to be the headings of various legal claims but which are not easily understood as such. It is quite difficult to make sense of what is said on these pages although there seems to be a suggestion that evidence was being covered up and in relation to this Gill Craik who dealt with the appeal outcome appears to be the subject of particular concern from the Claimants perspective.

20. In the box 15 of the claim form (ET1) additional information the Claimant states about two thirds of the way down the page "last straw" in respect of which she stated:

> On 20 February 2023 I saw the WhatsApp platform called Endeavour House Team that had been in existence since 2017 and it was so litigious I informed the owner of the device and ex-employee that this must be reported. She says on 2 February 2023 I informed Lado and OCC.

21. "Lado" is an acronym for Local Authority Designated Officer. I assume that OCC is either Oxford City Council or alternatively Oxfordshire County Council, based on a workplace address in Headington Oxfordshire OX3.

Ground of response

22. The Respondent states that the Claimant was employed as a Residential Support Worker at the Endeavour Academy from 16 April 2018 and that her employment preceded without material incident until 2021.

23. The Claimant's second grievance was apparently submitted on 4 April 2022, there was a two day grievance hearing on 18 and 25 July and the Claimant was issued with an outcome to her grievance on 4 August 2022.

24. The Claimant appealed that outcome and an appeal hearing took place on 22 September, 29 November, 7 and 9 December 2022 with the outcome of that appeal issued to her on 12 January 2023.

25. The Claimant's resignation was communicated with immediate effect on 7 March 2023.

26. The Respondent highlights that the Claimant had 423 days of sickness absence during her employment and remained absent signed off sick from 28 March 2022 until 7 March 2023.

27. It is explained that no action was taken in response to the Claimant "whistle blow" report in emails dated 29 January 2022 and 4 February 2022 even though there were 22 emails on her personal iPad which contained personal data of service users of the Respondent. The fact that the Respondent was not taking any action was confirmed to her on 15 December 2022 and which she told that there would be no disciplinary investigation into the potential data breach.

28. As to the claim of unfair dismissal the Respondent denies that there was a breach of the express or implied terms of the Claimant's contract of employment and denied that if there was any such breach that it was sufficiently serious to constitute a repudiatory breach.

29. The Respondent does not admit that communications made on 29 January 2022 and 22 February 2022 amount to qualifying protected disclosures (i.e. whistleblowing) within the meaning of s.43B of the Employment Rights Act 1996.

30. The claim of failure to make reasonable adjustments is denied by reference to time points although not pleaded to substantively.

Application for interim relief

31. On 7 December 2023 Employment Judge Hodgson heard a hearing in relation to an application for interim relief under section 128 of the Employment Rights Act 1996. He dismissed that application.

First attempt to clarify the claim

32. There was a case management hearing (preliminary hearing) held on 3 April 2024 by Employment Judge Glennie at which the Claimant appeared in person and the Respondent was represented by Mr S Whysall, solicitor.

33. EJ Glennie listed an eight day hearing commencing on 22 January 2025. All claims were listed to be heard together.

34. The Claimant was ordered on that day to provide various details of her claim. The deadline was the **3 May 2024**.

35. By that date the Claimant needed to set out a numbered list in date order of each of the complaints to be determined by the Tribunal showing:

    35.1. the date or if not known the approximate date of the event

    35.2. what happened

    35.3. who is involved

    35.4. what type of claim is made about this event (e.g. a complaint under the equality act such as direct discrimination, harassment, etc in which case the protected characteristic(s) involved should be identified; constructive dismissal protected disclosure detriment)

36. Also by 3 May 2024 the Claimant was ordered to make any application to amend the claim.

37. There were then further directions for the Respondent to respond and a potential further hearing. Employment Judge Glennie said that he had not made an order about a list of issues which may or may not be needed depending on the content of the Claimants document clarifying the complaints. He reserved the next hearing to himself.

Non-compliance with first order

38. On 3 May 2024 at 21:21 shortly before the deadline the Claimant provided a document in response to the order of Employment Judge Glennie. She set out in that email in paragraphs 3.1 to 3.4 of his order made at the hearing on 3 April 2024, i.e. precisely the part of the order identifying what she needed to provide. Unfortunately she did not then follow that part of the order.

