EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001075/2024

Preliminary Hearing held in Edinburgh on 23 January 2025

Employment Judge Sangster

Mr A Logan	**Claimant** **In person**
Centrica plc	**Respondent** **Represented by** **Ms A Bennie** **Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. The claimant's application to amend his claim, dated 8 December 2024, is refused; and
2. The respondent's application, dated 19 November 2024, for strike out failing which a deposit order, is refused.

REASONS

Introduction

1. This was a second preliminary hearing in relation to this claim. It was an open preliminary hearing to determine the claimant's application to amend, and the respondent's application for strike out, failing which a deposit order, in respect of all of the complaints brought (the **Second Preliminary Hearing**).

Background

2. The claimant presented a claim form, including an application for interim relief, on 23 July 2024. He attached a Description of Claim (**DoC**), extending to 19 pages, to his ET1 Form. His application for interim relief was refused.

3. A preliminary hearing for case management was held on 28 November 2024 (the **First Preliminary Hearing**). In advance of that hearing the claimant and respondent produced agenda documents, extending to 70 pages and 5 pages respectively. At the First Preliminary Hearing the complaints being brought were discussed in detail, with reference to the DoC and further particulars provided by the claimant in his agenda document (see paragraph 9 below for details of the complaints).

4. At the First Preliminary Hearing, the case was set down for an open preliminary hearing, to determine the following issues**:**

   4.1. Whether the Tribunal has jurisdiction to consider any complaints, other than the complaints of automatic unfair dismissal. The respondent asserted that the Tribunal had no jurisdiction, as the claimant had not complied with early conciliation requirements;

   4.2. The respondent's application, dated 19 November 2024, for strike out of all of the claimant's complaints, failing which a deposit order; and

   4.3. If the claimant made an application to amend his claim (as he indicated at the First Preliminary Hearing that he intended to do), and the respondent objected to that application, the claimant's application to amend his claim.

5. On 8 December 2024, the claimant applied to amend his claim, by proposing tracked changes to the DoC document which had been attached to his ET1. His application to amend was set out in an accompanying document extending to 5 pages, when printed. The respondent objected to the claimant's application to amend on 22 December 2024. The basis for their objection was set out in a document extending to 3 pages, when printed.

The Complaints

6. Following detailed discussion at the First Preliminary Hearing, with reference to the claimant's DoC, the complaints being brought were identified and recorded in the note of that hearing, which was sent to parties on 2 December 2024 (**the Note**), as follows:

6.1. Unfair dismissal, contrary to section 94-98 of the Employment Rights Act 1996 (**ERA**).

6.2. Automatically unfair dismissal under section 104F(1) ERA.

6.3. Automatically unfair dismissal under section 103A ERA. The claimant relies upon 3 disclosures in relation to this, which he asserts were protected disclosures. These are referenced in his DoC and are as follows:

6.3.1. The first set of disclosures are referenced in paragraph 9 DoC. The claimant asserts that he raised protected disclosures between 1 July 2022 and 1 May 2024 about, broadly, data issues (**Disclosure 1**). He explained at the preliminary hearing that he had made these on a daily basis in meetings (which will be recorded in Azure DevOps (**ADO)** communication records), in emails and Microsoft Teams chats. He also raised the concerns on 4 particular occasions, as follows:

6.3.1.1. In an email to Si Sylvester sent on/around March 2023, which Si Sylvester then escalated to Patrick Scott;

6.3.1.2. In weekly updates, sent by email, to Andrew Spurrier from late February 2024 onwards;

6.3.1.3. In an email to Jana Siber on 11 April 2024, entitled 'Multiple Reasonable Concerns' (para 27 DoC); and

6.3.1.4. In his written grievance in late May 2024.

6.3.2. The second disclosure, as detailed at paragraph 15 DoC, comprises disclosures which he made on 24 March 2023 in a written Avoidance of Harassment and Bullying in the Workplace complaint, which was prepared by the claimant following verbal concerns raised with him to 'Speak Up'. The claimant then expanded on those concerns in a meeting with the manager appointed to investigate those concerns, Helen Elspy, as reflected in the written records of that discussion (**Disclosure 2**).

6.3.3. The third disclosure, referenced at paragraph 27 DoC, comprises the other concerns raised in the claimant's email to Jana Siber on 11 April 2024, entitled 'Multiple Reasonable Concerns'. (**Disclosure 3**)

6.4. Detriment as a result of making the disclosures stated above. The detriments relied upon are:

6.4.1. Being blocked from attending the company quarterly finance meeting in December 2022, thus restricting the claimant's ability to network and build relationships (paragraph 10 DoC); and

6.4.2. Being placed on a PIP in/around March 2023 (paragraph 16 DoC).

6.5. Detriment for a reason related to a prohibited list contrary to Regulation 9 Employment Relations Act 1999 (Blacklists) Regulations 2010. The detriments relied upon are:

6.5.1. Being blocked from attending the company quarterly finance meeting in December 2022, thus restricting the claimant's ability to network and build relationships (paragraph 10 DoC);

6.5.2. Being accused by Mark Dale of aggressive conduct on 17 January 2023 (paragraph 11 DoC);

6.5.3. Changing the claimant's remit in January 2023, to exclude communication and assign only SQL-based tasks (paragraph 13 DoC);

6.5.4. Being prevented from participating in events in March 2023, further isolating him from team activities (paragraph 12 DoC);

6.5.5. Being bullied off the Connect NLP-based project, with daily pressure and exclusion from areas of experience (paragraph 14 DoC);

6.5.6. Comments made by Suzy Box in January/February 2024, as detailed in paragraph 19 & 20 DoC;

6.5.7. John Nolan and Andrew Spurrier threatening to intervene in applications made by the claimant for alternative roles, and subsequently doing so, as detailed in paragraph 21 DoC; and

6.5.8. Andrew Spurrier enquiring, on 15 March 2024, about roles the claimant had applied for externally, suggesting a predetermined decision to remove him from his role (paragraph 23 DoC).

