



EMPLOYMENT TRIBUNALS

Claimant: Ms. C. Stone

Respondent: Crest Nicholson Operations Limited

Heard at: Birmingham via CVP

On: 22 April 2025

Before: Employment Judge Wedderspoon

Appearances

For the claimant: In Person

For the respondent: Ms. A. Greenley, counsel

JUDGMENT ON PRELIMINARY HEARING

1. The allegation 4.1.1.2 and 4.1.1.5 are struck out in respect of the claimant's claim of public interest disclosure detriment (but remain live allegations of public interest disclosure for the purposes of the automatic unfair dismissal claim only)
2. The allegation of 4.1.1.4 is subject to a deposit order in respect of both (a) the detriment and (b) unfair dismissal claim.
3. The claimant will pay a deposit order of £200 per allegation as a condition to pursuing at a final hearing allegations 4.1.1.4 in respect of the (a) public interest detriment and (b) automatic unfair dismissal claim.

REASONS

1. The claimant was employed by the respondent, a property developer, as a site assistant manager from 10 January 2022 until 26 of October 2023. The procedural history of this case is recorded in the case summary by Employment Judge Flood in her order dated 27 September 2024 which was the second case management discussion to identify the claims and issues in the case. On her own volition Employment Judge Flood listed the case for a strike out or deposit order at this public preliminary hearing due to her concerns that the claimant's case lacked detail and her concerns about prospects of success in particular in respect of any complaint of protected disclosure detriment and dismissal because the claimant's concerns at that hearing appeared to be the way she had been scored in the selection process for redundancy. Judge Flood considered

this to be subjective and the claimant could not articulate why she felt any disclosures were the reason for any treatment. It was also entirely unclear at that stage what detriments were relied upon. Furthermore Judge Flood had some concerns about the direct sex discrimination complaint.

2. By letter dated 12 February 2025 the respondent made a written application for a strike out pursuant to rules 38 of the 2024 rules against the claimant's complaints of discrimination on grounds of sex/sexual orientation and public interest disclosure detriment and dismissal. As an alternative, the respondent seeks a deposit order in the sum of £250 per head of claim as a contingent condition of the claimant continue to pursue such claims pursuant to rule 40 of the Rules.
3. Today the Tribunal was provided with a bundle of documents of 155 pages. The claimant had requested and was granted as a reasonable adjustment some extra time to process answers to questions.
4. The Tribunal spent some time today clarifying with the claimant whether the list of claims and issues currently set out in the case management order of Judge Flood were accurate and complete. The claimant has confirmed today that as a result of making public interest disclosures (as currently set out in the order of Judge Flood) she was subject detriments by Ken Mulpeter and Simon Evans following her e-mail to Mr Mulpeter dated 18 July 2023.
5. The claimant clarified her case is that as a result of raising public interest disclosures she was required to move to different sites to sort out issues of customer service at the various sites and had pressure placed upon her to ensure the construction of houses was completed on time despite there being a site manager already present at the sites.
6. The claimant states that the detriments were as follows :-
 - (a) requested on 18 September 2023 to go to the Alrewas site;
 - (b) on 21 September 2023 being asked to go to the Westwood park Coventry site on 22 September 2023;
 - (c) on 21 September 2023 being asked to go to the Montague point site;
 - (d) on 22nd September 2023 being asked to go to the Blythe valley site on 25 September 2023.
7. The claimant also states that all of her public interest disclosures resulted in her being selected for redundancy and ultimately dismissed from the respondent's employment.
8. The claimant also confirmed today out of the five public interest disclosures listed by Judge Flood in her order at paragraph 4 the issue 4.1.1.2 and 4.1.1.5 both took place on 17 October 2023 so that these alleged disclosures were made after the claimant says she was subject to a detriment.