39. She set out a series of allegations about fraudulent documents which she says that the Respondent had produced, which appears at page 10 of the bundle that I have received.

40. This goes on for a further ten pages making reference to various statutory provisions including the Employment Rights Act and the Companies Act 2006 model articles of the Respondent and other phrases like “cruel and unusual punishment” which are legal sounding but are not relevant to a complaint brought in the Employment Tribunal under UK employment law.

41. There are some references to things or provisions which full within the Employment Tribunal jurisdictions such as disability, discrimination and specifically discrimination arising from disability. It is difficult to understand these however as cogent allegations of fact that would amount to a complaint that the Employment Tribunal can deal with.

42. There are also other matters that certainly fall outside of the jurisdiction of the Employment Tribunal such as matters relating data subject access requests and committing perjury and so on.

43. There is a second email also sent on 3 May, this one sent at 21:34. This begins at page 21 in the bundle. In that document what is said to be the reason for an amendment of the claim, in it the Claimant cites race discrimination, disability discrimination, age discrimination, different treatment, harassment, injury to feelings, there are a series of acronyms which are unexplained and other legal phrases like "conflict of interest". There is case law set out on injury to feelings and also case law which relates to constructive unfair dismissal, also the Misrepresentation Act 1967 and then various other statutory provisions including the Mental Capacity Ac, Data Protection Act, Care Act 2014, the Careers (equal opportunity) Act 2004 the Health and Social Care Act 2012. Again there is an absence of a coherent claim.

44. That document is seven pages in length.

Preliminary hearing on 21 June 2024

45. On 21 June 2024 Employment Judge Glennie held another preliminary hearing at which he refused an application to add three named Respondents and refused an application to amend and various complaints.

46. Employment Judge Glennie did not regard the emails sent on 3 May 2024 as having complied with his earlier order and so he restated the terms of his earlier order, extending the time for compliance to **19 July 2024**. The numbering of the order was different but the same particulars he requested were restated in this order. He stated this

> "I made order (for) because I considered that the document the Claimant had produced in response to the earlier order for clarification of her claim did not in fact comply with that order. I emphasised that:
>
> It is essential that the information be presented in the way set out in the order. This is done in order to ensure that the Tribunal can understand the Claimants case and can be clear about the issues that it has to decide.
>
> This is not a request for this to be done: it is an order that it shall be done. Note (2) at the foot of this document states that the possible consequences of not complying with the Tribunals orders.
>
> The Note 2 reads as follows: under Rule 6 if this order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with Rule 37; (c) baring or restricting a parties participation in the proceedings; and/or (d) awarding costs in accordance with Rules 74/84."

Second attempt at compliance within deadline

47. On 19 July 2024, again just before the expiry of a deadline the Claimant started to send a sequence of emails.

48. At 22:58 the Claimant provided a further email, this was 12 pages long and headed chronology. This document contains a series of dates and statements for example, "MAY–AUGUST 2018 RISK ASSESSMENT CARRIED OUT BY CORAL ROMAIN AND JAN BONNER" and also "MARCH-APRIL 2019 RISK ASSESSMENT CARRIED OUT BY ADAM LAURENCE". Under this heading the Claimant makes various statements about discovery being critical for disclosure of all personal data and then lists various "offences" including direct discrimination, disability discrimination, ageism, racism and also victimisation, automatic unfair constructive dismissal. This goes on for page after page.

49. I tried by using this document and listening to the Claimant's lengthy submissions during the course of the three-hour hearing in front of me to try to understand these factual allegations. This particular email relates to events in 2018.

50. I could not identify allegations that would amount to a complaint that the Employment Tribunal could hear. Again, in common with the documents provided by the Claimant earlier the document uses legal terminology which is a mixture of terminology relating to employment law and other areas of law. She did not set out meaningful facts in the format specified by Employment Judge Glennie. The Claimant also in this document requested that the ET3 grounds of resistance should be struck out.

