



# EMPLOYMENT TRIBUNALS

**Claimant:****Respondent**

Ilda Esteves

-v- Imperial College Healthcare NHS Trust

**Heard at:** London Central (in public; by CVP)

**On:** 1<sup>st</sup> May 2025

**Before:** Employment Judge Tueje

**Appearances:**

For the claimant: In person (assisted by her partner Mr Fernandes)

For the respondent: Ms Lee (counsel)

## RESERVED JUDGMENT

1. The following matters contained in the Claimant's e-mails sent on 22<sup>nd</sup> May 2023 and 6<sup>th</sup> July 2023 are struck out on the grounds that the manner in which the issues were brought was unreasonable, amount to an abuse of process and/or is contrary to *Henderson v Henderson*:
  - 1.1 Ms Holder's enquiries regarding her son's age;
  - 1.2 Ms Holder accusing the Claimant of lying about her suitability for the post;
  - 1.3 Marina shouting at the Claimant in May 2023 in front of colleagues, patients and their relatives; and
  - 1.4 Ms Graham not addressing Marina's behaviour.
2. The following matters contained in the Claimant's e-mails sent on 22<sup>nd</sup> May 2023 and 6<sup>th</sup> July 2023 are struck out based on the principle of *res judicata*:
  - 2.1 Ms Holder's refusal to provide training;
  - 2.2 Ms Holder mocking the Claimant's notebook;
  - 2.3 Ms Holder making degrading comments about DBS checks;
  - 2.4 Ms Holder leaving the Claimant's CV in a public area;
  - 2.5 Ms Holder's humiliating remarks when terminating the Claimant's assignment;
  - 2.6 Ms Graham "forced" the Claimant to provide her date of birth and national insurance number unnecessarily;
  - 2.7 Ms Graham tearing up training notes made by the Claimant; and
  - 2.8 Ms Graham discriminating against the Claimant by failing to shortlist her for a job.

3. Accordingly, any of the matters set out in paragraphs 1 to 2.8 above are struck out, insofar (but only insofar) as they are relied upon in the following paragraphs of the particulars of claim:  
Paragraph 42(a);  
Paragraph 43(a);  
Paragraph 45;  
Paragraph 46; and  
Paragraph 47.
4. The complaint of not being provided with an employment contract or the terms and conditions and/or particulars of employment is struck out based on the principle of *res judicata* and/or *Henderson v Henderson*.
5. The claim shall proceed on all other matters.

## REASONS

1. This matter was listed for a public preliminary hearing by an order made by Employment Judge Emery on 19<sup>th</sup> December 2024, which reads:

1.1 *The preliminary hearing will consider the following:*

- (i) *Whether some or all of the claims should be struck-out on the principle of 'res-judicata' - that some or all of the allegations in the claim have already been determined by way of the strike-out of the claimant's prior claim (number 2214008/2023) on 27 February 2024 and 9 August 2024.*
- (ii) *Whether some or all of the claims have been brought outside of the applicable time-limits, and if so whether a deposit should be ordered to be paid, on the basis that there is little prospect of the time-limit being extended on a just and equitable basis at the full merits hearing.*
- (iii) *Whether or not some of all of the claims should be struck-out on the basis that they stand no reasonable prospect of succeeding, or the manner in which the proceedings have been conducted by the claimant have been unreasonable, or should a deposit ordered to be made on the basis that the claims stand little reasonable prospect of succeeding.*

1.2 *To make such further Order and directions as necessary.*

2. The Respondent is an NHS Trust. The hearing bundle (at pages 139 to 140) contains an e-mail sent by the Respondent to the Claimant on 7<sup>th</sup> October 2022 which states: "*I have attached your new Bank contract*". There is a sample bank agreement at pages 141 to 153 of the hearing bundle. The Claimant worked on an assignment for the Respondent on 21<sup>st</sup> March 2023 and 23<sup>rd</sup> March 2023. She

was given a second assignment, and worked on 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> May 2023. It's understood the Claimant has not worked a bank shift for the Respondent since then.

