EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss S Bharaj	**v**	**Santander UK PLC**

Heard at: **Central London Employment Tribunal (By CVP videolink)**

On: **2 May 2025**

Before: **Employment Judge Brown**

Appearances:
For the Claimant: **Mr A Allen KC**
For the Respondents: **Mr P Nicholls KC**

JUDGMENT AT A PUBLIC PRELIMINARY HEARING

The judgment of the Tribunal is that:

1. **The Tribunal does not have jurisdiction to hear the Claimant's complaints of protected disclosure detriment e. and g. (and all its subparagraphs) because they are barred by res judicata, cause of action estoppel.**

2. **Accordingly, the following allegations e. and g. are struck out:**

   i. **e. on a date or dates unknown as yet to the Claimant, between July and 31 October 2024, told the FCA that there were conduct issues in relation to the Claimant's conduct and that the Claimant had accepted them (para 9 2025 Particulars of Claim);**
   ii. **g. attempting to undermine and discredit the Claimant both in relation to the credibility of her alleged disclosures and her character (and all its subparagraphs).**

REASONS

This Hearing

1. This was a Public Preliminary Hearing.

2. The parties agreed that Claimant's 2 current claims - her 2024 claim (2202090/2024) and her 2025 claim (6006485/2025) should be joined and dealt with together.

3. The Notice of Hearing dated 18 February 2025 did not state the specific issues to be decided at this preliminary hearing.

4. The Respondent had made an application to strike out the Claimant's claims. It contended, broadly, that the claims duplicated an earlier claim brought by the Claimant in 2018, which had been struck out.

5. At the start of this hearing, the Claimant considerably refined and reduced the complaints she pursued in the current 2024 and 2025 claims. She withdrew her claims against the Financial Conduct Authority and she withdrew all complaints under the Equality Act 2010.

6. Mr Allen KC, for the Claimant, produced a List of Issues in the 2024 and 2025 claims. He also presented a Claimant's position statement. In it, the Claimant stated that she relied on the protected disclosures in her 2018 claim. She said that no determination had been made of whether she made such disclosures in that claim. She said that her 2024 and 2025 claims related to different alleged post-employment detriments, for the period *after* the period covered by the 2018 claim. She said that she had become aware of those later detriments from materials disclosed to her by the FCA on 2 October 2023, 20 December 2023, 21 March 2024, 3 May 2024, 14 June 2024, 28 June 2024, 13 February 2025 and ongoing.

7. Mr Allen KC confirmed that the Claimant relied on the same 9 protected disclosures as in the 2018 claim, and that her 2025 claim added 2 more – protected disclosures 10 and 11.

8. The only detriments which the Claimant therefore pursued were as follows:

> ***2024 claim (discovered by the Claimant in the period after October 2023, on a date or dates unknown to the Claimant1 post-dating her employment****)*
>
> *a. allege to the FCA that the Claimant was or may have been responsible for the theft of the Orford Project documents (para 36(b) 2024 Particulars of Claim);*
>
> *b. misrepresented that the disclosures in her 2018 claim were both post-employment and not protected in any event, to the FCA undermining the Claimant's credibility, and delaying acknowledgement of her whistleblowing status by the FCA (para 36(e) 2024 Particulars of Claim);*
>
> *c. deliberately acted to prevent the Claimant from holding a regulated position, namely SMF17 MLRO (requiring regulatory approval) (paras 16, 40-41 2024 Particulars of Claim);*

d. damaged the Claimant's reputation and credibility within the FCA and used the FCA to harm the Claimant's career (para 38 2024 Particulars of Claim);

2025 Claim

e. on a date or dates unknown as yet to the Claimant, between July and 31 October 2024, told the FCA that there were conduct issues in relation to the Claimant's conduct and that the Claimant had accepted them (para 9 2025 Particulars of Claim);

f. in the period between July and 31 October 2024, failed to disclose to the FCA the documents or classes of documents listed at (the first) para 10 2025 Particulars of Claim which would have backed up the Claimant's assertion that she had made protected disclosures - but rather focused on the Claimant's conduct and performance in order to portray her in a negative light (para 11 2025 Particulars of Claim);

g. attempting to undermine and discredit the Claimant both in relation to the credibility of her alleged disclosures and her character:

(i) on 24 December 2020 in an email to the FCA disclosing excerpts from the Claimant's witness statement in the 2018 litigation (para 92 2025 Particulars of Claim);

(ii) on 8 August 2023 in an update to the FCA implying that the Claimant's 2018 claim was struck out on its merits (rather than as actually happened that it was struck out after the Claimant failed to comply with a case management order) (para 93 2025 Particulars of Claim);

(iii) on 10 November 2023 in an email to the FCA implying that the Claimant was a serial or vexatious litigant (para 94 2025 Particulars of Claim);

