EMPLOYMENT TRIBUNALS

Claimant: **Mr. R Kosinski**

Respondent: **CDW Limited**

Heard at: **Birmingham Employment Tribunal then Birmingham Civil Justice centre.**

Method **In person**

On: **12 May 2025**

Before: **Employment Judge Smart in public**

Appearances
For the Claimant: Himself with the assistance of Polish Interpreter Ms A Swallow.

For the Respondent: Ms Niaz – Dickinson (Counsel)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Judgment of the Tribunal to Strike out the claim dated 23 September 2024 is revoked.

2. The ordinary unfair dismissal claim is struck out because it has no reasonable prospects of success. The Claimant does not have the pre-requisite two years' service to bring it.

3. The ET1 for case number 1304867/2023 (claim 1) also contained a claim for automatic unfair dismissal because the Claimant made an alleged protected disclosure on 11 April 2024, detriment for either making a different protected disclosure and/or reporting health and safety concerns; and a breach of contract claim about a salary cut.

4. No other claims are presented in the ET1.

5. All existing claims in this claim cannot be said to have no reasonable prospects of success at this time and it is proposed to consolidate this claim with claim numbers 1305701/2024 (claim 2) and 1306255/2024 (claim 3).

6. The Claimant failed to make an application for interim relief within 7 days of the effective date of termination of employment as required by section 128 Employment Rights Act 1996. No such application is before the Tribunal.

7. There will be a case management preliminary hearing to discuss them further, clarify them and then consider further case management as necessary.

RECONSIDERATION

1. In a number of ways, this case represents a classic example of the fragility of the Tribunal system and the administrative difficulties that can sometimes occur when multiple claims are submitted, or when there is simply an insufficient administrative resource to ensure that correspondence can be saved to the appropriate case plan for a claim, within a reasonable period of time.

2. The unfortunate background to this reconsideration decision started on 30 April 2024, when a strike out notice was sent about the claimant's entire claim (claim 1).

3. The notice was sent because the claim appeared to contain a claim of ordinary unfair dismissal only, and the claimant appeared to have insufficient service to bring such a claim with his employment with the respondent being pleaded as commencing on 15 August 2022 and his employment being pleaded as ending on 22 April 2024.

4. The matter was then placed before me as part of what is known amongst us judges as “duty work”, whereby instead of sitting for a day an employment judge will consider correspondence and applications that have been sent out in writing or indeed the lack of response from either or both parties to a case where correspondence such as a strike out warning sent to the claimant appears to have had no response.

5. The claimant’s case was referred to me and there appeared to be no response to the strike out warning issued.

6. At the time, I believed a previous judge had reviewed the claim form, and ruled that it contained ordinary unfair dismissal only, hence the strike out warning. There had been no response and therefore, this claim lacked the relevant prerequisite for ordinary unfair dismissal.

7. The claim was therefore struck out by me on 23 September 2024.

8. An appeal to the EAT was submitted by the Claimant. It was put through to a full hearing.

9. Notification of the EAT’s sift decision was sent to me at the same time as an application about the Claimant’s other cases namely claims 1305701/2024 and 1306255/2024.

10. I was surprised there were other claim numbers mentioned, because I was

unaware of these at that time.

11. I was concerned that I was not fully in the picture about what had happened with these claims, and when I looked further into the cases, there were arguments taking place before my decision about consolidating the three claims, a preliminary hearing had been listed to discuss the claims and it was abundantly clear that I was not aware of the full facts and circumstances of the claim before me or the wider litigation that I had then been made aware of post the strike out decision.

12. That alone was sufficient for me to want to revisit the decision, and a reconsideration hearing was listed of my own volition to consider the full facts and circumstances to see if it would have affected my decision.

13. However, I could not understand why the Claimant had been able to submit an appeal but not a response to the strike out warning. At that time, namely March 2025, there was still no response to the strike out notice on any of the three files for the Claimant's claims against this Respondent, either paper ones or the electronic ones.

14. Also of note was the fact that the Claimant was asked where the protected disclosure was pleaded in the ET1 in accordance with s43B Employment rights Act 1996. He failed to do so. Instead, he listed a number of emails as being potential disclosures that are not pleaded in his ET1.