51. A second email this time sent at 23:35 on 19 July 2024 also set out a chronology dating back to April 2018 which talks about a hostile and unfair treatment and a toxic work culture.

52. A further email was sent at 23:49 which has what is described as a chronology for 2019 there is legal terminology and references to toxic management culture and the like, data protection, GDPR compliant again it is difficult for me to make sense of this as cogent factual allegations. This does not amount to compliance with Employment Judge Glennie's order.

53. A further email was sent at 23:49 which is described as the part 5 chronology this seems to refer to events in 2022. There are various allegations contained within it such as being accused and framed for gross misconduct but again this does not comply with the order of Employment Judge Glennie.

54. It contains an application to "strike out" a fake risk assessment and the fake 37 page contract which is an application that the Claimant pursued at the hearing before me. This document goes on for 28 pages and again contains a mixture of statements and legal terminology.

Further emails sent after 19.7.24 deadline

55. The Claimant continued to send emails after the deadline set out in Employment Judge Glennie's second Case Management Order.

56. Part 6 of the chronology was sent in an email on 20 July at 00:13 this relates to events in 2023. This document goes on for 14 pages. Again I consider it does not comply with Employment Judge Glennie's order either in content or compliance with the deadline.

57. The fourth part of the chronology was sent on 20 July 2024 at 00:21. That is a 19 page document in a similar format which seems to make various allegations about someone whom I assume is a service user. This goes on for 19 pages. Again there are various legal terms used but it does not comply with Employment Judge Glennie's order. Again it is difficult to understand this as setting out clear and cogent complaint which the Tribunal could hear.

Strike out application

58. On 29 July 2024 the Respondent made a strike out application. In short the Respondent submits that the case should be struck out because the Claimant has not complied with the order and it is not possible to have a fair hearing of the proceedings.

59. In the alternative they apply for a deposit order of £1,000 to continue with the proceedings.

60. The Claimant sent an email in response on 29 July 2024.

61. The Respondent on 2 October sent an email renewing their application for a strike out. The Claimant responded on 3 October 2024. This is a series of emails sent on 3 October which appear in the bundle from page 127-164. These emails contained in this part of the bundle a mixture of allegations which are difficult to understand and legal phrases and what looked like legal submissions. This does not amount to compliance albeit belatedly with Employment Judge Glennie's order.

## Submissions

Respondent's submissions

62. I have received submissions from the Respondents representative by reference to the case of **T Smith v Tesco** [2023] EAT 11, decision of HHJ Taylor. In that case HHJ Taylor upheld the decision of a Tribunal that the Claimant had acted in a manner that was scandalous, unreasonable or vexatious concluded that a fair trial was no longer possible and decided that it was proportionate to strike out the entire claim. In that case a fair trial was not possible because the

Claimant refused to cooperate with the Respondent and the Employment Tribunal. That decision also referred to the decision of HHJ Taylor in the case of **Cox v Adecco Group UK and Ireland and others** [2021] ICR 1307, in which guidance was given that it was important to try to understand the claim brought by a litigant in person before considering striking it out.

63. Mr Whysall for the Respondent submits that the Claimant has been given two opportunities to comply with the Tribunal order and has failed to do so and furthermore that no fair hearing is possible.

64. In the alternative he submits that there is little reasonable prospect of success in this claim.

65. I asked him during the course of his submissions whether and to what extent the Respondent had already prepared to deal with the claim. He accepted that the Respondent had provided witness statements for three witnesses dealing with the claim of constructive unfair dismissal on the basis of what they understood of the claim but it had been very difficult to do this. I asked him as to whether it might be possible to have a less Draconian option or only strike out part of the claim. His response was that the Claimant had still not identified the breach said to amount to constructive unfair dismissal. In his submission even the allegedly simple constructive unfair dismissal element of the claim was still unclear.

Claimant's submissions

66. The Claimant complained that the Respondent had failed to comply with various orders. She made submissions at some length about the Respondent having forged documents which she invited me to strike out.