### **Claim Number 2214008/2023**

3. Shortly after her second assignment, she referred her case to ACAS: early conciliation started on 19<sup>th</sup> June 2023 and ended on 31<sup>st</sup> July 2023. She presented a claim form on 20<sup>th</sup> August 2023 appending particulars of claim. Paragraph 1 states the Claimant “... *held three separate positions as a Band 2 Bank Administrator with Imperial College Healthcare NHS Trust...*” The particulars of claim also sets out the complaints relied on, which are summarised as follows (in the order these are set out in the particulars of claim):
4. Protected disclosure
  - 4.1 Relying on an incident on 21<sup>st</sup> March 2023, relating to an alleged breach of GDPR for leaving her CV lying on a table in an office staff had access to.
  - 4.2 Relying on a complaint e-mailed to HR Advisors on 22<sup>nd</sup> May 2023.
5. Protected act
  - 5.1 Relying on her messaging and calling Michelle Graham on 11<sup>th</sup> May 2023 to inform her she would not be coming to work due to the unwanted conduct and mistreatment by Marina.
  - 5.2 Relying on a complaint e-mailed to HR Advisors on 22<sup>nd</sup> May 2023.
6. Direct race and/or age discrimination
  - 6.1 Sharon Holder’s failure and/or refusal to send her for training , and for being rude, unsupportive, critical and mocking of her on 21<sup>st</sup> March 2023.
  - 6.2 The 21<sup>st</sup> March 2023 incident relating to her CV (see paragraph 4.1 above).
  - 6.3 On 23<sup>rd</sup> March 2023, Ms Holder terminated the claimant’s assignment without providing one week’s notice, claiming it was too difficult to train the claimant. She was not paid for the two days’ work she had done.
  - 6.4 For not shortlisting the claimant for the Paediatric Ward Administrator’s post which she applied for on 9<sup>th</sup> May 2023.
  - 6.5 On 10<sup>th</sup> May 2023 Ms Graham forced the claimant to leave the assignment and tore up the claimant’s training notes.
  - 6.6 Ms Holder told her, in the presence of other staff members, that “*when you people come here your DBS should be checked.*”<sup>1</sup>

---

<sup>1</sup> This complaint was subsequently added (see paragraph 13 below)

7. Age and/or race related harassment

- 7.1 Ms Holder's conduct on 21<sup>st</sup> March 2023 (see paragraph 6.1 above).
- 7.2 The 21<sup>st</sup> March 2023 incident relating to her CV (see paragraph 4.1 above).
- 7.3 Termination of the claimant's assignment on 23<sup>rd</sup> March 2023 (see paragraph 6.3 above).
- 7.4 On 10<sup>th</sup> May 2023 Ms Graham forced the claimant to leave the assignment and tore up the claimant's training notes.
- 7.5 Ms Holder told her, in the presence of other staff members, that *"when you people come here your DBS should be checked."*<sup>2</sup>

8. Less favourable treatment of part-time workers

- 8.1 Ms Holder's conduct on 21<sup>st</sup> March 2023 (see paragraph 6.1 above).
- 8.2 Termination of the claimant's assignment on 23<sup>rd</sup> March 2023 (see paragraph 6.3 above).
- 8.3 On 10<sup>th</sup> May 2023 Ms Graham forced the claimant to leave the assignment and tore up the claimant's training notes.

9. Victimisation

- 9.1 For not shortlisting the claimant for the Paediatric Ward Administrator's post which she applied for on 9<sup>th</sup> May 2023.
- 9.2 On 10<sup>th</sup> May 2023 Ms Graham forced the claimant to leave the assignment and tore up the claimant's training notes.

10. Detriment for making protected disclosures

- 10.1 Termination of the claimant's assignment on 23<sup>rd</sup> March 2023 (see paragraph 6.3 above).
- 10.2 For not shortlisting the claimant for the Paediatric Ward Administrator's post which she applied for on 9<sup>th</sup> May 2023.
- 10.3 On 10<sup>th</sup> May 2023 Ms Graham forced the claimant to leave the assignment and tore up the claimant's training notes.

11. There was a preliminary hearing for case management on 25<sup>th</sup> October 2023, at which Judge Plowright listed the matter for a public preliminary hearing on 27<sup>th</sup> February 2024. The purpose of that hearing included dealing with the Respondent's prospective strike out application.