15. The hearing took place on 12 May 2025. It started off well, but part way through the Claimant's evidence about this situation, there was a power cut affecting the tribunal building. This caused the fire alarm system to fail, and we were evacuated for some hours.

16. The hearing was moved to a different court, and we concluded the evidence and submissions.

17. However, that left insufficient time for deliberations and oral judgment. Judgment was therefore reserved.

18. Part way through the second half of the hearing, I was taken to a number of documents in the bundles, that indicated the Claimant had indeed responded to the strike out notice of 30 April 2024, the day after it was received by him, namely 1 May 2024.

19. He had also provided 28 pages of further particulars with that response to the strike out notice.

20. The Claimant sent a covering email to the Midlands West standard Tribunal email address but had failed to copy the Respondent into it.

21. I say now that such an omission should not be repeated. Both parties must ensure they comply with rule 92 of the Employment Tribunal rules of procedure 2024 at all times and ensure the other parties are copied into correspondence.

22. The Claimant provided the receipt automatically generated by the tribunal confirming receipt of his email.

23. Again, none of this information had made it to any of the case plans for any of the three claims against this Respondent, even by the time of the reconsideration hearing on 12 May 2025.

24. I know that because, before this hearing started, I re-read the electronic case plans for these claims and the paper files, and these documents were not present.

25. Consequently, I was not in possession of all the key information or documents until halfway through the 12 May 2025 reconsideration hearing.

26. I apologised to both parties for the fact that there appeared to have been multiple administrative/procedural errors in the consideration of the Claimant's claim.

REASONS

The evidence

27. For the reconsideration hearing, I was provided with two bundles of documents, namely the Claimant's and Respondent's bundles and a witness statement from the Claimant.

28. The claimant was cross examined by the respondent about his witness evidence and the further particulars, original ET1 and any other documents referred to in those bundles were examined in detail.

29. Whist the Claimant had the assistance of Ms. Swallow as a Polish interpreter; it was clear very early on that he did not really need her. He answered every question in English well, read all the documents in English and did not refer to her at all for any interpretation during the hearing.

30. It was also apparent from the claimant's witness statement, that he was attempting to argue the merits of the case in that statement rather than providing evidence about the procedural backdrop to the reconsideration application.

31. The Claimant's witness statement was therefore only of limited evidential benefit for the reconsideration hearing.

The pleadings

32. The first point that I consider is one of the Respondent's submissions.

33. Counsel argued that the Claimant was not making any claim for detriment or dismissal because of a protected disclosure in claim 1, because he said so in the preliminary hearing for case management before Judge Gilroy when discussing his second and third claims namely 1305701/2024 (claim 2) and 1306255/2024 (claim 3).

34. In his order, the learned Judge observed that there is considerable overlap between the claim before me and claim 2. I agree.

35. I also observe that claims 2 and 3 are virtually if not completely identical.

36. Counsel therefore argued that, given the overlap and confirmation that protected disclosure was not being pursued in the other two claims, this means that I should find there to be no protected disclosure claim in the ET1 before me, which is the subject of this reconsideration hearing.

37. The difficulty with that submission is that nowhere in claim 2 did the Claimant use the words *"unfair dismissal / termination of my employment contract for challenging and reporting misconducts despite lack of formal and official grievance procedure against senior CDW managers".*

38. As will become relevant later on, the Claimant does not mention anything about reporting health and safety concerns about lockers in Claim 2 or 3 either.