6.6. Victimisation under section 27 Equality Act 2010 (**EqA**). The protected acts relied upon by the claimant being previous Employment Tribunal claims (against other organisations) and grievances raised with the respondent asserting discrimination and/or victimisation. The claimant asserts that he was subjected to detriments as a result of doing so, as follows

6.6.1. From 15 May 2022 to 17 July 2024, poor introductions, hostility and isolation (paragraph 7 DoC);

6.6.2. Being blocked from attending the company quarterly finance meeting in December 2022, thus restricting the claimant's ability to network and build relationships (paragraph 10 DoC);

6.6.3. Being accused by Mark Dale of aggressive conduct on 17 January 2023 (paragraph 11 DoC);

6.6.4. Changing the claimant's remit in January 2023, to exclude communication and assign only SQL-based tasks (paragraph 13 DoC);

6.6.5. Being bullied off the Connect NLP-based project, with daily pressure and exclusion from areas of experience (paragraph 14 DoC);

6.6.6. Being prevented from participating in events in March 2023, further isolating him from team activities (paragraph 12 DoC);

6.6.7. Being placed on a PIP in/around March 2023 (paragraph 16 DoC);

6.6.8. In November/December 2023 being accused of making a campaign manager 'feel uncomfortable' (paragraph 18 DoC);

6.6.9. Comments made by Suzy Box in January/February 2024, as detailed in paragraph 19 & 20 DoC;

6.6.10. John Nolan and Andrew Spurrier threatening to intervene in applications made by the claimant for alternative roles, and subsequently doing so, as detailed in paragraph 21 DoC;

6.6.11. False allegations made by Steve Thomas on 8 April 2024, and threatening to remove him from all projects, as detailed in paragraph 25 DoC; and

6.6.12. Suspending the claimant on 3 May 2024, as detailed in paragraph 28 DoC.

6.7. Disability discrimination. The claimant claims that he was, at the relevant times, a disabled person in terms of s6 EqA, as a result of Essential Tremor and Generalised Anxiety Disorder, including panic attacks. His complaints are as follows:

6.7.1. Direct discrimination. He asserts that he was subjected to pressure and unrealistic/tight deadlines and a hostile working environment because of his disabilities.

6.7.2. Failure to make reasonable adjustments. The claimant relies on the following PCPs:

6.7.2.1. Isolation from team and lack of communication;

6.7.2.2. A hostile working environment;

6.7.2.3. Unrealistic/tight deadlines;

6.7.2.4. Not fairly following internal policies or updating same;

6.7.2.5. Assigning tasks outside of area of expertise;

6.7.2.6. Making false allegations against the claimant on 8 April 2024, and threatening to remove him from all projects; and

6.7.2.7. suspending the claimant on 3 May 2024.

6.7.3. He states that these put him at a substantial disadvantage as they exacerbated the symptoms of his disabilities and the respondent knew or ought to have known that the claimant was likely to be placed at this disadvantage, particularly given:

6.7.3.1. A complaint made by him on 14 March 2023 asserting bulling, harassment and failure to make reasonable adjustments;

6.7.3.2. The terms of his email to Si Sylvester dated 13 March 2024, where he raised these issues; and

6.7.3.3. The terms of his email to Si Sylvester on 3 May 2024 (prior to suspension).

7. The claimant was informed in the Note that he should consider this list carefully to make sure this accurately records the full extent of the complaints

he brings. He was informed that, if it did not, the Tribunal should be advised within 28 days of the Note being sent to the parties, copying said communication to the respondent. The claimant was informed that, if he asserted that any further complaints are made in the claim, he should highlight the paragraph of his DoC where he asserts that that further complaint is made and why this supports his assertion. Other than applying to amend his claim, as discussed below, the claimant did not make any representations regarding the complaints identified in the Note.

8. The claimant confirmed at the First Preliminary Hearing that he does not pursue complaints of indirect discrimination and does not rely on the protected characteristic of sex. There was accordingly no reference to those in the list complied, as detailed at paragraph 11 above.

Summary of Second Preliminary Hearing

9. At the commencement of the Second Preliminary Hearing, the respondent confirmed it was now accepted that the claimant complied with early conciliation requirements, so they did not insist on their application in relation to that issue.

10. In relation to the application for strike out, failing which a deposit, the respondent confirmed that they sought strike out of all complaints, other than the ordinary unfair dismissal complaint. Failing which, they sought a deposit order in respect of all complaints, including the ordinary unfair dismissal complaint.

11. Parties had prepared a bundle of documents for use at the Second Preliminary Hearing, extending to 852 pages. This was provided to the Tribunal on the morning of the preliminary hearing.

