EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000517/2023 (V)

Held on 5 November 2024

Employment Judge J M Hendry

Y Naique	**Claimant** **In Person**
Scottish Ministers (Education Scotland)	**1st Respondent** **Represented by,** **Miss S Monan,** **Solicitor**
Scottish Government	**2nd Respondent** **Represented by,** **Miss S Monan,** **Solicitor**
G Nimmo	**3rd Respondent** **Represented by,** **Miss S Monan,** **Solicitor**
G Routledge	**4th Respondent** **Represented by,** **Miss S Monan,** **Solicitor**
H Morrison	**5th Respondent** **Represented by,** **Miss S Monan,** **Solicitor**
J Stewart	**6th Respondent** **Represented by,** **Miss S Monan,**

E.T. Z4 (WR)

Solicitor

L Casey **7th Respondent**
Represented by,
Miss S Monan,
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

1. **The claim for unfair dismissal is struck out.**
2. **The claim for discrimination on the grounds of perceived disability is struck out.**
3. **The claim for harassment on the grounds of perceived disability is struck out.**
4. **The claim for harassment on the grounds of race shall be subject to a Deposit Order in the sum of Five Hundred Pounds (£500).**
5. **The claim for direct race discrimination shall be subject to a Deposit Order of Five Hundred Pounds (£500).**

REASONS

1. An urgent case management CVP hearing was arranged to take place on 5 November. The case had been listed for a hearing starting on 25 November. There were two issues that the Tribunal had to deal with. The first was the claimant's request to amend his claim to add claims for victimisation and the second was an application by the respondent for Strike-Out/Deposit Orders.

2. Mr Naique raised an Employment Tribunal claim against his former employers on 11 October 2023. He had been dismissed on 11 May 2023 and took part in early conciliation from 8 August 2023 until 12 September 2023.

Amendment

3. At the start of the hearing I indicated that I would deal with the issue of amendment first of all and then move on to the Strike-Out/Deposit application. I was conscious that Mr Naique is not legally represented and I urged him to ask me questions as we went along about any aspects of the discussion that he did not fully understand.

4. By e-mail dated 27 October 2024 Mr Naique applied to the Tribunal for leave to amend his ET1. He indicated in his letter that he had attached a copy of the claim showing the amendments that he wanted to make. He explained that the claim was for victimisation and that he had not included it in his original ET1 because his understanding was that victimisation would be implied from the claims that he had made for race discrimination, disability discrimination and perceived disability discrimination. He explained that when he was filling in the ET1 box or section applicable there was no obvious place to put a claim for victimisation.

5. Miss Monan explained that the application was opposed on a number of grounds. Firstly, it came very late in the day and secondly it was impossible for the respondent to respond to the new case. In addition, the claims were considerably out of time and would probably lengthen the hearing, it's complexity, and might involve additional witnesses being called.

6. I spent a little time discussing the matter with the claimant and understanding what his pleadings were to date. Attached to the ET1 was a document with various events setting out the period covering the claimant's probation and employment with the respondent organisation.

7. The claimant indicated that he thought the amendment in effect merely added a new label to facts already pled. We discussed the nature of the amendment. I explained what was involved in making a claim under section

27 of the Equality Act to engage the section. I asked him first of all what was the protected act on which he relied. The claimant indicated that it was a grievance that he had lodged in which he had alleged that the respondent's managers were discriminating against him on the grounds of his race. I explained that he could only make claims of victimisation after this event as the victimisation had to flow from the protected act. The victimisation had to be connected with the lodging of the grievance.

8. I explored with him why he felt his employer's actions towards him, which he thought were victimisation, related to the grievance. The claimant believes that in effect there was a course of conduct leading to his dismissal. He explained the background to the claim not being included in the ET1. He did have a solicitor at that time but the solicitor was not giving him advice about this particular claim. He had to do his own research and had completed the ET1 unaided. I spent a little time going through the documents the claimant had sent to the Tribunal aware that as he is a party litigant he might not appreciate the difference between what are regarded as being pleadings (what is in the ET1, in Better and Further Particulars or in amendments) to understand his position.