39. Having reviewed the ET1 in detail, and now having the benefit of having discussed the issues with him under oath, I find that the ET1 presented by the claimant on 25 April 2024, contains the following pleaded claims below. I quote the words used in the ET1 in brackets:

    39.1. That the claimant made a protected disclosure under section 43B of the Employment Rights Act 1996 on 11 April 2024, where he alleges that he reported unlawful conduct about two of his managers against him, namely threatening behaviour. (ET1 page 7 *"On the 11 .04.2024 I e-mailed Gareth Head, warehouse I configuration operations manager. In my e-mail I reported threatening, verbal and terrorising behaviours of Aarron Manton and Nick Browett on the 19.02.2024 against me within CDW premises without any colleague to acompany me)."*

    39.2. That as a result of that protected disclosure, the claimant was dismissed on 22 April 2024, meaning that it was an automatic unfair dismissal in accordance with section 103A of the employment rights act 1996. (ET1 page 7 *"- unfair dismissal / termination of my employment contract for challenging and reporting misconducts despite lack of formal and official grievance procedure against senior CDW managers")*;

    39.3. The respondent had allegedly breached the claimant's contract of employment, cutting his salary (ET1 page 7 *"Following those misconducts at work I spent four weeks off on sick absence to recover as well as taking prescribed medicaitons. On my return to work I learned that my salary was severely cut. In that e-mail I also challenge that salary cut due to my sickness absence caused by Aarron Manton and Nick Browett misconducts against me.")*.

    39.4. The respondent had allegedly told the claimant off, for submitting an idea to improve health and safety conditions within the staff locker room, which appeared to be a detriment because of making either a protected disclosure

or for raising a health and safety concern under s44 Employment Rights Act 1996 (ET1 page 12 *"But that did not discourage me to keep going the extra mile for the British taxpayers. As a result of that in 2023 I was assessed not only as the CDW employee with the highest number of improvements ideas submitted to the management, but also with the highest number of such ideas being implemented within the business. Because that was not welcomed either, I was invited to a meeting with Gareth Head, warehouse/configuration operations manager - with over 14 years of service as Petty Officer Weapons Engineer Artificer within Royal Navy, and told off for formally submitting one idea to improve health and safety conditions within personal lockers room."*).

40. Other bullet points about procedural issues during the dismissal are focused on unfairness, which are allegations relevant to an ordinary unfair dismissal claim or potentially remedy.

41. Clearly, the claimant has insufficient service to claim ordinary unfair dismissal and no other types of claim are pleaded other than those identified above, having now had the opportunity of speaking to the Claimant and hearing his evidence under oath.

42. I turn now to the response to the strike out warning on 1 May 2024 of three pages in length. Based on the raw wording of this document, the following points are of significance:

    42.1. There is a new allegation that prior to the termination of the claimant's employment, he was challenging the respondent about a decision to refuse to allow the claim and the opportunity to apply for internal supervisory positions due to his mental health without any medical evidence to support the respondent's decision.

    42.2. There is a new allegation that prior to the termination of the claimant's employment the claimant was challenging the respondent about the interpretation of an e-mail he alleges was written in plain English that was used to make alleged false and bad faith accusations against the claimant.

    42.3. There is a new allegation that prior to the termination of the claimant's employment, he had officially expressed support towards disabled, gay and transgender people against discrimination. It is noteworthy here, that the claimant fails to link any pool treatment to the support he says he expressed about these particular protected characteristics.

43. It is clear to me that none of these complaints are contained within the ET1 submitted to the tribunal.

44. Finally, I turn to the final pleadings document of significance which is the 28 pages of further particulars provided with the response to the strike out warning again on 1 May 2024.

    44.1. The title to the document is *"claimants particulars of claim (Interim relief application);*

44.2. The claimant goes into a lot of detail about the fact that his son has what the claimant indicates are severe disabilities;

44.3. The Claimant is effectively a carer for his disabled son;

44.4. that the claimant was a victim of racial hatred by a number of previous employers, which caused him to be diagnosed with PTSD;

44.5. The claimant lists a number of duties he says the respondent owed to him whilst he was employed including providing a workplace free from discrimination, harassment, victimisation, bullying and hostility amongst other similar duties And that the respondent should provide a workplace that follows fair, just, formal and transparent grievance and disciplinary procedures and a workplace that is safe and healthy when considering the client's family situation and of the family problems that may arise outside of the workplace;

44.6. The claimant then extensively purports to quote a number of policies, which I will not repeat here;

44.7. The new allegation of the respondent failing to consider the claimant for a job opportunity is repeated. However, this is covered in more detail in Claim 2;

44.8. the claimant complains about an e-mail from Gareth Head, sent on 12 September 2023, which the claimant alleges was unprofessional and had insufficient analytical value.