12. No witnesses gave evidence at the preliminary hearing. No findings in fact are accordingly made in this Judgment.

13. Each party also produced a written submission at the Second Preliminary Hearing, as follows:

13.1. The respondent produced a skeletal written submission, extending to 13 pages, as well as copies of 8 case authorities relied upon.

13.2. The claimant produced a written submission extending to 29 pages (split into two sections entitled 'Evidence and Bundle References' and 'Skeleton Argument'), as well as a copy of one case authority and sections 13 & 15 of the Equality Act 2010.

14. Following discussion of preliminary matters, the parties were afforded up to two hours each to speak to and/or supplement their written submissions orally. The respondent did so first. The claimant did so in the afternoon, following the lunch break. As they did so, they referred to particular pages in the bundle, which I undertook to review following the conclusion of the preliminary hearing, as there was insufficient time to do so during the course of the hearing. I indicated at the conclusion of the preliminary hearing that I would require to take time carefully read and consider the detailed submissions, as well as the cases referenced and the extensive documentation I had been referred to, and would then prepare a written Judgment.

Respondent's Submissions

15. The respondent provided an overview of the relevant legislation and case law and, in summary, submitted that:

Amendment

15.1. In relation to the application to amend, the terms of the respondent's objection to the application to amend, dated 22 December 2024 was simply adopted. Within that, the respondent indicated their view that the application to amend should be refused. They stated that the claimant was given detailed instructions on how to apply to amend his claim, if he wished to do so, and what required to be addressed in his proposed amendment. He has not however complied with that. Instead, he has simply changed the references within the DoC, from s13 to s15 EqA. He has not particularised the factual basis for his complaint, for example by

identifying the unfavourable treatment he suffered or the 'something arising from disability' which he asserts caused that treatment. He has delayed in seeking to amend his claim. The respondent will be prejudiced if the application to amend is permitted.

Strike Out

15.2. The claimant cannot establish that the asserted disclosures meet the requisite tests to constitute qualifying disclosures. Information is not disclosed, the claimant is simply raising queries, making allegations or stating personal opinions or perceptions. There can be no objective basis for any reasonable belief held by the claimant that the disclosures tend to show a relevant failure, or that they are made in the public interest (as they relate only to the claimant). Taking the complaints regarding public interest disclosure at their highest, those complaints accordingly have no reasonable prospect of success.

15.3. The claimant's assertions of detriment and dismissal, for a reason related to blacklisting, are complete speculation on the part of the claimant, with no foundation whatsoever. There is no reasonable prospect of the claimant establishing facts from which the Tribunal could conclude, in the absence of any other explanation, that the respondent contravened Regulation 3 of the Employment Relations Act 1999 (Blacklists) Regulations 2010, or relied on information supplied in contravention of that Regulation. These complaints accordingly have no prospect of success.

15.4. The victimisation complaint is lacking in specification, so cannot enjoy prospects of success.

15.5. The PCPs asserted by the claimant in relation to the reasonable adjustments complaint do not meet the criteria set out in ***Ishola v Transport for London*** 2020 ICR 1204. They relate to treatment of the claimant only. Unfair treatment of particular employees does not amount to a PCP. As the claimant has not identified valid PCPs, his complaints

of failure to make reasonable adjustments have no reasonable prospects of success.

Deposit Order

15.6. In the alternative, if the complaints are not struck out, the respondent seeks a deposit order in relation to each, as well as in relation to the ordinary unfair dismissal complaint.

Claimant's Submissions

16. The claimant's oral submission was made with reference to 3 documents: the first referred to, and quoted sections from, the evidence contained in the joint bundle, which the claimant relied upon for the purposes of this preliminary hearing; the second set out his skeleton argument in relation to the respondent's application for strike out, failing which a deposit order, and his application to amend; and the third was his application to amend, submitted on 8 December 2024. In summary, he submitted that:

Amendment

16.1. The proposed amendment is a minor one. He simply seeks to recategorize facts already relied upon, which he erroneously initially identified as being complaints of direct discrimination, rather than discrimination arising from disability. He has sought to correct that error at an early stage in proceedings. The underpinning facts remain substantially the same. There is no prejudice to the respondent in allowing the amendment. The balance of justice and fairness weighs in favour of permitting the amendment.

Strike Out

16.2. There are significant factual disputes in relation to each complaint, which can only be determined at a final hearing. Case law demonstrates that it is not appropriate to strike out complaints of discrimination or complaints which are related to whistleblowing. Such complaints should not be assessed on a summary basis. The complaints should be

determined at a final hearing, where evidence can be heard and credibility assessed. Strike out is not appropriate.

16.3. It is clear that the asserted disclosures meet the requisite tests to constitute qualifying disclosures. Facts were disclosed which demonstrate breaches of duty which are in the public interest.

16.4. The claimant was clear at the First Preliminary Hearing that, in addition to the 4 particular disclosures referenced in relation to Disclosure 1, he relies upon a series of disclosures as Disclosure 1 (as identified in the Note), including verbal disclosures in daily meetings and disclosures in emails and Microsoft Teams chats, over the period from 1 July 2022 to 1 May 2024. Disclosure 1 must be viewed in that context, and with reference to the claimant's evidence. It is not possible to look at the 4 occasions he raised concerns in isolation, without that context, to determine whether they constitute protected disclosures. It is not possible to consider the full context of Disclosure 1 at this stage, as the respondent has not disclosed the relevant documents to him.