9. In its submission today the respondent states that in respect of the sex/sexual orientation discrimination complaint, that the respondent's evidence will be that it did not have a policy of providing anybody with an opportunity to conduct level 6 NVQ qualifications. In any event the claimant having determined to do the qualification herself was actually paid the expense to the claimant as indicated at pages 101; 103 on 115 of the bundle at the time of her redundancy dismissal so she was not out of pocket. There was no less favourable treatment and no detriment to the claimant. The respondent submits this claim has no reasonable prospects of success.
10. In respect of the public interest disclosures it was not clear what criminal offences had been committed or what the legal obligation was alleged but nevertheless it was submitted it would be highly unlikely that a Tribunal would find them to be public interest disclosures or that they had any causative link to the alleged detriments and a dismissal. The respondent submitted it was highly unlikely that it would be considered requesting the claimant to move to different sites was a detriment in any event. The respondent relied upon the case of **Cox v Adecco**.
11. The claimant contends that all of the evidence must be heard before the tribunal can take a view as to the prospects of success in this claim and that she will be able to establish from her witnesses that she indeed was discriminated by reason of her sex or sexual orientation. She submitted it was indicative by the treatment of her during the redundancy and the way that Simon looked at her when he agreed to pay for the NVQ level 6 qualification; it was dealt with by albeit with some reluctance. She was present she says in the room when her comparators who were in probation, with less service than her, were offered the NVQ level 6 qualification fully paid. Despite her raising concerns as to why this was not offered to her; this was never explained by the respondent.
12. Furthermore the claimant submitted in terms of her public interest disclosures she said it was unsafe contrary to health and safety law and in fact with construction rules dating back to 2015 that she should be left on site on her own. She raised these concerns with a number of individuals. She was unsure in respect of Kelly Joyce whether when she raised her concern with her in January 2023 whether Kelly Joyce told either Ken or Simon who she says imposed a detriment upon her. The claimant says all her whistleblowing disclosures affected the respondent's decision to select her for redundancy and dismiss her.
13. The claimant gave evidence today at the tribunal to state that she was employed 6 months post her dismissal in about mid 2024 for a period of six months as a project manager. She has been employed as a trainee teacher from January 2025 with an annual gross sum of £40,000 with a net monthly sum of just under £2,500. Her expenses include £1500 for a mortgage; her car is on hire purchase at a cost of £307 per month and her fuel of costs amount to £300 per month. She has savings of £1,000. The claimant and her partner are in the middle of a divorce and she is paying for the mortgage on the property on her own.

The Law

14. Pursuant to rule 38 of the 2024 rules of procedure the tribunal may strike out all or part of a claim where it determines that it has no reasonable prospect of success.
15. Pursuant to rule 40 of the 2024 rules of procedure where the tribunal considers that any specific allegation or argument or claim has little reasonable prospect of success it may make an order requiring a party to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument. Before making and deciding the amount of the deposit the tribunal must make reasonable inquiries into the deposit's ability to pay the deposit. The tribunal's reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.
16. In the recent case of the Court of Appeal of **Moustache v Chelsea Westminster 2025 EWCA Civ 1857** stated a clear list of issues was an exceptionally useful case management tool to provide clarity and structure. In the case of **Smith v Tesco 2023 EAT 11** HHJ Tayler noted that that the Court of Appeal has repeatedly emphasised great care should be taken before striking out a claim that strike out of the whole claim is inappropriate if there is some proportionate sanction that may for example limit the claim or strike out only those claims that are misconceived or cannot be tried fairly.
17. In the case of **Cox v Adecco Group UK and Ireland and others 2021 ICR 1307** it was noted at paragraph 30 there has to be a reasonable attempt at identifying the claims and the issues before considering strike out or making a deposit order. In some cases a proper analysis of the pleadings and any court documents in which the claimant seeks to identify the claims may show that they really is no claim and there are no issues to be identified; but more often there will be a claim if one reads the documents carefully even if it might require an amendment. At paragraph 31 of the judgement it stated respondents seeking strike out should not see it as a way of avoiding having to get to grips with the claim. They need to assist the employment tribunal in identifying what on a fair reading of the pleadings and other key documents in which the claimant sets out the case the claims and issues are. Further the EAT observed that no one gains by truly hopeless cases being pursued to a hearing but whether a claim has reasonable prospects of success turns on factual issues that are disputed it is highly unlikely that a strikeout will be appropriate.
18. In **Malik v Birmingham City Council EAT 0027/19** the President of the EAT stated there is an obligation to take the claimant's case at its highest for the purposes of a strike out application particularly where a litigant in person is involved requires the tribunal to do more than simply ask the claimant to be taken to the relevant material. The tribunal should carefully consider the claim as pleaded as set out in any relevant supporting documentation before concluding that there is nothing of substance behind it.
19. In the case of **Hemdan v Ishmail UKEAT/0021/16** Mrs Justice Simler (as she was then) stated that the purpose of a deposit order is not emphatically to make it difficult to access justice or to affect a strike out through the back door. The test for ordering payment of a deposit is that the party has little reasonable