44.9. That on 15 February 2024, the claimant sent an e-mail to Aarron Manton, promoting the equality, fairness and inclusion of the protected characteristics previously mentioned above;

44.10. That the claimant was accused without warning on 19 February 2024, of sending an e-mail that the respondent took exception to because of the language the claimant was alleged to have used within it being derogatory towards other colleagues;

44.11. it was this allegation, the claimant says amounted to verbal, threatening, terrorising an intimidating attack upon him by Mr Manson and nick Browett who conducted the meeting to discuss this email;

44.12. The next day on 20 February 2024, the claimant emailed Both these managers too states that he did not write the word uneducated in the e-mail at all, nor did he use the words in his e-mail “with no education”. The claimant also alleged that he wrote in this e-mail that the actions of these managers were unjust and untrue and that the claimant was aggrieved because neither manager had offered him an apology and that this had caused his mental health to become worse;

44.13. The claimant then had a period of sickness absence and returned to work on

27 March 2024. There was discussion about a meeting with the managers involved and HR to discuss the incident and the e-mail correspondence to have been going backward and forward both at the time and after the meeting;

44.14. The claimant then complained that he'd received a huge salary cut and, in his view, he was with permission from the warehouse supervisor challenging that cut to his salary which he says was caused due to sickness absence in turn caused by Mr Manton and Mr Browett;

44.15. This is the first time the claimant alleges that the treatment he received was discriminatory treatment;

44.16. It is also significant that in the further particulars both claim, the claimant does not link his dismissal to any of the previous emails sent except for Equality Act reasons.

45. It's clear to me that the ET1 does not contain any claims for a breach of the Equality Act 2010 either as discrimination, harassment or victimisation.

46. The further particulars about dismissal are solely focused towards ordinary unfair dismissal, and do not allege automatic unfair dismissal at all.

47. Consequently, the Claimant's claim as contained in the ET1, is as I have identified above with the quoted ET1 extracts.

48. It was not in dispute that the effective date of termination of employment for unfair dismissal was 22 April 2024.

49. The ET1 was presented 25 April 2024 and ticked the box for an interim relief application but does not contain any such application.

50. The particulars of claim document, dated 1 May 2024, indicated it contained an interim relief application. However, it contains nothing but a heading that it was an interim relief application.

The Claimant's evidence under oath

51. The following points are of significance from the cross examination of the Claimant:

51.1. The only email the Claimant relies upon for his protected disclosure is the email of 11 April 2024 at 09:51pm to Gareth Head.

51.2. The Claimant said that he was dismissed because he did not give up about his manager's actions towards him.

51.3. The Claimant explained that the health and safety issue with the lockers was that some of the lockers were damaged and people could have scratched their hands. However, he could not remember the words used and he said he reported it to Danny Roumayah. He says he did not provide any technical

parameters about the risk etc. The Claimant then alleged he was told off by Gareth Head because he had raised the issue in the wrong way.

51.4. When asked what was meant by an interim relief application used in the heading of the further particulars, the Claimant could not explain to me what the application was about or what interim relief meant even in lay language.

51.5. He had said to Judge Gilroy, that he was not pursuing a whistleblowing complaint in his other two claims because the only claim he argued was about protected disclosures was in Claim 1, which was struck out.

The Law

52. Reconsideration is covered by the Employment Tribunal Rules, rules 70 – 73, which state:

"Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—

(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise, the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full Tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full Tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full Tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.

53. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law or perversity of the factual findings) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

54. Rule 72(1) of the Rules of Procedure empowers us to refuse the application based on preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

55. The importance of finality was confirmed by the Court of Appeal in **Ministry of Justice v Burton and Anor [2016] EWCA Civ 714** in July 2016 where Elias LJ said that:

"the discretion to act in the interests of justice is not open-ended; it should be exercised in a principled way, and the earlier case law cannot be ignored. In particular, the courts have emphasised the importance of finality (Flint v Eastern Electricity Board [1975] ICR 395) which militates against the discretion being exercised too readily; and in Lindsay v Ironsides Ray and Vials [1994] ICR 384 Mummery J held that the failure of a party's representative to draw attention to a particular argument will not generally justify granting a review."