---

<sup>2</sup> This complaint was subsequently added (see paragraph 13 below)

12. Prior to the preliminary hearing, by a letter dated 22<sup>nd</sup> February 2024 the Respondent applied to strike out the claim.
13. In the interim, the claimant had sought to rely on an incident in support of the direct discrimination and harassment complaints, in which she says Ms Holder told her, in the presence of other staff members, that “*when you people come here your DBS should be checked.*” She was given permission to amend her claim to include these complaints.
14. The public preliminary hearing on 27<sup>th</sup> February 2024 was before Judge Peer, whose judgment is dated 11<sup>th</sup> March 2024; it was sent to the parties on 26<sup>th</sup> March 2024. Insofar as relates to the Respondent’s strike out application, Judge Peer held as follows:

*(3)The claimant’s allegations of direct race discrimination, direct age discrimination, harassment related to race and harassment related to age other than the allegation that she was told ‘when you people come here, your DBS should be checked’ are struck out because they have no reasonable prospect of success.*

*(4)The claimant’s allegation of direct race discrimination that she was told ‘when you people come here, your DBS should be checked’ has little reasonable prospect of success and the claimant is ordered to pay a deposit of £50 as a condition of continuing to advance that allegation.*

*(5)The claimant’s allegation of harassment related to race that she was told ‘when you people come here, your DBS should be checked’ has little reasonable prospect of success and the claimant is ordered to pay a deposit of £50 as a condition of continuing to advance that allegation.*

*(6)The claimant’s allegations of victimisation are struck out because they have no reasonable prospect of success.*

*(7)The claimant’s allegations of being subjected to detriments for making protected disclosures are struck out because they have no reasonable prospects of success.*

*(8)The claimant’s claim that she was subjected to less favourable treatment because she was a part-time worker is struck out because it has no reasonable prospects of success.*

15. Regarding the complaint of less favourable treatment of part-time workers, Judge Peer dealt with this aspect of the case in the judgment as follows:

53. *A Bank Registration Agreement for Temporary Workers was before me (HB 75-87). This is a sample agreement dated May 2012. At the hearing before me, the claimant submitted that this was not the agreement that applied to her because it did not have her name and she had not signed*

*it. I sought to clarify the claimant's position but the claimant continued to maintain not merely that the agreement in the HB did not have her name but that the agreement did not set out the relationship between her and the respondent at all. Allowing for some confusion as to the question asked and the context of the hearing, this was a surprising contention inconsistent with the claimant's own pleadings in which she refers to herself as a bank worker.*

54. *The claimant's claim form records at 8.1. the statement 'TLF because I am bank staff and/or part time'. The claimant's particulars of claim refer at paragraph 1 to status as 'a Bank administrator- band 2' although also to 'employed' and at paragraph 29 'Less favourable treatment because I am bank staff and/or part-time staff'. The claimant's pleadings are predicated on her status as bank staff and related to work on separate assignments in March 2023 and May 2023. The non-acceptance at the preliminary hearing that the Bank Registration Agreement is the relevant agreement was not accompanied by any detail or suggestion as to what the relevant agreement might be such as any other or updated agreement for bank staff or bank administrators. In all the circumstance given the material available to me and the claimant's own pleadings, the claimant is to be considered as having the status of bank staff.*

16. Judge Peer concluded as follows:

67. *Regulation 3 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 provides that the regulations apply to a worker who was a full-time worker and following a termination or variation of contract worked for lower weekly hours than they worked immediately before the termination or variation. The claimant is bank staff and cannot fall within scope of the 2000 Regulations. I have therefore concluded that there can be no reasonable prospect of the less favourable treatment on the ground of part-time worker status succeeding.*

17. The Claimant did not pay the deposit in accordance with Judge Peer's deposit order, accordingly the complaints of direct race discrimination and race related harassment based on the comments made regarding DBS checks, were struck out. This is recorded in the order dated 9<sup>th</sup> August 2024.

### **Claim Number 2223380/2024**

18. As to the current claim, early conciliation began on 12<sup>th</sup> May 2024, it ended on 23<sup>rd</sup> June 2024, and the claim form was presented on 21<sup>st</sup> July 2024 appending particulars of claim. A summary of the basis of these complaints is set out below, with the paragraph reference in the particulars of claim.

19. Direct race discrimination (paragraph 42 of the particulars of claim).

- 19.1 This relates to the Respondent's delay in dealing with the Claimant's grievance submitted on 22<sup>nd</sup> May 2023 and 6<sup>th</sup> July 2023 (paragraph 42(a))

of the particulars of claim). The Claimant states her 6<sup>th</sup> July 2023 grievance raised matters additional to those raised on 22<sup>nd</sup> May 2023, but she does not specify what the additional matters are.