9. I read carefully over the chronology of events. It makes little reference to the detail of the grievance other than the following:

"*On 17 January 2023 I raised a grievance which included instances of race discrimination, bullying, harassment, victimisation and racial pay gap."*

10. In terms of s.27 of the Equality Act which deals with victimisation the employee is protected from detriment because they either do a protected act or the employer believes they have done or may do a protected act. Protected acts are:

"(a) *Bringing proceedings under this Act;*
(b) Giving evidence or information in connection with proceedings under this Act;
(c) Doing any other thing for the purposes of or in connection with this Act;

(d) Making an allegation (whether or not expressed) that:
(a) Another person has contravened this Act."

11. If the summary given by the claimant of the issues raised in the grievance is correct then this may be sufficient under s.27(2)(b) to allow the claimant the protection of the Act and the section.

12. The claimant explained that the principal issue of victimisation was the dismissal although there were other actions that he described as ''less strong''. Miss Monan pointed out that he had not made any connection between the grievance and the decision taken by the dismissing officer to terminate his employment or why the grievance would have affected his decision.

13. This is an amendment adding a new claim that is out of time. There is nothing in the ET1 that suggests the claimant was dismissed because of the lodging of a grievance. He simply writes he was dismissed. The starting point in considering amendment is the leading authority of ***Selkent Bus Co. Ltd v. Moore*** [1996] ICR 836. The approach set out there has since been affirmed by the Court of Appeal, for instance in ***Hammersmith and Fulham London Borough Council v. Jesuthasan*** [1998] ICR 640. My understanding is that I should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. The fact that the amendment is introducing a claim out of time is only one factor. Amendment is, however, discretionary.

14. I explained that the claimant, to amend, he had to set out in writing briefly what he says happened that allows him to engage the protection of this section. He also has to set out what the acts of victimisation were, who carried them out and why he believes they were related to the grievance that he lodged. This he has not done. I accepted Miss Monan's submission that the amendment came very late in the day. If allowed the hearing might have

to be discharged. It was also difficult to respond to it given the deficiencies in the way it was set out.

15. I explained that in circumstances I wasn't prepared to allow him to amend his pleadings on the basis of the current proposed amendment because of the deficiencies we had identified and the difficulties the respondent would have in responding both in the time available and given the deficiencies in the amendment itself which is far from clear in it's terms.

Strike-Out/Deposit Order

16. We then turned to strike out. The respondent's agents had written to the Tribunal on 15 October making an application for an Order to strike-out the claim and/or for the Tribunal to make a Deposit Order. I set out their submissions here almost as set out in their letter which I do for the sake of speed, given the impending hearing:

1. Disability discrimination by perception

The claimant asserts that he was treated less favourably because he was perceived as having "*mental health issues*" (D3 of claimant's Schedule of Further and Better Particulars ("FBPs")). The alleged acts of less favourable treatment relied upon by the claimant are as follows:

- Being "sidetracked" in meetings and made to feel unwelcome. (D3 in FBPs).
- Being "supressed from going on to development courses since the agenda was to ultimately dismiss me towards the end of probation" (C4 in FBPs).
- Not being provided with objectives, or complete training" (C5 in FBPs).
- Not having a "list of day-to-day job duties including any other allied related duties were provided.
- The job description stated on the advert was too generic" (C5 in FBPs).

- Having to "keep asking for guidance" (D5 in FBPs).
- His dismissal (D3 in FBPs).

The claimant's argument is misconceived. He asserts:

- "Hypothetical colleagues who were not disabled or perceived [sic] to be as disabled would rather have gotten all the support and reasonable adjustments." (E3 in FBPs)
- "I believe my white counterparts [sic] who and/or those who were not perceived to be disabled were provided with what was expected of them so that they achieved their goals." (E5 FBPs)

The claim has no reasonable prospects of success and ought to be dismissed for the following reasons:

The claimant has not identified the condition which he considers that the respondent believed he had which amounted to a disability in terms of section 6 of the Equality Act. The unfavourable treatment relied on is a failure of the respondent to provide him with certain supports because they perceived him as having a disability. As the claimant is relying on a perceived disability rather than an actual disability, it cannot follow that there has been a failure by the respondent to provide support in relation to a disability or indeed that any alleged failure could be unfavourable treatment.