(iv) on 29 July 2024 in an email to the Claimant threatening to share information with the FCA – which included incorrect assertions impugning the Claimant's character and attempting to mislead the FCA as to the credibility of her disclosures (paras 95-98 2025 Particulars of Claim);

(v) on or before 31 October 2024 in its communications to the FCA implying or stating that the Claimant had not reasonably believed it was in the public interest to make the disclosures she had made in 2017 (para 101 2025 Particulars of Claim);

(vi) in a further investigation commissioned by the Respondent from TLT which did not properly engage with the Claimant; did not disclose the evidence that they sought to rely on and did not give the Claimant an opportunity to comment prior to the TLT report being disclosed to the FCA.

9. Mr Nicholls KC, for the Respondent, accepted that the Claimant's position was that those detriments were the only ones which she now pursued.

10. The parties then agreed that I needed to decide the following things at this hearing:

    10.1. Whether the Claimant's 2024 and 2025 claims pleaded those detriments;

    10.2. Whether to strike out the claims for those protected disclosure detriments.

Whether the Detriments Were Pleaded in the 2024 and 2025 claims

11. The Respondent accepted that detriments a. b. and g. were pleaded in the 2024 and 2025 claims. It contended that c. d. e. and f. were not.

12. I decided that all the disputed detriments were pleaded in the claims.

13. Of *c. " deliberately acted to prevent the Claimant from holding a regulated position, namely SMF17 MLRO (requiring regulatory approval) (paras 16, 40-41 2024 Particulars of Claim);"* I decided that:

    13.1. The Claimant had pleaded, at paragraph 16 of her 2024 Particulars of Claim, "As I set out at paragraphs 19, 28, 29 and 36, the persistent harassment, misrepresentations and vexatious undermining the Respondents have orchestrated against me has made it nearly impossible for me to hold a regulated position and be employed on a permanent basis within the financial services industry."
    13.2. She had also pleaded, at paragraph 40 of those Particulars, "The Respondents unlawful conduct has had a career ending impact on my ability to hold permanent regulated positions within the financial services industry. … It is my belief that the actions of the Respondents were deliberate and designed to prevent me from achieving my potential, denying me a full and successful career."
    13.3. The Claimant had pleaded that the Respondent had engaged in a deliberate course of conduct, designed and intended to stop her holding regulated position in the industry.
    13.4. That was the essence of detriment c. The Claimant had pleaded detriment c.

14. Of *d. ". damaged the Claimant's reputation and credibility within the FCA and used the FCA to harm the Claimant's career (para 38 2024 Particulars of Claim);"* I decided that:

    14.1. Paragraph 16 of the Claimant's 2024 Particulars pleaded that the Respondent had made misrepresentations and had vexatiously undermined the Claimant – and that the Respondent and FCA had acted together, in that they "orchestrated" their actions in this regard;
    14.2. At 36e. of her 2024 Particulars, the Claimant pleaded, " … the First Respondent incorrectly asserts that I made allegations of protected

disclosures post-employment. This misrepresentation undermines my credibility, and the FCA's acceptance of this definition is legally incorrect."

14.3. Paragraph 38 of her 2024 Particulars pleaded, "… the First Respondent ruthlessly determined to destroy my reputation and credibility, using every avenue possible to do so. In this instance, collusion to victimise further for using the Second Respondent [the FCA]."

14.4. As stated above, at paragraph 40 of the 2024 Particulars, she said that the Respondent and FCA had acted to deny her a successful career;

14.5. The Claimant therefore pleaded that the Respondent had damaged the Claimant's reputation and credibility, including by making misrepresentations about her protected disclosures to the FCA, and had damaged her career, and that it had colluded with the FCA in doing so.

14.6. That was the essence of detriment d. The Claimant had pleaded detriment d.

15. Of detriment e. "*on a date or dates unknown as yet to the Claimant, between July and 31 October 2024, told the FCA that there were conduct issues in relation to the Claimant's conduct and that the Claimant had accepted them (para 9 2025 Particulars of Claim);* I decided that:

15.1. The Claimant had pleaded, at paragraph 9 of her 2025 Particulars of Claim: "… on 31 October 2024 the Claimant was made aware that the Respondent had provided information to the FCA that suggested there were conduct issues relating to the Claimant and that she had "accepted them" The Claimant was not privy to the basis of this assertion and denies both."