67. I identified during the course of the Claimant's submissions that she had produced a witness statement for the application for interim relief, which was refused by Employment Judge Hodgson. I arranged for a copy of that document to be provided to me. That is a 14 page document. It starts with a chronology of events from January 2018. It describes what she says was a protected disclosure, she describes this as a "whistle blow". The second page of that witness statement at paragraph 8 refers to an alleged breach of data in relation to children.

68. She sets out a rebuttal in this document of the numbered paragraphs in the grounds of resistance. As to what is said to be the repudiatory breach of contract at paragraph 39 the Claimant states that there are monies owed from her suspension pay which she states were a repudiatory breach of contract. Much of the rest of this document is difficult to understand as coherent allegations which a Tribunal could determine.

**LAW**

Strike out

69. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 provide as follows:

> Striking out
>
> 37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
>
> (a) that it is scandalous or vexatious or has no reasonable prospect of success;
>
> (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
>
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
>
> (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).

70. In the Court of Appeal, Sedley LJ provided guidance on strike out in case of non-compliance in the case of **Blockbuster Entertainment Ltd v James** [2006] IRLR 630, CA. There are essentially two points; it is noted that strike out is a Draconian sanction and in order for there to be a strike out (i) there needs to be either a deliberate and persistent disregard of required procedural steps or (ii) no fair trial is possible.

71. The Presidential Guidance on General Case Management 2018 at guidance note 8, which deals with Striking Out under rule 37.

> Striking out under Rule 37
>
> 8. Under rule 37 the Tribunal may strike out all or part of a claim or response on a number of grounds at any stage of the proceedings, either on its own initiative, or on the application of a party. These include that it is scandalous or vexatious or has no reasonable prospect of success, or the manner in which the proceedings have been conducted has been scandalous, unreasonable or vexatious.

> 9. Non-compliance with the rules or orders of the Tribunal is also a ground for striking out, as is the fact that the claim or response is not being actively pursued.
>
> …
>
> 11. Before a strike out on any of these grounds a party will be given a reasonable opportunity to make representations in writing or request a hearing. The Tribunal does not use these powers lightly. It will often hold a preliminary hearing before taking this action.
>
> 12. In exercising these powers the Tribunal follows the overriding objective in seeking to deal with cases justly and expeditiously and in proportion to the matters in dispute.

Deposit Orders

72. **Rule 39** of the Rules provides that a party may be ordered to pay a deposit as a condition of continuing with a specific allegation or argument where there is little reasonable prospect of success:

73. The Employment Appeal Tribunal ("EAT") provided a summary of the principles applicable to the Tribunal's power in this regard in **Arthur v Hertfordshire Partnership University NHS Foundation Trust** UKEAT/0121/19/LA per HHJ Eady QC at paragraphs 22 to 24. By way of summary:

    73.1. The test for making a deposit order is distinct from the no reasonable prospect of success test which it is necessary to establish prior to the striking out of a claim.

    73.2. The distinction is highlighted by the purpose of a deposit order, which is to identify at an early stage those claims with little reasonable prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of an adverse Costs Order being made.

    73.3. When determining whether to make a deposit order the Tribunal is not restricted to considering purely legal questions.

    73.4. Rather a Tribunal is entitled to have regard to the likelihood of a party being able to establish the facts essential to its case. The Tribunal, in doing so, is entitled to reach a provisional view as to the credibility of the assertions being put forward by a party.

    73.5. The purpose of a deposit order is not, however, to make it difficult to access justice or obtain a striking out of a claim by the back door.

**CONCLUSIONS**

Strike out

74. I am satisfied that the Claimant has been given two opportunities to comply with Employment Judge Glennie's order i.e. to set out in very simple terms the date, what happened, who was involved and what type of claim is made about each event. She has made submissions after the second deadline.

75. None of the various documents submitted by the Claimant since her three claim forms has lead to any led to any degree of coherence in the claims, particularly in relations to the complaints of discrimination. I largely accept the Respondent's submission that the documents that have been produced do not lead the Tribunal to a situation where there is a coherent claim that the Respondent can respond to and that a Tribunal could make findings on. As to the complaint brought under section 103A I have dealt with that separately below.