2. Harassment in relation to race and perceived disability

The claimant asserts that the following alleged acts amount to harassment in relation to his race, being Indian:

- "*I was being micromanaged by Lucy who had no supervisional duties over me and was being targeted in group MS Teams Group Chat." (C4 in FBPs)*

- *"I was being accused of making mistakes and not asking when unsure and if I did ask, I would also be accused of asking thereby commenting on my competency." (C4 in FBPs)*
- *"The one to one meetings with Glynis which had turned weekly from monthly started getting quite toxic wherein I was being bullied & belittled in the one on one calls." (C16 in FBPs)*
- *"I was called a red flag by Glynis to another colleague via email." (C17 in FBPs)*
- *"Fabricated evidence was being collated by Glynis Nimmo who I believe was advised by the HR and/or her senior managers Greg & Hazel." (C18 in FBPs)*
- *"I was accused by Glynis of overusing mobile data. Hazel and Greg were roped in to further bully me and harass me. All these conversations occurred via emails." (C22 in FBPs)*
- *"Issues brought up before the HR were ignored." (C24 in FBPs)*

The claimant asserts that the following alleged acts amount to harassment in relation to his race *and* his perceived disability:

- "*I was pressured to attend group meetings and left out deliberately by making me feel unwelcome*." (C15 in FBPs)
- *''I was being slandered behind my back by Glynis…During the meeting with Hazel and my other colleagues including Glynis, she did not speak to me at all but just stared at me. This seemed very odd, and it was then that I realised Glynis have been slandering me behind my back and hence Hazel's demeanour during the meeting made sense as in she seemed opinionated and judgemental about me. I could safely conclude that Glynis has been slandering me to other colleagues as well". (C19 and D19 in FBPs)*
- "*During my 2nd week at work, I was reported to the Police under the guise of 'welfare check' for not showing up for work and not notifying my line manager*." (C20 in FBPs)
- *''Meetings were being set up by Glynis, Greg and Hazel to bully and harass me*." (C21 in FBPs)

- *''Jill Stewart from the HR set up meetings which were basically allegations without any corroboration. These allegations primarily came from Glynis*." (C23 in FBPs)

The claim has no reasonable prospects of success and ought to be dismissed for the following reasons:

None of the acts of unwanted conduct alleged by the claimant amount to conduct inherently related to the fact the claimant is Indian, nor the claimant being perceived as having "mental health issues", as alleged. The claimant has not set out any basis on which a connection can be made between the conduct and his race or his perceived disability. The claimant asserts that his white colleagues and those not perceived to be disabled were not subjected to the same alleged unwanted conduct. However, the relevant test under section 26 of the Equality Act is that the unwanted conduct is related to a relevant protected characteristic, not whether the claimant received different treatment from those who do not share the relevant protected characteristic.

3. Direct race discrimination

The claimant asserts that he was treated less favourably because he was perceived as having "mental health issues". The alleged acts of less favourable treatment relied upon by the claimant are as follows:

- *"I was not provided with full training and despite doing my job with whatever little training I got as the work flowed in, I never got told during my initial 3 months that I was falling short." (C7 in FBPs)*
- *"My IT allowance was supressed by not providing me full training and then claiming I was not up to mark." (C7 in FBPs)*
- *"My interim probation was counter signed by Greg Routledge who never spoke to me to suppress my IT allowance.*
- *My probation was for 9 months, however the qualifying criteria to be applicable for the IT allowance was after 3 months of proven competency." (C7 in FBPs)*

- *"I was treated less favourably during the interview stage by Glynis Nimmo as a result of which I was placed on the bottom most of the reserve list." (C8 in FBPs)*
- *"During my 2nd week at work, I was reported to the Police under the guise of 'welfare check' for not showing up to work and not notifying my line manager or HR." (C9 in FBPs)*
- *"Travel, stay and subsistence was suppressed by Glynis and I had to approach another colleague putting my case before them to get reimbursed." (C10 in FBPs)*
- *"Prevented from getting onto development courses." (C11 in FBPs*
- *"Denied higher start pay". (C12 in FBPs)*
- *"Denied IT allowance applicable after 3 months into service." (C12 in FBPs)*
- The claimant asserts that his white colleagues, in particular Lucy Casey, were not treated in the same way by respondent. The reason for the difference in treatment is his race.