16.5. The claimant's assertions of bullying related to more than one person and policies applied to the entire workforce – bringing them within the scope of public interest, as set out in ***Chesterton Global Ltd v Nurmohamed*** [2017] EWCA Civ 979.

16.6. The PCPs relied upon were capable of being applied to everyone. They disproportionately impacted the claimant, as a disabled person.

Deposit Order

16.7. It is not appropriate to make a deposit order. It cannot be said that the complaints have 'little reasonable prospect of success'. Caution must be exercised, so as not stifle claims involving serious allegations, particularly in whistleblowing or discrimination contexts. They are not punitive orders, but are a tool to ensure claims that appear weak face some financial risk.

Relevant Law

Amendment

17. Employment Tribunals have a broad discretion to allow amendments at any stage of proceedings, either on the Tribunal's own initiative or on the application by a party. Such a discretion must be exercised in accordance with the overriding objective (which is set out in the Employment Tribunal Procedure Rules) of dealing with cases fairly and justly.

18. Where a Tribunal requires to determine an application to amend, the key test is to balance the injustice and/or hardship of allowing or refusing the amendment: ***Cocking v Sandhurst (Stationers) Limited and another*** 1974 ICR 650 at 657B-C and ***Selkent Bus Company Limited v Moore*** 1996 ICR 836 at 843D. Accordingly, when determining whether to grant an application to amend, Tribunals should carry out a careful balancing exercise of all the relevant factors, having regard to the interests of justice and to the levels of hardship that would be caused to the parties by granting or refusing the amendment.

19. In ***Selkent*** Mummery J stated that it is impossible and undesirable to attempt to list all of the relevant factors to be considered exhaustively, but noted a number of factors that will generally be relevant to the assessment, namely:

19.1. **Nature of the amendment** - i.e. is the amendment, for example, one involving the correction of clerical or typographical errors, the addition of factual details to existing allegations and or the addition or substitution of other labels for facts already pled? Alternatively, is the amendment one which involves the making of entirely new factual allegations that change the basis of the existing claim? In other words, whether the amendment sought is a minor matter, or a substantial alteration pleading a new cause of action.

19.2. **Applicability of time limits –** if a new claim or cause of action is proposed to be added by way of amendment, the Tribunal should consider whether that claim/cause of action is out of time and, if so, whether the time limit should be extended.

19.3. **Timing and manner of the application –** an application should not be refused simply because there has been delay in making it, as amendments may be made at any stage of the proceedings. Delay in making the application is however a discretionary factor. It is relevant to consider why the application was not made earlier and why it is now being made: for example, the identification of new facts or new information from documents disclosed on discovery.

20. The above is not an exhaustive list. There may be additional factors to consider in any particular case.

21. The Court of Appeal in ***Abercrombie & Others v Aga Rangemaster Ltd*** [2013] IRLR 953 stated:

'the approach of both the EAT and this Court in considering applications to amend which arguably raise new causes of action has been to focus not on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry than the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted.'

22. The hardship and injustice test is a balancing exercise. As noted by Lady Smith in ***Trimble and another v North Lanarkshire Council and another*** EATS0048/12 it is inevitable that each party will point to there being a downside for them if the proposed amendment is allowed or not allowed. It will therefore rarely be enough to look at the downsides or 'prejudices' themselves. These need to be put in context, and that is why it is important to look at all the surrounding circumstances.

Strike Out

23. The Tribunal has power to strike-out the whole or part of claim under Rule 38(1) of the Employment Tribunal Procedure Rules 2024 on various grounds, including:

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

24. Having regard to the legal authorities referred to below, the following is noted: strike-out on grounds of no reasonable prospects is considered by means of a summary determination; where there is a serious dispute on the crucial facts, it is not for the Tribunal to conduct an impromptu trial of the facts; exceptional circumstances may arise where disputed facts are totally and inexplicably inconsistent with undisputed contemporaneous documentation; discrimination and unfair dismissal cases are generally fact sensitive and therefore strike out on this ground is exceptional; where there are no reasonable prospects, the Tribunal must decide whether to exercise its discretion mindful that full evidence has not been heard, although the Tribunal should not be deterred in the most obvious of cases.

25. The House of Lords in ***Anyanwu and anor v South Bank Students' Union and anor*** [2001] IRLR 305 emphasised the importance of not striking out discrimination claims, other than in the most obvious of cases. Lord Steyn stated, at paragraph 24:

'such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. 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 a claim being examined on the merits or demerits of its particular facts is a matter of high public interest.'

And Lord Hope stated, at paragraph 37:

'I would have been reluctant to strike out these claims, on the view that discrimination issues of the kind which have been raised in this case should as a general rule be decided only after hearing the evidence. The questions of law that have to be determined are often highly fact-sensitive. The risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The tribunal can then base its decision on its findings of fact rather than on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence.'

26. The Court of Appeal in ***Ezsias v North Glamorgan NHS Trust*** [2007] ICR 1126, held that the same or similar approach should be followed in whistleblowing cases. Maurice Kay LJ stated, at paragraph 29:

'…there is a crucial core of disputed facts in this case that is not susceptible

to determination otherwise than by hearing and evaluating the evidence. It was an error of law for the Employment Tribunal to decide otherwise…It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation.'