19.2 The Respondent maintains that the Claimant is seeking to re-litigate matters already dealt with. It argues the grievance regarding her assignments with the Respondent in March 2023 and May 2023 were the subject of her grievance submitted on 22<sup>nd</sup> May 2023 and 6<sup>th</sup> July 2023, are as follows:

- (i) Ms Holder's refusal to provide training;
- (ii) Ms Holder's indirect enquiries around her age
- (iii) Ms Holder mocking the Claimant's notebook;
- (iv) Ms Holder accusing the Claimant of lying about her suitability for the post;
- (v) Ms Holder making degrading comments about DBS checks;
- (vi) Ms Holder leaving the Claimant's CV in a public area;
- (vii) Ms Holder's humiliating marks when terminating the Claimant's assignment;
- (viii) Marina shouting at the Claimant in May 2023 in front of colleagues, patients and their relatives;
- (ix) Ms Graham not addressing Marina's behaviour;
- (x) Ms Graham "forced" the Claimant to provide her date of birth and national insurance number unnecessarily.
- (xi) Ms Graham tearing up training notes made by the Claimant;
- (xii) Ms Graham discriminating against the Claimant by failing to shortlist her for a job.

19.3 Not upholding the Claimant's complaint made on 18<sup>th</sup> February 2024 regarding Danny Humphreys recording their meeting and sharing the recording with Colleen Sherlock, Elizabeth Grogan and others without the Claimant's consent (paragraph 42(b) of the particulars of claim).

19.4 For the delay in providing or not providing the information for the Subject Access Request made by the Claimant on 9<sup>th</sup> June 2024 (paragraph 42(c) of the particulars of claim).

20. Detriment for making protected disclosure, protected act (paragraph 43 of the particulars of claim).

20.1 This relates to the Respondent's delay in dealing with the Claimant's grievance submitted on 22<sup>nd</sup> May 2023 and 6<sup>th</sup> July 2023 (paragraph 43(a) of the particulars of claim).

20.2 For not upholding the Claimant's complaint dated 18<sup>th</sup> February 2024 regarding Mr Humphreys (paragraph 43(b) of the particulars of claim).

20.3 For Ms Sherlock preparing the outcome letter dated 15<sup>th</sup> February 2024 on behalf of Ms Grogan (paragraph 43(c) of the particulars of claim).

- 20.4 For Mr Humphreys, Ms Sherlock, Ms Grogan and Ms Weedon e-mailing the Claimant's private e-mail account without complying with the confidentiality protocols required by NHSmail. According to the particulars of claim, this took place on 16<sup>th</sup> February 2024. (paragraph 43(d) of the particulars of claim).
- 20.5 For the delay in providing or not providing all information requested in the Claimant's Subject Access Request made on 17<sup>th</sup> February 2024 and unnecessarily requesting multiple IDs (paragraph 43(e) of the particulars of claim).
- 20.6 For the delay in providing or not providing the information for the Subject Access Request made by the Claimant on 9<sup>th</sup> June 2024 (paragraph 43(f) of the particulars of claim).
- 20.7 For Ms Grogan obtaining my personal information or demographics without my consent to view if anyone has accessed my medical records. According to the particulars of claim, this took place on 17<sup>th</sup> February 2024 (paragraph 43(g) of the particulars of claim).
- 21. For not providing the employment contract or the terms and conditions of employment (paragraph 44 of the particulars of claim).
- 22. Protected disclosures ((paragraph 45 of the particulars of claim), which also rely on the following):
  - 22.1 Paragraph 28 of the particulars of claim;
  - 22.2 Paragraph 39 of the particulars of claim;
  - 22.3 Paragraph 43(a) of the particulars of claim;
  - 22.4 Paragraphs 43(b) to 43(g) of the particulars of claim.
- 23. Protected Act ((paragraph 46 of the particulars of claim), which also rely on the following):
  - 23.1 Paragraph 28 of the particulars of claim;
  - 23.2 Paragraph 30 of the particulars of claim;
  - 23.3 Paragraph 43(a) of the particulars of claim;
  - 23.4 Paragraphs 43(b) to 43(g) of the particulars of claim.
- 24. Breach of express and implied terms of contract ((paragraph 47 of the particulars of claim), which also rely on the following):
  - 24.1 Paragraph 43(a) of the particulars of claim;
  - 24.2 Paragraph 43(b) of the particulars of claim;
  - 24.3 Paragraph 43(c) of the particulars of claim;
  - 24.4 Paragraph 43(d) of the particulars of claim;
  - 24.5 Paragraph 43(f) of the particulars of claim.