56. Similarly in **Liddington v 2Gether NHS Foundation Trust EAT/0002/16** the EAT chaired by Simler P said in paragraph 34:

"a request for reconsideration is not an opportunity for a party to seek to re-litigate matters that have already been litigated, or to reargue matters in a different way or by adopting points previously omitted. There is an underlying public policy principle in all judicial proceedings that there should be finality in litigation, and reconsideration applications are a limited exception to that rule. They are not a means by which to have a second bite at the cherry, nor are they intended to provide parties with the opportunity of a rehearing at which the same evidence and the same arguments can be rehearsed but with different emphasis or additional evidence that was previously available being tendered."

57. More recently in **Ebury Partners UK v Davis [2023] IRLR 486**, HHJ Shanks said at paragraph 24:

"…The employment Tribunal can therefore only reconsider a decision if it is necessary to do so 'in the interests of justice.' A central aspect of the interests of justice is that there should be finality in litigation. It is therefore unusual for a litigant

to be allowed a 'second bite of the cherry' and the jurisdiction to reconsider should be exercised with caution. In general, while it may be appropriate to reconsider a decision where there has been some procedural mishap such that a party had been denied a fair and proper opportunity to present his case, the jurisdiction should not be invoked to correct a supposed error made by the ET after the parties have had a fair opportunity to present their cases on the relevant issue. This is particularly the case where the error alleged is one of law which is more appropriately corrected by the EAT."

58. Reconsideration of a judgment is usually not appropriate where both parties have had a fair opportunity to present their case and the decision was made in light of all available arguments put forward **Trimble v Super Travel Limited [1982] ICR 440.** This case also held that reconsideration is not an opportunity for a quasi appeal on the law akin to an appeal to the EAT.

59. Similarly, the interests of justice test, is not open ended and must be exercised in a principled way and past case law cannot be ignored about it, **Newcastle on Tyne City Council v Marsden [2010] ICR 743.**

60. In common with all powers under the Rules, reconsideration must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and importance of the issues, and avoiding delay.

61. Achieving finality in litigation is part of a fair and just adjudication.

Strike out

62. This power is contained in rule 38, which says as follows where relevant to this claim:

"Striking out

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

(a) that it is scandalous or vexatious or has no reasonable prospect of success;
(b) …
(c) …
(d) …
(e) …

(2) A claim or response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing."

63. In **Cox v Adecco UKEAT/0339/29 [2021] ICR 1307** at [28] HHJ Taylor held as follows when describing the general approach to strike out:

"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."

And

"31. 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. 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, and key passages of the documents, in which the claim appears to be set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer, and take particular care if a litigant in person has applied the wrong legal label to a factual claim that, if properly pleaded, would be arguable. In applying for strike out, it is as well to take care in what you wish for, as you may get it, but then find that an appeal is being resisted with a losing hand.

32. This does not mean that litigants in person have no responsibilities. So far as they can, they should seek to explain their claims clearly even though they may not know the correct legal terms. They should focus on their core claims rather than trying to argue every conceivable point. The more prolix and convoluted the claim is, the less a litigant in person can criticise an employment tribunal for failing to get to grips with all the possible claims and issues. Litigants in person should appreciate that, usually, when a tribunal requires additional information it is with the aim of clarifying, and where possible simplifying, the claim, so that the focus is on the core contentions. The overriding objective also applies to litigants in person, who should do all they can to help the employment tribunal clarify the claim. The employment tribunal can only be expected to take reasonable steps to identify the claims and issues. But respondents, and tribunals should remember that repeatedly asking for additional information and particularisation rarely assists a litigant in person to clarify the claim. Requests for additional information should be as limited and clearly focused as possible."

Analysis and conclusion

64. I have carefully considered the Respondent's argument that the protected disclosure alleged in the ET1 had no reasonable prospect of success and therefore it is not in the interests of justice to revoke or vary the judgment regardless of the cause of the strike out judgment. I reject it for the following reasons:

64.1. A lot of the respondent's questions focussed on whether the email actually raised an express complaint of a breach of the law.