15.2. The Claimant had therefore pleaded detriment e.

16. Of detriment f. *f. in the period between July and 31 October 2024, failed to disclose to the FCA the documents or classes of documents listed at (the first) para 10 2025 Particulars of Claim which would have backed up the Claimant's assertion that she had made protected disclosures - but rather focused on the Claimant's conduct and performance in order to portray her in a negative light (para 11 2025 Particulars of Claim);* I decided that:

16.1. In paragraph 10 of her 2025 particulars, the Claimant set out, at paragraph 10, what documents the Respondent ought to have disclosed to the FCA; and

16.2. At paragraph 11, she asserted, "The 13/02/2025 bundle did not contain, … any of the anticipated documents. … The documents disclosed focus entirely on the Claimant's conduct and performance. … This was a repeated attempt by the Respondent to divert the investigation into its conduct, to the Claimant's conduct and undermine her credibility …".

16.3. The Claimant therefore pleaded detriment f.

Strike Out Application

17. The Respondent then made its strike out application, in relation to detriments a., b., e. and g..

18. Mr Nicholls KC, for the Respondent, presented a helpful skeleton argument, with authorities, and both parties made oral submissions.

19. The background was that the Claimant had presented an earlier claim on 16 April 2018. That concerned matters arising from her period of employment with the Respondent which had ended on 2 April 2018. That claim was struck out at a hearing in January 2021, by a judgment dated 1 March 2021.

20. The Claimant acknowledged that she had pleaded many of the facts of 2018 claim in her 2024 and 2025 complaints. Mr Allen KC, for the Claimant, said that she had done so because the factual background was relevant and therefore mentioned in the new claims – and that the protected disclosures which the Claimant now seeks to rely on overlap with those relied on in the 2018 claim.

21. It was not in dispute that there was no substantive determination of whether alleged protected disclosures were made out in the 2018 claim.

Law - Res judicata; *Henderson v Henderson*

22. In *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] 4 All ER 715, the Supreme Court summarised the law relating to res judicata at paragraphs [17]-[19].

23. At [17] Lord Sumption, giving the judgment of the Court, said,

> "Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins.
> …
> The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is 'cause of action estoppel'. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see Conquer v Boot [1928] 2 KB 336, [1928] All ER Rep 120. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment.
> …….
> Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: Duchess of Kingston's Case (1776) 20 St Tr 355, [1775–1802] All ER Rep 623. 'Issue estoppel' was the expression devised to describe this principle by Higgins J in Hoystead v Taxation Comr (1921) 29 CLR 537 at 561 and adopted by Diplock LJ in Thoday v Thoday [1964] 1 All ER 341 at 352, [1964] P 181 at 197–198. Fifth, there is the principle first formulated by Wigram V-C in Henderson v Henderson (1843) 3 Hare 100 at 115, [1843–60] All ER Rep 378 at 381–382, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

24. At paragraph [18], Lord Sumption said, of the *Henderson v Henderson* principle,

25. …where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case."

26. However, it is not the case that, just because a Claimant could have brought claims forward in an earlier claim, the rule in *Henderson v Henderson* automatically applies to prevent the Claimant from bringing forward these claims later.

27. In *Johnson v Gore Wood & Co*. [2002] 2 AC 1 (HL) (quoted in Virgin Atlantic v Zodiac at paragraph 24 page 731 e-f) Lord Bingham set out the approach which should be taken"

    "It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not …

    While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances."

Decision on Strike Out

28. Applying the law to these claims, I decided that:

    28.1. Allegations of detriment a. and b. were not barred by any principle of res judicata, including issue estoppel and the rule in *Henderson v Henderson*. Further I did not consider that they had no reasonable prospects of success because they were said to be out of time.

    28.2. The allegations of detriment in e. and the whole of g. were barred by the principle of res judicata / cause of action estoppel.

29. Of a. "2024 claim (discovered by the Claimant in the period after October 2023, on a date or dates unknown to the Claimant post-dating her employment) allege to the

FCA that the Claimant was or may have been responsible for the theft of the Orford Project documents (para 36(b) 2024 Particulars of Claim)", I decided:

29.1. The Respondent had contended that the Claimant had sought disclosure of the Orford documents in the 2018 case and that, therefore, the Orford matter was in issue. I disagreed. There was nothing before me to show that any part of allegation a. was in issue in the 2018 case: there was nothing to indicate that it was an issue that the Claimant may have responsible for theft of documents; or that the R alleged this to the FCA; or that, in doing so, it subjected her to a detriment.

29.2. As none of those elements of the allegation were in issue in the 2018 case, that complaint had clearly not determined as res judicata, nor was there "some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties" – there was no issue estoppel.

29.3. Applying *Henderson v Henderson* and *Johnson v Gore Wood & Co*., on the Claimant's case, she did not know that Respondent had made this allegation to the FCA until after October 2023. Her allegation of detriment could not have been raised in the 2018 litigation as the Claimant did not known of it. The earlier claim was presented on 16 April 2018 and was struck out at a hearing in January 2021, by a judgment dated 1 March 2021. She is not abusing the process of the court by bringing an allegation of detriment which she did not know of during that time.