27. The Employment Appeal Tribunal in ***Balls v Downham Market High School & College*** UKEAT/0343/10/DM, stated that in considering strike out, Tribunals must carefully consider all of the available material. Lady Smith stated, at paragraph 6

'..the test is not whether the claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be no reasonable prospects.'

28. The Court of Appeal in ***Ahir v British Airways Plc*** *[2017] EWCA Civ 1392* per Underhill LJ (para16):

'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 test is met in a particular case depends on an exercise of judgment…it remains the case that the hurdle is high…'

29. More recently in ***Cox v Adecco Group UK & Ireland and others*** 2021 ICR 1307, EAT, HHJ Tayler in the Employment Appeal Tribunal conducted a review of the authorities and considered the position where the claimant is a litigant in person. Having done so, he stated, at paragraph 28:

'From these cases a number of general propositions emerge, some generally well understood, some not so much.
(1) No one gains by truly hopeless cases being pursued to a hearing.

(2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate.
(3) If the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate.
(4) The claimant's case must ordinarily be taken at its highest.
(5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is.
(6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim.
(7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing.
(8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer.
(9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.'

Deposit Orders

30. Under Rule 40(1) of the Employment Tribunal Procedure Rules 2024, where the Tribunal considers that any specific allegation or argument has little reasonable prospects of success, it may order the party ('**the depositor**') to pay a deposit not exceeding £1000 as a condition of continuing to advance that allegation or argument.

31. Whilst this is a lower hurdle than having no reasonable prospects of success (under Rule 38 on strike out), there must be a reasonable basis upon which to doubt that the legal arguments are valid, or that the material facts necessary to support the allegation will be established.

32. Under Rule 40(2), when deciding the amount of each deposit, the Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit, and have regard to such information when deciding the amount of the deposit. Where multiple allegations or arguments are advanced (as is the case here) there may be multiple deposits ordered, not exceeding £1,000 each. However the Tribunal should stand back and consider whether the total deposit awarded is proportionate

33. Under Rule 40(4), if a deposit is ordered and the depositor fails to pay the deposit, the specific allegation or argument will be struck out.

34. Under Rule 40(7), if a deposit is ordered and paid, the deposit shall be refunded to the depositor, unless Tribunal ultimately decide to rejects the specific allegation or argument for substantially the same reasons. If the Tribunal does reject the specific allegation or argument for substantially the same reason, the depositor must (unless the contrary is shown), be treated as having acted unreasonably when considering an award of expenses (costs) and the deposit must be paid to the other party.

35. In ***Hemdan v Ishmail*** [2017] IRLR 228, it was confirmed that the purpose of the rule was to identify claims with little prospect of success at an early stage and discourage those, but was not intended to act as a barrier to access to justice or to "strike-out by the back door". In that case, it was stated:

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

time and resource of courts and tribunals that would otherwise be available to other litigants and do so for limited purpose of benefit.

11. The purpose is emphatically not, in our view, and as both parties agree, to make it difficult to access justice or to effect a strike out through the back door…

12. … The test, therefore, is less rigorous in that sense, but nevertheless there must be a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or the defence. The fact that a tribunal is required to give reasons for reaching such a conclusion serves to emphasise the fact that there must be such a proper basis.

13. The assessment of the likelihood of a party being able to establish facts essential to his or her case is a summary assessment intended to avoid cost and delay. Having regard to the purpose of a deposit order, namely to avoid the opposing party incurring cost, time and anxiety in dealing with a point on its merits that has little reasonable prospect of success, a mini-trial of the facts is to be avoided, just as it is to be avoided on a strike out application, because it defeats the object of the exercise. Where, for example as in this case, the Preliminary Hearing to consider whether deposit orders should be made was listed for three days, we question how consistent that is with the overriding objective. If there is a core factual conflict it should properly be resolved at a Full Merits Hearing where evidence is heard and tested.'

36. In determining an application for a deposit order, the Tribunal is accordingly entitled to have regard to the prospects of any party making out any factual assertion on which the claim is based as well as purely legal issues (***Van Rensburg v Royal Borough of Kingston-upon-Thames*** UKEAT/0095/07). However, the Tribunal *'must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response'* (***Van Rensburg*** para 27) although this should not involve a trial of the facts as this would defeat the purpose of the rule (***Hemdan***).

Discussion and Decision – Amendment

37. I considered the nature of the amendment proposed, applicable time limits and the timing and manner in which it was made, before assessing the balance of injustice and hardship.

38. At the First Preliminary Hearing, it was noted that the claimant included in his agenda document that he wished to amend his claim to include a complaint

of discrimination arising from disability. In the Note, I highlighted that the claimant made reference to section 15 of the Equality Act 2010 in his agenda document, but that was not referred to in his claim. I highlighted that no detail of the basis for any potential complaint of discrimination arising from disability was specified in the agenda document: the claimant simply referenced the section of the legislation, which is not sufficient for the purposes of an amendment application. I indicated in the Note that *'If the claimant wishes to amend his claim, he will require to prepare a document setting out the wording he wishes to add. This can either be a separate document or highlighted as proposed tracked changes to the DoC. This should clearly set out the factual and legal basis for any further complaints.'* The process of applying for an amendment, and the factors the Tribunal would require to consider to determine that application, if the respondent objected to it, were then also set out.