prospect of success in relation to a specific allegation argument or response in contrast to the test for a strike out which requires a tribunal to be satisfied that there is no reasonable prospect of success. 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. 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 the 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. In that particular case the EAT substituted a deposit order granted against the claimant (a trafficked individual) to a nominal sum in respect of each allegation but £1 each per allegation. In her judgement Mrs. Justice Simler at paragraph 14 stated tribunals should be alive to the possibility of communication difficulties that might affect or compromise understanding of the allegation or claim. She went on to say whilst on a literal reading of the three allegations there were inconsistencies between those allegations and the evidence she gave minor amendments to the wording of the allegations may well have addressed the inconsistencies without significantly altering their substance in those circumstances we would expect some leeway to have been afforded by the Tribunal.

Conclusions

20. At the hearing on 27 September 2024 Judge Flood had some concerns that the claims and the issues listed were not truly the claimant's case. Today the claimant has confirmed that the list of issues contained in that order is her case before this tribunal and has provided some additional information and also clarification of her detriment complaints. The Tribunal is satisfied in accordance with **Moustache v Chelsea Westminster 2025 EWCA Civ 1857** a clear list of issues has been provided.
21. In respect of the allegation of direct sex or sexual orientation, the claimant's case is that other male comparators were offered the opportunity to undertake an NVQ level 6 which was funded by the respondent. She was not offered the same opportunity. The respondent's case is that it has no policy of offering this to any employee. This is a factual dispute that can only be resolved upon hearing all of the witness evidence. At the time of the claimant's redundancy the claimant had undertaken the level 6 NVQ and was compensated by the respondent. However the claimant's claim now clarified is that she was subject to less favourable treatment because it wasn't offered to her unlike her male comparators. Her case is that she was present in the office when a discussion about the NVQ level 6 qualification took place; she was not offered this opportunity but it was offered to both Liam and Greg. Although the claimant accepts she was paid eventually by the respondent (at the time of the termination of her employment) it's the fact that the opportunity wasn't offered to her at the material time when offered to two male comparators. Potentially that could amount to less favourable treatment

and a detriment in the sense of disadvantage. The claimant also says at the material time of the discussion she had been employed by the respondent for some time whilst both Liam and Greg who were offered the opportunity were on probation so she believes that it was because she was a woman or because of her sexual orientation.