30. Of b. "misrepresented that the disclosures in her 2018 claim were both post-employment and not protected in any event, to the FCA undermining the Claimant's credibility, and delaying acknowledgement of her whistleblowing status by the FCA (para 36(e) 2024 Particulars of Claim)", I decided:

30.1. The Respondent contended that this allegation was barred by issue estoppel because the Respondent had alleged, in the 2018 proceedings, that the Claimant's disclosures were post dismissal. However, I considered that, in order for issue estoppel to operate, there must be some issue which is necessarily common to both, was decided on the earlier occasion, and is binding on the parties.

30.2. It was not in dispute between the parties that the Claimant can rely, in these proceedings, on protected disclosures which she alleged in the previous proceedings. It was not determined in previous proceedings that she had not made disclosures.

30.3. The issues in allegation b. involve what the Respondent said to the FCA: the allegation is that the Respondent misrepresented to the FCA that the disclosures were post-employment; that it undermined her credibility in doing so and delayed acknowledgement of her whistleblower status by the FCA.

30.4. None of those matters were in issue, or were determined in previous proceedings. I accept that the 2018 proceedings were struck out and that

that dismissal of her claims is binding on the Claimant in this case. However, the Respondent has not shown what the issue in the 2018 was which was "necessarily common to both" the 2018 case and this allegation and was decided on the earlier occasion and is binding on the parties.

30.5. Again, the Claimant says that she discovered this alleged detriment after October 2023. As above, I have found that she is not abusing the process of the court by bringing an allegation of detriment which she did not know of during the 2018 case.

31. Regarding both allegations a. and b., I did not accept that these allegations were bound to fail on time issues. Knowledge is relevant to the issue of whether claims could have been brought in time and whether time should be extended. There is also an issue as to whether there was a series of acts, the last of which time. I am not in a position to make a determination of those matters at this hearing – and certainly not without hearing evidence.

32. As to allegation e. "on a date or dates unknown as yet to the Claimant, between July and 31 October 2024, told the FCA that there were conduct issues in relation to the Claimant's conduct and that the Claimant had accepted them":

32.1. I accepted Mr Nicholls KC's submission for the Respondent that this allegation was in the Claimant's 2024 amendment application, p213. She had applied to amend her 2024 claim to allege, at paragraph 99 of her amendment, " 99. Stating to the regulator that there were performance or conduct issues as if these were established facts was misleading. … This is of great importance as the comments are not statements of fact, but rather derisory insinuations to undermine her character and credibility to the FCA as the body which determines her future roles within the Financial Services sector."

32.2. At a hearing on 14 February 2025, EJ Bunting had refused the Claimant's application to amend her claim to add this allegation. At paragraph 192 of his judgment, promulgated on 21 March 2025, he said. "That claim is out of time in relation to all allegations."

32.3. The first principle of res judicata, "is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is 'cause of action estoppel'."

32.4. Applying that, this cause of action was not allowed to proceed by EJ Bunting, and was held to be out of time. The finding cannot be challenged by the Claimant in these proceedings. Allegation e. cannot proceed.

33. As to allegation g. "attempting to undermine and discredit the Claimant both in relation to the credibility of her alleged disclosures and her character" and its subparagraphs i – vi:

33.1. Mr Allen KC conceded that EJ Bunting had made a determination that the Claimant was not permitted to add subparagraphs i – v by way of amendment, but he contended that EJ Bunting had made no determination in relation to paragraph g.vi.

33.2. However, I accepted Mr Nicholls KC's argument that the Claimant's amendment application included, at paragraph 102, "The further investigation completed by TLT LLP: refused to properly engage with the Claimant: did not fully disclose what evidence they sought to rely on; and did not provided the report/supporting evidence which they had given to the FCA in order to support their conclusions. The Claimant was again not given an opportunity to comment on this investigation prior to its disclosure to the FCA." That was the same as allegation vi, which read, (vi) in a further investigation commissioned by the Respondent from TLT which did not properly engage with the Claimant; did not disclose the evidence that they sought to rely on and did not give the Claimant an opportunity to comment prior to the TLT report being disclosed to the FCA."

33.3. The whole of allegation g. is therefore caught by the first principle of res judicata. It was not allowed to proceed by EJ Bunting, and was held to be out of time. The finding cannot be challenged by the Claimant in these proceedings

34. Accordingly, I struck out allegations of protected disclosure detriment e. and g. The claims proceed on the basis only of protected disclosure detriments allegations a. – d. and f.

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Employment Judge **Brown**
Date: 8 May 2025

SENT to the PARTIES ON

14 May 2025

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FOR THE TRIBUNAL OFFICE