39. The claimant applied to amend his claim on 8 December 2024. Whilst the application to amend was made outside the time limit for raising such a complaint, I did not view that as particularly significant in the overall context of this claim.

40. With his application to amend, the claimant provided an amended version of his DoC, with tracked changes reflecting the amendments he sought. The claimant's proposed amendment simply seeks to remove all references in his DoC to s13 EqA, and replace them with references to s15 EqA. He proposes that these changes be made to paragraphs 22, 25 & 28 of the DoC (as well as on pages 12 & 16 where he sets out the terms of the legislation). No further changes are proposed.

41. When discussing paragraphs 25 and 28 of the DoC at the First Preliminary Hearing however, the claimant clarified that the complaints he brought in relation to those paragraphs were failure to make reasonable adjustments and victimisation, not direct discrimination. In relation to paragraph 22 he indicated that he brought a complaint of direct discrimination and failure to make reasonable adjustments, namely that he was subjected to daily pressure, unrealistic deadlines and a hostile working environment because of

his disabilities, and/or that this placed him at a disadvantage because of his disabilities, in that it exacerbated the symptoms of his disabilities, which he had informed the respondent of on 14 March 2023, 13 March 2024 and 3 May 2024.

42. Within the Note, I included a list of the complaints being advanced, based on the DoC and the detailed discussion at the First Preliminary Hearing. It is clear from that that the content of paragraphs 25 & 28 of the claimant's DoC have not been included as complaints of direct discrimination. The claimant did not indicate any disagreement to the list of complaints as detailed in the Note (despite being directed to do so if he did).

43. In light of the above points, I have reached the conclusion that the proposed amendments do not contain sufficient detail to enable the Tribunal, or the respondent, to understand the complaints of discrimination arising from disability being advanced, for the following reasons:

43.1. In relation to the proposed amendments to paragraphs 22, 25 and 28 there is absolutely no specification of what the claimant asserts constitutes unfavourable treatment. Whilst it could be assumed that the unfavourable treatment is the same as the less favourable treatment relied upon for the direct discrimination complaint and the detriment for the victimisation complaint, this is not clear from the proposed amendment. That is particularly the case, given that the claimant indicated that he was simply recategorizing complaints of direct discrimination which he had previously stated were not contained in paragraphs 25 & 28.

43.2. In relation to the proposed amendments to paragraphs 22, 25 and 28, there is no specification of what the 'something arising from disability' is that he asserts caused that unfavourable treatment, or the basis upon which he asserts the 'something' arose in consequence of disability; and

43.3. In relation to the proposed amendments to paragraphs 22, 25 and 28, there is no specification of why he believes the something arising from

disability that he relies upon caused the unfavourable treatment that he asserts he received.

44. As a result, I have reached the conclusion that proposed amendment does not set out a valid complaint under s15 EqA in the degree of detail which would be required to give the respondent fair notice of the case it may be required to meet.

45. If the application to amend were permitted, the respondent would be prejudiced, as further particulars and/or case management preliminary hearings would be required, to clarify these matters. The claimant's DoC is detailed, he produced a very detailed agenda document containing further particulars, and a great deal of time was spent in discussion with him at the First Preliminary Hearing, to identify the complaints which he brings with reference to these documents. These were then set out in detail in the Note, which he was given the opportunity to consider and comment on. The requirements for an application to amend were also discussed and set out in the Note. The claimant was then given the opportunity to apply to amend his claim. It is not proportionate to permit him a further opportunity to do so, or to provide further particulars which may or may not provide the requisite specification. Whilst he is a litigant in person, he is an experienced litigant, having brought a number of other claims against other organisations, which the Tribunal has been referred to. He also has other complaints in this claim, in relation to the factual circumstances referenced in the paragraphs of his DoC which he sought to amend, which remain and will proceed (subject to consideration of the separate application for strike out, which is considered below).

46. Taking all of these points into account, I concluded that the balance of hardship and injustice weighs in the respondent's favour and concluded that the application to amend the claim should be refused.

Discussion and Decision – Strike Out and Deposit Orders

Protected Disclosure Detriments & Dismissal

47. A qualifying disclosure is defined in section 43B ERA as *"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following:*

    a. *That a criminal offence has been committed, is being committed or is likely to be committed;*
    b. *That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;*
    c. *That a miscarriage of justice has occurred, is occurring or is likely to occur;*
    d. *That the health or safety of any individual has been, is being or is likely to be endangered;*
    e. *That the environment has been, is being or is likely to be damaged; or*
    f. *That information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed."*

48. The respondent's principal assertion in relation to these complaints was that they had little or no prospects of success as the claimant cannot establish that the asserted disclosures were qualifying disclosures. (They accept that, if they were qualifying disclosures, they would be protected disclosures as they were made to the respondent).

49. The Tribunal assessed the available information in relation to each asserted disclosure in turn, and reached the following conclusions:

    49.1. **Disclosure 1**. The claimant states that this related to the unnecessary processing of billions of rows of data, at significant cost to customers and shareholders. The Tribunal noted that the claimant's position, as stated at the First Preliminary Hearing and this preliminary hearing, is that several communications constituted Disclosure 1, as stated at paragraph 6.3.1 above. It was not however clear, by the time of the

Second Preliminary Hearing, which precise documents the claimant relies upon as containing Disclosure 1.