**The Preliminary Hearing for Case Management on**



25. On 8<sup>th</sup> December 2024 the claimant applied to amend her claim. That application was dealt with at the preliminary hearing on 19<sup>th</sup> December 2024, and paragraph 6 of the case management order reads:

*6. The claimants application dated 8 December 2024 to amend her claim succeeds. The following allegations are added to the claim:*

*6.1 That her removal from the respondent's bank constituted an act of direct race discrimination; she says she found out about her removal from the bank in mid- October 2024;*

*6.2 Delay and obstructive communication regarding the Subject Access Request.*

26. The case management order continues:

*7. I allowed these amendments because, if what the claimant says is accurate, the claimant alleges that she experienced post-work detriments, and these allegations are arguably brought within the three-month time limit.*

*8. The respondent argues that these claims stand no reasonable prospects, and /or the subject matter was addressed in the claim already struck-out. These are issues which can be addressed at the forthcoming Preliminary Hearing.*

*9. Whether or not the amendments have been made in time, and if not whether it is just and equitable to extend time, will be decided at the full-merits hearing, if appropriate.*

### **The Public Preliminary Hearing on 1<sup>st</sup> May 2025**

27. The Claimant was represented by Mr Fernandes, her partner. The Respondent was represented by Ms Lee, counsel.

28. I was provided with the following documentation for the preliminary hearing:

28.1 A 805-page electronic hearing bundle;

28.2 A 14-page index to the hearing bundle

28.3 The Claimant's 15-page skeleton argument; and

28.4 The Respondent's 12-page skeleton argument.

29. I heard legal argument from both parties, however, there was insufficient time to provide judgment, which was therefore reserved.

30. This is my reserved judgment on the issues identified in Judge Emery's order made on 19<sup>th</sup> December 2024 (see paragraph 1.1(i) to 1.1(iii) above).

### **The law**

### Res Judicata

31. The principle of res judicata applies where one party relies on an issue against another party, which issue has already previously been determined by a judgment made in proceedings involving the same parties. Where it applies, res judicata ousts the Tribunal's jurisdiction to determine the same issue in subsequent proceedings, including where the issue is relied on to pursue a different cause of action, unless there is fresh evidence or there has been fraud justifying setting aside the previous judgment.

### Time limits

32. Section 123 EA provides:

*(1) Proceedings on a complaint within section 120 may not be brought after the end of—*

*(a) the period of 3 months starting with the date of the act to which the complaint relates, or*

*(b) such other period as the employment tribunal thinks just and equitable.*

...

*(3) For the purposes of this section—*

*conduct extending over a period is to be treated as done at the end of the period; failure to do something is to be treated as occurring when the person in question decided on it.*

33. The key question in determining whether there was conduct extending over a period is whether there was an ongoing situation or continuing state of affairs which amounted to discrimination (*Hendricks v Metropolitan Police Commissioner* [2002] IRLR 96). The claimant bears the burden of proving, by direct evidence or inference, that numerous alleged incidents of discrimination are linked to each other so as to amount to a continuing discriminatory state of affairs.

34. Section 23 Employment Rights Act 1996 ("ERA") provides:

*(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*

*(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*

*(b)...*

*(3) Where a complaint is brought under this section in respect of—  
a series of deductions or payments, or a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by*

*the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

(3A) *Section 207A(3) (extension because of mediation in certain European cross-border disputes) and section 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2).*

(4) *Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.*

35. The test of practicability means what could have been done not what would have been reasonable. Reasonably practicable does not mean “reasonable” or “physically possible” but is analogous to “reasonably feasible” (see *Palmer and Or v Southend-On-Sea BC* 1984 ICR 372, CA). The burden of proof is on the claimant to show that it was not reasonably practicable to present the claim in time *Consignia v Sealy* [2002] IRLR 624.

#### Strike out and deposits

36. Rule 38 of the ET Rules provides:-

(1) *The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply on any of the following grounds-*

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

37. In *North Glamorgan NHS Trust v Ezsias* [2007] EWCA Civ 330, the Court of Appeal held:

*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 applicant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation*

38. As to discrimination claims, in *Mechkarov v Citibank NA* [2016] ICR 1121 the EAT summarised the principles that emerge from the authorities in dealing with applications for strike out of discrimination claims:

*"(1) only in the clearest case should a discrimination claim be struck out; (2) where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence; (3) the Claimant's case must ordinarily be taken at its highest; (4) if the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with*

*undisputed contemporaneous documents, it may be struck out; and (5) a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts."*

39. In *Ahir v British Airways plc* [2017] EWCA 1392 the Court of Appeal held that tribunals should "*not be deterred from striking out claims, 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 in reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context*".