76. I have considered whether it is possible that the Claimant has been unable to comply with Employment Judge Glennie's order. I recognise that boiling down a set of events in a workplace context into short headlines and legal labels is something that judges and lawyers are experienced at doing but that litigants in person sometimes struggle with. It is frequently my experience that litigants in person just want to tell the story, and struggle with concise summaries which fit neatly into a legal analysis.

77. The Claimant was intelligent and articulate in the hearing before me. She did not state that she could not understand Employment Judge Glennie's order. In my assessment that order it is written in admirably clear language. The consequences of non-compliance are also set out.

78. The Claimant has twice (three times if you include more recent submissions) chosen to put down on paper a mishmash of events not in a coherent sequence and a used large amount of legal terminology without any regard to the clear direction that she was given by Employment Judge Glennie.

79. As to whether the case of Smith v Tesco provides assistance I note in that case that case Employment Judge Flood had drawn up a list of issues and a table of the facts that the Claimant relied upon and in that case the Claimant had rather than cooperating to finalising the issues based on the structure provided by the judge instead sought to add a plethora of further allegations.

80. There is some similarity between that case and Ms Adedeji's, but the cases are not precisely similar. I note however that the Tesco case was decided under rule 37(1)(b) – unreasonable conduct, whereas probably the current situation might fit more appropriately under rule 37(1)(c) i.e. non-compliance. It seems to me that that follows more appropriately from Employment Judge Glennie's Order, and the Note attached to it.

81. The distinction may not be hugely important. I conclude that the Claimant has been given clear instructions by a Employment Judge but twice unreasonably failed to follow the instruction given and that this is non-compliance of an order of the Tribunal. In other words **both rule 37(1)(b) and (c) are engaged**.

Conclusion on strike out of discrimination claims

82. I recognise that strike out is a Draconian sanction, to be exercised sparingly by Tribunals and only if it is proportionate.

83. Is a fair hearing possible? I find it is no longer possible to have a fair hearing in respect of any of the claims of discrimination, specifically age discrimination, race discrimination, disability discrimination and sex discrimination. I have not been able, despite reading voluminous documentation and listing to the Claimant in a three-hour hearing to make sense of these various allegations of discrimination.

84. In inferthat Employment Judge Glennie had the same difficulty at two previous hearings. I do not find it would be proportionate or appropriate to give the Claimant yet another attempt to comply with the order. There is a trial listed in January. It is unfair to the Respondent to allow further delay, which will prejudice it both through additional cost but also the ability of the Respondent and its witnesses to deal with events in a timely manner before memories have faded further. In any event I do not consider it likely that giving the Claimant another attempt would be likely to lead to a coherent claim. If I could obviously see what the discrimination complaints were I might try to distil them, but I have been unable to do this.

85. As to proportionality, I find that it would be disproportionate to strike out all claims, in circumstances where I consider that the claim forms contain enough detail to identify a complaint under section 103A. I have concluded therefore that the proportionate approach is to strike out all of the discrimination claims, which are still incoherent, but to consider the section 103A complaint separately.

86. All of those claims are struck out.

Conclusion on strike out section 103A claim

87. While I have found that the has been unreasonable conduct and non-compliance by the Claimant, in the exercise of discretion as to strike out and the question of proportionality, I have considered separately the complaint brought under **s103A of the Employment Rights Act 1996** i.e. automatically unfair dismissal because of a protected disclosure. This is a complaint of constructive dismissal based on the Claimant's resignation.

88. Following **Cox v Adecco**, I consider that I need to understand as far as possible what the claims are. Whereas I have not found this to be possible in the case of the discrimination claims, in relation to the section 103A complaint, it seems to me that key elements have been set out (albeit imperfectly) from the outset.

89. As to protected disclosures, I understand from the claim forms that there was an alleged protected disclosure made to HR on 29 January 2022. There is also the alleged protected disclosure made by the Claimant in 22 February 2022 when she escalated she says to prescribed persons and regulators.