49.2. The respondent had provided some Azure DevOps communication records to the claimant in advance of the Second Preliminary Hearing, as well a number of further emails. They asked the claimant to confirm if these were the correct documents regarding Disclosure 1, as the dates of the documents they identified differed from the dates stated in the Note (as replicated at paragraph 6.3.1 above). They also asked whether the Azure records provided contain the protected disclosures he intends to rely on. If so, they asked him to identify the disclosures by page and paragraph number. The claimant did not respond. He has not provided confirmation of whether a) the Azure records are the correct documents; b) he now has the totality of documents he relies upon in relation to Disclosure 1; or c) his position is that further documents require to be produced by the respondent and, if so, what.

49.3. If he now has the totality of documents he relies upon, he must identify which documents he relies upon and highlight which parts of those documents he relies upon as constituting Disclosure 1 and the basis for that. Until the claimant does so, it is not possible to assess whether his complaints based on Disclosure 1 have little or no prospects of success ('*Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is'* ***Cox v Adecco)***, or to proceed to a hearing on the merits. It is not for the Tribunal, or indeed the respondent, to review these documents to try to identify, within the significant detail included, what may or may not be relied upon by the claimant. The claimant must confirm what his case is in sufficient detail to enable the Tribunal and the respondent to know precisely what the claimant relies upon as Disclosure 1 and why.

49.4. **Disclosure 2**. The claimant stated at the First Preliminary Hearing that he relied upon information disclosed in a written Avoidance of Harassment and Bullying in the Workplace complaint dated 24 March

2023, which he then expanded upon in a meeting with Helen Elspy, as reflected in the written records of that discussion. Copies of those documents were contained in the bundle produced for the Second Preliminary Hearing.

49.5. Having now had the opportunity to review those documents, it is clear that both documents are detailed - extending to 19 & 35 typed pages respectively – and cover a wide range of matters. Whilst the claimant referenced particular paragraphs of these documents in his written 'Evidence and Bundle References' Document, it is not clear from this, what paragraphs the claimant relies upon as constituting protected disclosures and the basis for that. Until the claimant clarifies this, it is not possible to assess whether his complaints based on Disclosure 2 have little or no prospects of success ('*Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is'* ***Cox v Adecco)***, or to proceed to a hearing on the merits. It is not for the Tribunal, or indeed the respondent, to review these documents to try to identify, within the significant detail included, what may or may not be relied upon by the claimant. The claimant must confirm what his case is in sufficient detail to enable the Tribunal and the respondent to know precisely what the claimant relies upon as Disclosure 2 and why.

49.6. **Disclosure 3**. The claimant stated at the First Preliminary Hearing that this disclosure comprised the other concerns raised in his email to Jana Siber on 11 April 2024. That email was contained in the bundle on three occasions: an incomplete version, not including all of the embedded 'figures' (or screenshots) was included from page 475 -514; and what appear to be complete versions were included from pages 423-474, and again from page 515-566. It should be noted that, in their submission, the respondent referred to the complete document as being from page 475-477 of the bundle. That is clearly not the case. The full document continues, as stated above, and as recorded in the index to the bundle of documents for the preliminary hearing.

49.7. Having now had the opportunity to review these documents, it is clear that, whichever version is considered, the claimant's email to Jana Siber on 11 April 2024 is very detailed and covers a wide range of matters. Again, whilst the claimant references particular paragraphs of that email in his written 'Evidence and Bundle References' Document, it is not clear from this, what paragraphs the claimant relies upon as constituting protected disclosures and the basis for that. Until the claimant provides that clarification, it is not possible to assess whether his complaints, based on Disclosure 3, have little or no prospects of success ('*Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is'* ***Cox v Adecco)***, or to proceed to a hearing on the merits. It is not for the Tribunal, or indeed the respondent, to review that email to try to identify, within the significant detail included, what may or may not be relied upon by the claimant. The claimant must confirm what his case is in sufficient detail to enable the Tribunal and the respondent to know precisely what the claimant relies upon as Disclosure 3 and why.

49.8. Case management orders, in relation to the provision of this information, are made separately.

Blacklisting – detriment and dismissal

50. The respondent asserted that the complaints should be struck out as the claimant has not pled that he was subjected to the asserted detriments/dismissal because his name is on a prohibited list. However, that submission ignores the fact that a great deal of time was spent at the First Preliminary Hearing (at which Ms Bennie was not representing the respondent), identifying each detriment relied upon and what the claimant asserts caused each, as recorded in the Note. The claimant's claim is that his name was on a prohibited list and the respondent subjected him to the identified detriments as a result. While the respondent disputes this, for the purposes of this application, the claimant's claim must be taken at its highest and the Tribunal must assume the claimant will make out the facts he offers

to prove, unless those facts are conclusively disproved or totally and inexplicably inconsistent with contemporaneous documents. That has not been demonstrated. It cannot therefore be said, on a preliminary assessment, that his claim has no or little prospects of success. There is a factual dispute as to whether the claimant's name was on a prohibited list and whether the claimant was subjected to detriments. If those issues are established the Tribunal will require to determine causation. That will require evidence from the decision makers and consideration of what, if any, inferences should be drawn from the established facts and circumstances. It cannot be said, without hearing that evidence, that that complaint has little or no reasonable prospect of success.