40. Rule 40 ET Rules provides: -

*(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("the deposit order").*

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

41. In the case of *Hemdam v Ishmail* [2017] IRLR 228 the Court of Appeal gave guidance to tribunals on the approach to deposit orders. The guidance included:-

(a) The test for ordering a deposit is different to that for striking out under Rule 37(1)(a).

(b) The purpose of the 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 creating a risk of cost. It is not to make access to justice difficult or to effect a strike out through the back door.

(c) When determining whether to make a deposit order a tribunal is given a broad discretion, is not restricted to considering purely legal questions, and is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case and reach a provisional view as to the credibility of the assertions being put forward.

(d) Before making a deposit order 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.

(e) A mini trial on the facts is not appropriate.

### **The Issues for Determination**

42. I have reached my decision after considering the parties' written and oral arguments, including documents referred to in their arguments, and taking into account my assessment of the documentation referred to by the parties.
43. This judgment does not refer to every matter raised by the parties, or every document I reviewed or have taken into account in reaching my decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the submissions that was relevant to a specific issue, I have considered it.
44. The most straightforward way to provide my decision is to address the complaints using the Claimant's descriptions used in the particulars of claim, and in the order the complaints are listed in the concluding paragraphs of the particulars of claim.
- 44.1 Direct race discrimination;
  - 44.2 Detriment for making protected disclosure, protected act;
  - 44.3 For not giving the employment contract or Terms and conditions;
  - 44.4 Protected disclosure
  - 44.5 Protected Act
  - 44.6 Breach of contract – express and implied

## **Conclusions**

45. The Claimant's argument regarding res judicata is that the Respondent misled the Tribunal. For instance, at the preliminary hearing held on 25<sup>th</sup> October 2023, the Respondent falsely claimed it had not yet completed its investigation into the Claimant's grievance. However, Mr Fernandes pointed out, the Respondent's investigation report was dated 17<sup>th</sup> October 2023, so the Tribunal was misled as to the progress of the investigation. He also argued the Respondent was responsible for other procedural irregularities such as incomplete and late disclosure, including only providing the hearing bundle for the 27<sup>th</sup> February 2024 preliminary hearing a few days before the hearing, and the password to access disclosure being provided on the day of the hearing. Consequently, the Tribunal's strike out orders dated of 27<sup>th</sup> February 2024 and 9<sup>th</sup> August 2024 were made in circumstances which breach the Claimant's right to natural justice. Accordingly, the Claimant argues, those orders should be struck out.
46. I note that if the Respondent had misled the Tribunal such that the Tribunal would be justified in setting aside the 27<sup>th</sup> February 2024 and 9<sup>th</sup> August 2024 judgments, the res judicata argument would be unsustainable.