The claim has no reasonable prospects of success and ought to be dismissed for the following reasons:

The claimant has failed to set out the basis on which he asserts that any less favourable treatment is said to have occurred because of his race. The claimant relies solely on the fact that he believes he was treated less favourably than others who do not share his race. The claimant's belief that he was treated less favourably than others is not enough. He has not pointed to any evidence that race was a reason for the alleged less favourable treatment. Taking the claimant's case at its highest, even if the Tribunal accepts that the claimant has been treated less favourably by the respondents in comparison to a hypothetical comparator, this is not sufficient to establish that direct discrimination has occurred. There must be "something more" from which the Tribunal can conclude that the difference in treatment was because of the claimant's race. The claimant has not identified anything other than an alleged difference in treatment.

Unfair Dismissal

17. The claimant had initially raised the issue of whistleblowing but that claim had been withdrawn. I explained to him that there was now no basis for a claim for unfair dismissal as he had insufficient service. The claimant had provided the Tribunal with written responses to the respondent's position. This continued following the hearing when he submitted further arguments in relation particularly to unfair dismissal by email dated 13 November. I considered these submissions as the claimant is a party litigant and may have felt he had not expressed himself fully at the hearing on this matter and because the respondent's solicitors quickly responded as I was still in the course of writing the Judgment. I will deal this discrete matter.

18. The claimant suggested that he can maintain a claim for unfair dismissal on the basis that although he has insufficient service he was dismissed for asserting a statutory right (Section 104(1) Employment Rights Act 1996) namely to be paid equal pay with a female white colleague or he was asserting a statutory right not to be discriminated against. The basis for such a claim is not pled. In any event it is misconceived. The section protects people who assert rights given to them by the Employment Rights Act. This would for example protect someone who asked for a statement of employment particulars (an entitlement under Section 1) who was then dismissed for asking. Claims for equal pay or discrimination arise from the Equality Act and not the Employment Rights Act.

Strike Out/Deposit Orders

19. At the outset of the strike out hearing, I explained to the claimant the Tribunal's powers under Rule 37. Miss Monan indicated that the respondents' overall position was that the claims were misconceived. The claimant had no reasonable prospect of success and if the Tribunal held that this test was not met then their secondary position was that the claims had

little reasonable prospects of success and Deposit Orders should be imposed.

20. I explained to the claimant that he could give me details of his financial position and if I came to make a Deposit Order I could take this into account in assessing the level of any Deposit Order. He later explained to me that he was unemployed at present but had some modest savings of £6000.

21. Miss Monan then briefly took me through the terms of her letter dated 15 October 2024 indicating that the claimant had not made the necessary connections between the claims being made and the actions of the respondent's managers.

22. I then discussed the matters that had been raised with the claimant and discussed his position. Mr Naique had carried out some research and made reference to the case ***Chief Constable of Norfolk v. Coffey***. This he believed allowed him to make a claim for perceived disability discrimination.

23. I indicated to him that such claims were unusual and not straightforward. We discussed the circumstances in ***Coffey***. The facts of that case involved a Police Officer with a hearing difficulty but one which did not quite meet the test for disability in terms of s.6 of the Equality Act but it met the other criteria of having a long lasting effect and being a physical impairment. I wanted to explore with the claimant his employment background so that I could understand the factual basis from which he believed such discrimination might have occurred.

24. Firstly, in relation to perceived disability I asked him what was the disability that he thought was at issue. He confirmed that he had mentioned in his papers mental health issues. I asked how did he come to believe that his Manager, Miss Nimmo or others, were aware of possible mental health

issues. Over lunchtime he e-mailed additional documents. These consisted of a large quantity of documents. These had not been noted by the Clerk as being required for today's hearing but we eventually were able to consider them.

25. In that bundle of documents there is an e-mail of 14 September 2022 from Mr Naique to ''HR Online'' asking to be referred to Occupational Health "for mental health purposes". He explained that this request arose out of stress he was feeling in the workplace. The HR Adviser contacted his Line Manager Glynnis Nimmo who arranged a meeting with him in short to find out what it was all about and presumably to consider what support could be made available. At the meeting with her Mr Naique was clear that he did not indicate one way or another whether he had a mental health condition. He was circumspect. He was asked by Miss Nimmo to tell her why he was needing such support. He simply said that he wanted to be referred for Reiki or Psychotherapy.