Victimisation

51. The respondent asserted that the complaints should be struck out as the claimant has not identified the protected act relied upon, or pled that he was subjected to the asserted detriments because he did a protected act or acts. Again, however, that approach ignores the fact that time was spent at the First Preliminary Hearing identifying the asserted protected acts and detriments relied upon, as recorded in the Note. In his ET1, the claimant sets out that he believed his colleagues were aware of his previous Employment Tribunal complaints. He sets out the basis for that belief. His complaint of victimisation is that, as a result of that and/or the fact that he raised grievances asserting discrimination and/or victimisation (on 24 March 2023 and 12 June 2024), the respondent subjected him to the identified detriments. While the respondent may dispute these points, for the purposes of this application, the claimant's claim must be taken at its highest and the Tribunal must assume the claimant will make out the facts he offers to prove, unless those facts are conclusively disproved or totally and inexplicably inconsistent with contemporaneous documents. That has not been demonstrated. It cannot therefore be said, on a preliminary assessment, that his claim has no or little prospects of success. It appears, from the documents produced at the preliminary hearing that the claimant has previously brought proceedings under the EqA in the Employment Tribunal against other organisations. It also

appears, from the documents produced at the preliminary hearing, that the claimant asserted, in grievances raised on 24 March 2023 and 12 June 2024, that the respondent contravened the EqA. Whether the claimant was subjected to detriments, and if so the reason or cause for that, will require evidence from the decision makers and consideration of what, if any, inferences should be drawn from the established facts and circumstances. It cannot be said, without hearing that evidence, that that complaint has little or no reasonable prospect of success.

Direct Disability Discrimination

52. The respondent's application in relation to the direct discrimination complaint is shortly stated in their skeletal submission and was not expanded upon orally. They state, at paragraph 84, *'As before, there has been no attempt to specify any disability claim. Re direct discrimination who is the comparator? Moreover, his claim as per the Note is inconsistent with his grievance and his many other complaints which is that he was removed from work and had insufficient work.'* Many claimants, particularly litigants in person, do not specify comparators. Many claims, particularly ones which involve a large number of asserted complaints, involve inconsistencies. The issue to be determined at this preliminary hearing was however whether the respondent has demonstrated that the complaints of direct discrimination have little or no prospect of success, when taken at their highest. The Tribunal concluded that they have not done so. At best they have demonstrated that further particulars of this complaint may be required in relation to specification of whether the claimant relies upon an actual or hypothetical comparator in relation to this claim. Those details can however be provided in advance of any final hearing.

Failure to Make Reasonable Adjustments

53. In relation to the complaints of failure to make reasonable adjustments, the respondent, with reference to the case of ***Ishola v Transport for London*** 2020 ICR 1204, asserted that a PCP must be capable of being applied to others. They assert that the PCPs relied upon (other than one) are treatment which only applied to the claimant. Alternatively, in respect of those that may

be PCPs, the respondent submitted that *'the treatment can be objectively justified which means no reasonable prospects of success and so strike out of the relevant claims'*

54. In ***Ishola***, at paragraph 38, Simler LJ states:

'In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that 'practice' here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises…I consider that although a one-off decision or act can be a practice, it is not necessarily one.'

55. The claimant's position is that each PCP relied upon is/was capable of being applied to others, or was or constituted a practice. Whether similar cases are generally treated this way, or would be treated that way if they occurred again, is a factual matter which is disputed and will require to be determined by the Tribunal at a final hearing, having heard all the evidence. Similarly, if it is found that there was a PCP which placed the claimant at a substantial disadvantage in comparison with persons who are not disabled, whether the respondent took such steps as were reasonable to avoid the disadvantage is not a matter which can be determined at this stage, on a summary assessment. Evidence will require to be led for this to be established. In addition, it relates to what the respondent is offering to prove. The focus in relation to this application is on the claimant's pleadings and what he, taking his claim at its highest, is offering to prove.

Unfair Dismissal

56. In relation to the complaint of 'ordinary' unfair dismissal, the respondent asserted only that this has little reasonable prospect of success (rather than no reasonable prospect). In their skeletal submission they simply referred to a number of documents in the bundle by page number, namely communication to the claimant re suspension, the letter confirming termination of the claimant's employment, a witness statement from the dismissing manager and the appeal outcome. Having done so, they stated *'based on same, it is submitted that the test for a deposit order is met, the unfair dismissal claim enjoying little prospect of success'*

57. In almost every unfair dismissal case the decision to dismiss is fact-sensitive (***Tayside Public Transport company Ltd (t/a Travel Dundee) v Reilly*** [2012] Scot CS CSIH 46, per Clerk LJ).

58. In this case, the respondent asserts that the claimant was dismissed for some other substantial reason, namely irretrievable breakdown in relationships between the claimant and his colleagues. The claimant asserts that the reason put forward by the respondent is not in fact the real reason why he was dismissed. There is accordingly a core of disputed fact in relation to why the decision was taken to dismiss the claimant. That factual conflict should properly be resolved at a full merits hearing, where evidence is heard and tested. Without hearing that evidence, in particular from the dismissing manager, it cannot be said that the claimant's claim has little reasonable prospects of success.

Conclusions re Strike Out/Deposit Order

59. For these reasons, the respondent's application for strike out, failing which a deposit order, is refused.

Date sent to parties 12/02/2025