90. As to alleged breach of contract the Claimant relies on two matters: first, in relation to monies withheld from her suspension pay and second, being placed under disciplinary measures by Gemma Deehan who raised data breach investigations against her in May 2022. That was from 9 May 2022. The Claimant says that that was in direct response to her making protected disclosures. There is an alleged delay of some nine months in dealing with the Claimant's grievance raised on 4 April 2022 and not resolved until 12 January 2023.

91. I have concluded that it would be Draconian to strike out the entirety of the Claimant's claims when there is a complaint under s.103A which can be discerned from the claim forms. I also bear in mind that the Respondent has had to deal with this complaint at an interim relief hearing and so for this reason has some idea of how the Claimant puts this complaint and also have prepared evidence to deal with it. There are apparently witness statements which address this claim at least in some form.

92. It will be a matter for the Tribunal at the full merits hearing in January, but my view is that the focus of that hearing will need to be narrowly on these alleged protected disclosures and the components of breach identified in the claim forms.

93. I will set out a separate case management order reducing the length of the hearing and setting this as a judge sit alone, with an attempt to distil the issues.

Deposit Order (section 103A claim only)

94. The Respondent invites me to make a deposit order on the basis that the claims have little reasonable prospect of success. Given that I have struck out the claims of discrimination, I am only considering here the claim brought under s.103A.

95. The case law suggests that I must have a reason to believe that the Claimant has little reasonable prospect of this claim succeeding.

96. While I note that Employment Judge Hodgson did not grant the application for interim relief I note that this is a different threshold test. Inevitably that was a hearing based on pleadings and argument without fully contested evidence or cross examination.

97. I understand the Claimant's complaint to be in outline that she raised what she believed was a protected disclosure and as a result there was an investigation against her, a delay in dealing with her grievance and she did not receive the pay that she should have done, which she says was because of that protected disclosure. She says that cumulatively those matters amount to a serious breach which she resigned in response to such that she was constructively dismissed.

98. I have doubts about whether this claim will succeed. Nevertheless, it is difficult for me to say without the benefit of evidence that there is little reasonable

prospect of success. Although the Claimants claims and attempts to clarify them have been jumbled and difficult to follow, there is an identifiable thread in relation to this section 103A constructive unfair dismissal claim in the claim forms. I have not concluded that there is little reasonable prospect of success and **I am not going to make a deposit order**.

99. This complaint can proceed to the hearing in January.

**Claimant's strike out application**

100. The Claimant made an application described by her as a strike out application, but which might be better characterised as an application for an order barring the Respondent from rely on certain documents which she says are fake or forged.

101. I explained to the Claimant during the course of the hearing that the usual approach of the Tribunal to documents the authenticity of which is questioned by the other side is to deal with this final hearing having heard evidence. Cogent evidence will be needed before a Tribunal finds that a document is a forgery or something similar to that. It is a very serious allegation.

102. What I am not going to do is make an order striking out or barring the Respondent relying upon a particular document. What the Claimant must do in her witness statement is identify the document or documents that she says are forged or fake by reference to the page number in the agreed bundle of documents. She should state clearly why she believes that the documents are forged or fake, and specify who it is she believes is responsible and why she believes this. If there is a genuine (i.e. non-forged) version of the document she should ensure that this is in the bundle of documents for the hearing. She should make clear in her witness statement why she believes that that is the correct version.

103. If the Respondent needs to file a supplementary witness statement dealing with this allegation of forgery they should do so at least seven days before the final hearing.

104. If individuals are called by the Respondent to give evidence on this topic, the Claimant will need to put squarely in cross examination to those people that these documents are forged or fake.

105. The Tribunal will then make a decision as to whether these documents are forged or fake if this is an issue which they find they need to decide. If the documents in question are completely unrelated to the substance of the claim, it may be that the Tribunal finds that it does not need to resolve this dispute.

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Employment Judge Adkin

Date 20 December 2024

JUDGMENT SENT TO THE PARTIES ON

30 December 2024

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FOR THE TRIBUNAL OFFICE