26. I asked him whether or not there was anything that had happened in the office or any other way that might have indicated to Miss Nimmo that he had any mental health condition. The claimant's view is that Miss Nimmo took from these matters that he had some unspecified mental health issue and that she must have then told other Managers and that this view "infected" their decision making leading ultimately to his dismissal. I asked him if there were any circumstances, documentation or e-mails which would support this assertion but other than the belief he has that the respondents' actions were unreasonable (and thus evidence of discrimination), he was unable to point to any other circumstances.

27. The claimant had lodged the Scott Schedule in June. In that he recorded:

> "*The HR notified me that I needed approval of my Line Manager and upon contacting her she set up a meeting in which she basically asked me two things namely, what was the condition to which I chose not to disclose it? The other she asked me was that if I was looking for a funding from the*

employer to which I responded by stating either via funding or through any process already in place both of which were not available.
On 14 September 2023 I e-mailed Emma King to be referred to Occupational Health for mental health purposes surrounding communication issues.
Nothing positive come out of OH as he simply stated Psychotherapy and/or Reiki wasn't available. I believe Glynnis went about disclosing the above with colleagues including her Managers Gregg and Hazel and they developed a perception that for the reason I was seeking Psychotherapy must be because I'm ill and this further compounded my dismissal amongst other disadvantages."

28. As the respondent's solicitor had submitted the claimant was relying on a perceived disability rather than an actual disability and it could not logically follow that there had been a failure by the respondent to provide support in relation to a disability which they had not been aware of and which is not demonstrated to exist. How then could any alleged failure amount to unfavourable treatment? The claimant's situation appears wholly different from the situation in ***Coffey***.

29. We then went on to consider claims for harassment. The respondents' position was straightforward in that the claimant makes reference to alleged acts of harassment but doesn't say why he believes they related to his race or perceived disability. I had noted that in the course of these discussions that the claimant had lodged a Scott Schedule and that this had been updated. I, therefore, made reference to it and what was said there.

30. Finally, in relation to direct discrimination on the grounds of race and perceived disability the claimant's position is that from the outset i.e. from his recruitment he believed that he was being treated less favourably because of the colour of his skin. This he said was apparent because he had not been ranked highly enough despite his qualifications. He then had various difficulties throughout his employment leading to his dismissal.

Decision

31. The respondent sought strike out under Regulation 37 of the Employment Tribunals Rules of Procedure 2013 on the basis that the claims had no reasonable prospects of success. The powers of the Tribunal are set out in that Rule which is in the following terms:

"***Striking out 37.***
(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds— (a) that it is scandalous or vexatious or has no reasonable prospect of success…."

32. A Tribunal is required when addressing such applications as the present to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states as follows:

*"**(2) Overriding objective***
The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable— (a) ensuring that the parties are on an equal footing; (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues; (c) avoiding unnecessary formality and seeking flexibility in the proceedings; (d) avoiding delay, so far as compatible with proper consideration of the issues; and (e) saving expense. A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate.

The EAT held that the striking out process requires a two-stage test in ***HM Prison Service v Dolby*** [2003] IRLR 694, and in ***Hassan v Tesco Stores Ltd*** UKEAT/0098/16. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim.

33. Tribunals have been given guidance from the Supreme court particularly in ***Anyanwu v. South Bank Student Union*** (2001) ICR that they should be slow to strike out discrimination claims. Commenting on this case the EAT said this in the case of ***Chandhok v. Tirkey*** UKEAT/0190/14/KN.