47. In support of its strike out application, the Respondent maintains that the 2223380/2024 claim, or at least substantial parts of the 2223380/2024 claim, relies on matters that were the subject of the 2214008/2023 2023 claim, and which were struck out by Judge Peer on 27<sup>th</sup> February and 9<sup>th</sup> August 2024. The Respondent denies misleading the Tribunal, stating there were delays in completing the investigation which were explained in an e-mail from Ms Weedon to the Claimant sent on 17<sup>th</sup> May 2024 (a copy of the e-mail is in the hearing bundle). The Respondent also maintains that it has complied with its duty of disclosure, which had been provided in a timely manner. In particular, it states that when disclosure was originally provided to the Claimant it was not password protected. Therefore, the disclosure the Claimant refers to which was password protected, was sent after the Respondent had already provided disclosure.
48. In my judgment, the Respondent has provided credible explanations to address the Claimant's allegations that it has misled the Tribunal regarding the time elapsing between its October 2023 investigation report, and completing the investigation. I note that the explanation in Ms Weedon's e-mail sent on 17<sup>th</sup> May 2024 pre-dates this claim, which lends further credibility to the explanation contained therein. I also accept that the Respondent has not provided late or incomplete disclosure. In fact, the Claimant accepts that some disclosure has been provided, which is reflected by the substantial hearing bundle. However, I have not been pointed to, nor have I seen, any case management orders directing the Respondent provides disclosure in 2214008/2023. Therefore, I do not consider the Claimant's criticism of inadequate disclosure are justified, when it doesn't seem the Respondent was under a duty to provide disclosure in the earlier proceedings. If I am wrong, and there are relevant documents which exist but have not been disclosed, I do not consider that on its own that would provide sufficient justification to vitiate the strike out judgments. That is because, as set out above, it is accepted by the Claimant that some disclosure had taken place, and the Claimant has not provided a sufficient explanation as to how any documents that have allegedly been withheld undermined her rights of natural justice, or justify setting aside the strike out judgments.
49. The Claimant's response to the Respondent's res judicata argument does not dispute that the issues to which the res judicata principle are said to apply were determined as part of the 2214008/2023 claim. Instead, her response is that the strike out judgments should be set-aside. And as stated, I do not consider there are grounds for those judgments to be struck out.
50. For completeness, I will deal with my findings as to whether the issues relied on in the 2223380/2024 claim have already been determined in the 2214008/2023 claim so as to oust the Tribunal's jurisdiction.
51. I find that aside from some exceptions, res judicata applies to the following complaints in the 2223380/2024 claim:
- 51.1 Direct race discrimination at paragraph 42(a) of the particulars of claim;
  - 51.2 Detriment for making protected disclosure, protected act at paragraph 43(a) of the particulars of claim;

- 51.3 The complaint of not being given an employment contract or the terms and conditions of employment at paragraph 44 of the particulars of claim;
- 51.4 Part of the complaint of protected disclosure referred to at 45 of the particulars of claim. The parts which are subject to res judicata are those issues listed at paragraphs 22.1 and 212.3 above;
- 51.5 Part of the complaint of protected act referred to at 46 of the particulars of claim. The parts which are subject to res judicata are those issues listed at paragraphs 23.1 and 23.3 above; and
- 51.6 Part of the complaint of breach of contract at 47 of the particulars of claim. The part which is subject to res judicata is issue listed at paragraphs 24.1 above.
52. The complaints referred to at paragraphs 51.1, 51.2, 51.4, 51.5, and 51.6 above rely on matters raised in the Claimant's 22<sup>nd</sup> May 2023 grievance, which are set out at paragraphs 19.2(i) to 19.2(xxii) above. However, aside from a few exceptions, the matters raised in the Claimant's 22<sup>nd</sup> May 2023 grievance were expressly raised in the 2214008/2023 claim, and so have been struck out following the orders of 27<sup>th</sup> February 2024 and 9<sup>th</sup> August 2024. Although the Claimant states the 7<sup>th</sup> July 2023 complaint raised additional matters, she has not specified what additional matters were raised. Therefore, in the absence of specific details to the contrary, based on the details of the 22<sup>nd</sup> May 2023 and 6<sup>th</sup> July 2023 grievance provided by the Respondent at paragraph 19.2(i) to 19.2(xii) above, I consider both grievances raise the same issues. Accordingly, these issues have been determined, and so the Tribunal does not have jurisdiction to deal with them as part of the 2223380/2024 claim
53. As stated, there are a few exceptions, because the grievances listed at paragraphs 19.2(ii), 19.2(iv), 19.2(viii) and 19.2(ix) above were not expressly relied on as issues within the claim number 2214008/2023. However, if, as argued by the Respondent, and which I accept, those matters at paragraph 19.2(i) to 19.2(xii) above were included in the Claimant's 22<sup>nd</sup> May 2023 grievance, and that grievance was struck out by Employment Judge Peer, I consider pursuing those issues would amount to an abuse of process, and is contrary to the rule established by *Henderson v Henderson*. The issues are matters that were known to the Claimant because she raised them in the 22<sup>nd</sup> May 2023 grievance, therefore she could have raised them in the 2214008/2023 claim, but did not do so. That means she is barred from subsequently raising them in the 2223380/2024 claim because of the unreasonable manner she has conducted that aspect of the claim, which I find amounts to an abuse of process.
54. There is one final issue to which I consider res judicata applies, which is the complaint that the Respondent failed to give the Claimant an employment contract or Terms and conditions. Judge Peer expressly finds that the Claimant was a bank staff. It is implicit in the judgment that Judge Peer considered the Bank Registration Agreement that the Claimant was referred to represented the terms and conditions on which the Claimant was engaged. It also seems is implicit in the

judgment that the Claimant was provided with the terms and conditions of her engagement. If that is correct, then I consider res judicata would apply.