64.2. However, it doesn't have to. The Claimant simply needs to prove that he had a reasonable belief that the alleged disclosure of information tended to show one of the relevant failures in s43B.

64.3. This disclosure will need further clarification, but until it is properly clarified, it cannot be said that it has no reasonable prospect of success after applying the principles in **Cox.**

64.4. The Claimant is a litigant in person and English is not his first language. Under these circumstances, I am reluctant to criticise him for the lack of particularisation or legal labels in his ET1 about the remaining claims he pleaded.

64.5. Parts of the test for whether a protected disclosure has been made in the email of 11 April 2024 including by referring back to the email of 15 February 2024, is whether the Claimant reasonably believed the information he disclosed in that email tended to show a relevant failure and whether the

Claimant reasonably believed that the disclosure was made in the public interest. In my judgment these issues of reasonable belief, require evidence to be heard to determine. They cannot be said to have no reasonable prospects of success for that reason, after applying the principles in **Cox.**

65. Consequently, the submission that any of his existing claims currently have no reasonable prospect of success is rejected.

66. However, once the claims are clarified, this issue can be revisited if appropriate.

67. It is clearly in the interests of justice to reconsider and revoke the previous order because:

    67.1. This is not a case where the case has been properly heard on the merits as envisaged in **Liddington** and **Trimble.**

    67.2. This is clearly a case where there has been a number of procedural difficulties that have resulted in the Claimant being prevented from fairly and properly arguing his case against the strike out notice and more generally. This was therefore an example of where it is appropriate to reconsider a judgment as per the guidance in **Ebury Partners.**

    67.3. Having now had the opportunity to discuss the case with the Claimant and be referred to contemporaneous documents, it is clear that I did not have the full information in front of me when making my strike out decision. The fact that additional pleaded claims were in the ET1, was not appreciated by me at the time of making the decision.

    67.4. Rather than failing to respond to the strike out warning, the Claimant clearly responded to it, but that information was not provided to me.

    67.5. The fact this claim was linked to two other claims, with a significant overlap of facts, was not presented to me at the time of the decision and that fact would have materially affected the decision to strike out the claim as a whole.

    67.6. If I had all the information discussed above, I would have directed that the claim be discussed at a case management hearing instead.

68. When considering the overriding objective, it is clearly unacceptably prejudicial to the Claimant to have the claim struck out in its entirety and/or not subjected to the ordinary case management procedures of the Tribunal they would usually receive. This is especially so given he is a litigant in person.

69. In contrast, there is no detriment to the respondent for the judgment to be reconsidered. It would always have had to meet the claims raised legitimately in the ET1 and discuss them at a case management hearing.

70. Consequently, the submission that finality of the strike out judgment should prevail is rejected.

71. Clearly, important documents and issues were inadvertently missed in this case and finality does not outweigh the more general interests of justice in this case, especially when maintaining that strike out judgment would amount to a complete denial of justice for the Claimant.

72. No interim relief application is before the Tribunal.

73. I am not persuaded the Claimant has made such an application. He has simply ticked a box in the ET1 not knowing what he was ticking and no subsequent application has been made except in a heading, which is insufficient.

74. The Claimant did not understand what an interim relief application was when he submitted the further particulars of claim, and therefore could not possibly have properly made the actual application.

Outcome

75. Having now had the benefit of the full information and explanations from the Claimant, it is clear that the Judgment striking out the claim needs to be revoked because it is just to do so. It is therefore so revoked.

76. This Judgment strikes out the ordinary unfair dismissal claim only.

77. A case management hearing with a time estimate of 3 hours will be listed as soon as possible to case management the remaining claims in claim 1, consider any submissions about the proposed consolidation with claims 2 and 3 and consider any further case management as necessary.

78. No interim relief hearing will be listed. No application has in fact been made.

79. The next case management hearing will be before me, if possible, sitting alone in person, in private. A notice of hearing will follow shortly.

Order approved by:

Employment Judge G Smart

On 26 June 2025