> ‘‘*There may still be occasions when a claim can properly be struck out – where, for instance, there is a time bar to jurisdiction, and no evidence is advanced that it would be just and equitable to extend time; or where, on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ at paragraph 56 of his judgment in* ***Madarassy v. Nomura*** *[2007] ICR 867): “…only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.” Or claims may have been brought so repetitively concerning the same essential circumstances that a further claim (or response) is an abuse. There may well be other examples, too: but the general approach remains that the exercise of a discretion to strike-out a claim should be sparing and cautious. Nor is this general position affected by hearing some evidence, as is often the case when deciding a preliminary issue, unless a Tribunal can be confident that no -8- UKEAT/0190/14/KN further evidence advanced at a later hearing, which is within the scope of the issues raised by the pleadings, would affect the decision.’’*

34. It has been observed that the power of strike out is a draconian one and could only be exercised in rare circumstances. The effect of a successful strike out application would be to prevent a party proceeding to a hearing and leading evidence in relation to the merits of their claim. (***Balls v Downham Market High School & College*** [2011] IRLR 217 EAT]

35. As a general principle discrimination cases should not be struck out except in very clear circumstances and the cases in which such claims are struck out before the full facts could be established are rare (***Chandhok & others v Tirkey*** [2015] IRLR 195 EAT).

Application for Deposit Order

36. In the alternative it was submitted that the claim has little reasonable prospect of success and that a Deposit Order should be made if the case is not struck out. The test is not as rigorous as "no reasonable prospect of success". The Tribunal's power to order a Deposit Order of up to £1000 for each specific allegation or argument (***Doran v. Department of Work and Pensions*** UKEAT ES/0017/14, ***Van Rensburg v. The Royal Borough of Kingston Upon Thames and others*** UKEAT/0096/07 and UKEAT/0095/07, ***Wright v. Nipponkoa Insurance (Europe) Ltd*** UKEAT/0133/14.

37. In relation, firstly, to the claims for perceived disability discrimination I accept the submissions of the respondent's agents. The claims cannot rely on the terms of the decision in ***Coffey***. The claimant has failed to set out the perceived protected characteristic in sufficient detail to obtain the protection afforded by the Equality Act to someone who is perceived as having a protected characteristic. He has not said for example that the managers though he had depression or bi-polar disorder or whatever. There can be many degrees of mental health problems which fall far short of a disability under the Equality Act which are protected. In short, he has not pled sufficient facts to bring himself within the protection of the Equality Act 2010 on these grounds.

38. In addition the alleged unfavourable treatment relied upon includes the alleged failure of the respondent to provide him with support because they perceived him as having a disability. It cannot follow given that he does not say he has an actual disability and the respondent was aware of it that there could be a failure by the respondent to provide support in relation to a disability or indeed that any alleged failure could be unfavourable treatment. The claim for perceived disability discrimination is misconceived and in my view has no reasonable prospects of success and shall be struck out. The claims for harassment in so far as they relate to the same perceived disability discrimination must also be struck out on the same grounds.

39. This leaves the claims for harassment on the grounds of race discrimination and direct discrimination. Discrimination claims pose particular problems for Tribunals. Discriminatory conduct is seldom signposted or overt and claimants are often left pointing to differences they believe have occurred in the way they have been treated and asking Tribunals to draw inferences as to the underlying or true reason for such behaviour. The claimant here asserts he was treated differently from white colleagues. The case of ***Nagarajan v. London Regional Transport*** (1999) IRLR 572 is authority for the proposition that to find discrimination had occurred the Tribunal needs to find that the protected characteristic needed to have had a significant influence on events.

40. The claimant offers to prove circumstances inferring discrimination on the grounds of race. He says he was treated differently from white colleagues. That is the bare bones of his position. There is nothing to indicate what type of discrimination is at play other than his belief that white colleagues were treated differently. That said I am not certain that this meets the high test of the claims having no reasonable prospects of success. It is not impossible that his managers will accept that his race played some part in their decision making or cannot explain satisfactorily why other were treated differently. Even if I were to find the section engaged, I would still have to consider the second part of the test in ***Dolby*** and ***Hassan***.

41. I am also conscious of the guidance given in ***Anyanwu*** that Tribunals should be especially slow to strike out discrimination claims. Although I have some doubts that the claim is not misconceived even were I to hold the section engaged I am reluctant to strike out the claims. The respondent is an arm of Government and required to obey the law. There are strong policy grounds here for allowing the allegations to be aired in public and an opportunity given to refute them.

42. In the circumstances here I have concluded that Deposit Orders are appropriate as the claims pled certainly have little reasonable prospects of success. Taking into account the claimant's means the sum of £500 per claim is appropriate.

Employment Judge: J M Hendry
Date of Judgment: 14 November 2024
Date Sent to Parties: 14 November 2024

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