55. If I am wrong, and res judicata does not apply, I consider that the Claimant is barred from pursuing this complaint based on the decision in *Henderson v Henderson*. That is because the Claimant would have had the relevant information required to include this complaint as part of the 2214008/2023 claim, but she did not do so. It would amount to an abuse of process to allow her to pursue it in this claim. I note that the Claimant's employment status was relevant to one of the complaints in the 2214008/2023 claim, which included dealing with the terms on which she was engaged. In that context, to fail to raise in the earlier claim an allegation that she had not been provided with the particulars of her employment, but to seek to do so in these proceedings, amounts to an abuse.
56. The remainder of the Claimant's complaint postdate the presentation of the earlier 2214008/2023 claim, and so res judicata would not apply.
57. In its grounds of resistance prepared for the 2223380/2024 claim, the Respondent maintains that any complaint on or before 13<sup>th</sup> February 2024 is prima facie out of time. The remaining complaints are as follows:
58. Direct race discrimination
  - 58.1 paragraph 42(b) of the particulars of claim.
  - 58.2 paragraph 43(c) of the particulars of claim.
59. Detriment for making protected disclosure, protected act (paragraph 43 of the particulars of claim).
  - 59.1 Paragraph 43(b) of the particulars of claim.
  - 59.2 Paragraph 43(c) of the particulars of claim.
  - 59.3 Paragraph 43(d) of the particulars of claim.
  - 59.4 Paragraph 43(e) of the particulars of claim.
  - 59.5 Paragraph 43(f) of the particulars of claim.
  - 59.6 Paragraph 43(g) of the particulars of claim.
60. Protected disclosures (paragraph 45 of the particulars of claim) insofar as it relies on the following:
  - 60.1 Paragraph 39 of the particulars of claim;
  - 60.2 Paragraphs 43(b) to 43(g) of the particulars of claim.
61. Protected Act (paragraph 46 of the particulars of claim) insofar as it relies on the following:
  - 61.1 Paragraph 30 of the particulars of claim;
  - 61.2 Paragraphs 43(b) to 43(g) of the particulars of claim.
62. Breach of express and implied terms of contract (paragraph 47 of the particulars of claim) insofar as it relies on the following:



- 62.1 Paragraph 43(b) of the particulars of claim;
  - 62.2 Paragraph 43(c) of the particulars of claim;
  - 62.3 Paragraph 43(d) of the particulars of claim;
  - 62.4 Paragraph 43(f) of the particulars of claim.
63. The complaints added pursuant to Judge Emery's order made on 19<sup>th</sup> December 2024 granting the Claimant's application to amend the claim, which are as follows:
- 63.1 Direct race discrimination as a result of her removal from the respondent's bank, which the Claimant found out about in mid-October 2024
  - 63.2 Delay and obstructive communication regarding the Subject Access Request.
64. All of the above complaints postdate 13<sup>th</sup> February 2024, accordingly there is no basis on which these would be struck out at the preliminary hearing for being out of time, or for making a deposit order.
65. As regards striking out the remaining complaints on the grounds that they have no reasonable prospect for success, I do not consider the threshold to strike out these complaints has been met. In particular, in accordance with *Mechkarov* as it relates to the complaints of direct race discrimination, I consider there are disputed facts which it would be more appropriate to resolve at a final hearing, where all the evidence can be heard and tested. I do not consider this is a clear-cut case in which strike out at this preliminary stage is justified.
66. Aside from the direct discrimination complaints, the authorities establish that strike out at the preliminary stage where there are factual disputes is exceptional. Furthermore, all the complaints, including whistleblowing detriment, victimisation and breach of contract are fact sensitive claims. Notwithstanding the Respondent's denials, the Claimant's allegations are not patently implausible such that a strike out is justified, particularly, as I remind myself that the Claimant's case is to be taken at its highest.
67. I am not in a position to say whether all or part of the claim may succeed or fail. That will be for the Tribunal to determine at the final hearing. However, having considered the pleadings and heard the parties' submissions, in my judgment I cannot say that there is little or no reasonable prospect of the claimant establishing her claims.
68. To the parties will be notified separately regarding any further case management directions.

Employment Judge Tueje

30<sup>th</sup> May 2025

Claim number. 2223380/2024

Sent to the parties on:

3 June 2025

.....  
For the Tribunal Office:

.....