22. The Tribunal determined there is a dispute of fact here which has to be determined. The Tribunal cannot say without hearing all of the evidence that the claimant has no reasonable prospect of succeeding in this allegation or that she has little reasonable prospect. The very nature of discrimination claims is that they are fact sensitive and require the hearing of the evidence to be challenged and tested. The Tribunal considers in the circumstances where there is a factual dispute it is inappropriate to make any summary assessment (see **Cox v Adecco**). The tribunal makes no order in respect of the discrimination allegation.
23. The claimant clarified today that the five matters listed by Employment Judge Flood at paragraph 4 of her order are the whistle blowing complaints she said she made. The respondent was given an opportunity to seek further clarification at the hearing today of the claimant's claims. The alleged public interest disclosures consist as follows :-
24. On 18 July 2023 the claimant alleges that she sent an e-mail to Ken Mulpeter regarding the removal of company property from site. This appears to an allegation concerning a criminal offence. The parties have not addressed me in terms of public interest of this allegation but generally a matter of criminal offence which has implications on a democratic and civil society could well amount to a matter in the public interest.
25. The claimant alleges she informed the respondent's health and safety officer at some point in 2023 that the site staff were failing to comply with a legal obligation to complete signing in sheets. The claimant identified today that this in fact took place on the 17 of October 2023. The claimant also clarified today that this concerned the issue of "CDM rules" which necessitate a site manager being on site. This may be a health and safety issue/breach of a legal obligation which may have wider impact on the public at large.
26. Between August 2022 to May 2023 by telephone and e-mail the claimant alleges that she informed Shalie Wright that she was continually being left on the site on her own. Again this may be a health and safety issue/breach of a legal obligation which could have wider impact on the public.
27. In January 2023 verbally the claimant alleges that she informed Kelly Joyce and customer care that she was continued being left on site on her own. Again this may be a breach of health and safety/a legal obligation with health and safety impacting on the public at large.
28. On 17 of October 2023 by telephone the claimant reported to David Banyard her concerns about site management not attending before 9:00 a.m. Again that this may be a breach of a legal obligation such as the CDM rules which require a site manager being on site at all times and may have implications to the public.

29. In the absence of evidence and the evidence being tested and challenged at a fair trial the tribunal is unable to say that these matters themselves have no reasonable prospect or little reasonable prospect of success of amounting to qualifying public interest disclosures.
30. The claimant stated all of these matters impacted on her selection and ultimate termination of her employment. In her submission today the claimant was unable to say whether Kelly Joyce in customer care had informed anyone else about her public interest disclosure because she simply didn't know. The tribunal cannot say that that particular allegation of public interest disclosure has no reasonable prospect of success because when tested at a trial the claimant may be able to establish that Kelly Joyce did indeed pass on the claimant's concerns to Mr. Mulpeter or Mr Evans (who she said subjected her to detriments) or the individual who selected the claimant for redundancy. However the fact that the claimant is unsure that she did, leads the tribunal to conclude that it is an allegation which has little reasonable prospect of success.
31. The claimant states all 5 public interest disclosures led to her subject being subject to a detriment. The tribunal determined that this has some difficulties for the claimant by reason of the timing of the alleged disclosures and the alleged detriments on the basis that the detriments relied upon took place between 8 of September to the 22 of September 2023. The claimant contends that it was a detriment that when the sites had assistant managers she was required to move to different sites and was placed under pressure to ensure works were completed on time. Upon hearing all the evidence the Tribunal may consider these to be detriments as in disadvantages and how it impacted on the claimant. However allegations 4.1.1.2 and allegation 4.1.1.5 can have no causative link to the claimant's alleged detriments as the disclosures occur after (namely on 17 October 2023) the alleged detriments took place (8 to 22 September 2023). The tribunal determines to strike out those alleged public interest disclosures in respect of the alleged detriments only but does not strike them out in respect of the automatic unfair dismissal claim.

Summary

32. Using Judge Flood's case management order, allegation of 4.1.1.4 is subject to a deposit order in respect of both (a)the detriment and (b) automatic unfair dismissal claim. The Tribunal determined that a reasonable amount taking account of the claimant's ability pay would be £200 per allegation.
33. The claimant's complaints at 4.1.1.2 and 4.1.1.5 in respect of her detriment complaints are struck out.
34. The Tribunal went on to case manage the hearing.

Employment Judge Wedderspoon

Date: 23 April 2025

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