



EMPLOYMENT TRIBUNALS

Claimant: Mr M Quashie

First Respondent: St Giles Trust

Second Respondent: Patsy Joyce

Heard: by Cloud Video Platform **On:** 3 July 2025

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: In person

First Respondent: Catherine Souter, counsel

Second Respondent: Hollie Patterson, counsel

JUDGMENT AT PRELIMINARY HEARING

1. The allegation that the respondents discriminated against the claimant by dismissing him. is struck out against the Second Respondent. It is not struck out against the First Respondent.
2. The allegation that the First Respondent leaked and distributed recordings of conversations with other members of staff is struck out in its entirety because it has no reasonable prospect of success.
3. The remaining discrimination allegations are not struck out.

REASONS

1. The respondents applied for strike out of all of the allegations of discrimination made by the claimant, and which are set out in paragraphs 6.2.1, 6.2.2, 6.2.3 (direct discrimination), 7 (reasonable adjustments), and 8.1.1, 8.1.2 and 8.1.3 (harassment)

of the Case Summary in the Record of the Preliminary Hearing on 4 March 2025.

2. Rule 38 of The Employment Tribunal Procedure Rules 2024 provides that:

“(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;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out)....”

3. Strike out is a draconian sanction and not one to be used too easily. Establishing one of the specified grounds on which a response can be struck out is not in itself determinative of the respondent's application. A two stage approach is required as confirmed in **Hasan v Tesco Stores Ltd EAT 0098/16**. The Tribunal must first decide whether one of the grounds has been made out and, if it is, must then decide whether to exercise its discretion and order strike out. Rule 38 gives the Tribunal the power to strike out, it does not mandate it to do so.
4. Tribunals should be particularly cautious about exercising their power to strike out badly pleaded claims brought by litigants in person who are not familiar with articulating complex arguments in written form on the ground that they have no reasonable prospect of success (**Mbuisa v Cygnet Healthcare Ltd EAT 0119/18**).
5. The Employment Appeal Tribunal, in **Abertawe Bro Morgannwg University Health Board v Ferguson [2013] ICR 1108** commented that whilst in some cases strike out may save time, expense and anxiety, in cases that are fact sensitive the circumstances in which a claim is likely to be struck out are rare.
6. In **Cox v Adecco and ors [2021] ICR 1307** the Employment Appeal Tribunal gave guidance to Tribunals dealing with strike-out applications against litigants in person. It held that when considering strike out of claims brought against litigants in person, the claimant's case should be taken at its highest and the Tribunal must consider, in reasonable detail, what the claims and issues are. A Tribunal should not strike out a claim where it does not know what the claim is. There should, therefore, be a reasonable attempt at identifying the claim and the issues before considering strike out. The EAT also said that, 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 tests that apply to amendments.

7. In ***Anyanwu and anor v South Bank Student Union and anor [2001] ICR 391*** the House of Lords stressed the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact-sensitive and can only be determined after evidence has been heard.
8. This approach was adopted also in ***Kwele-Siakam v Co-Operative Group Ltd EAT 0039/17*** in which the EAT found that an Employment Judge was wrong to strike out claims for race discrimination and victimisation when the central issue in the case was the reason for the respondent's behaviour towards the claimant, which would require a Tribunal to make findings of fact after a full hearing.
9. In reaching my decision on the application for strike out I have taken account of the legal principles set out above, the overriding objective and the need for proportionality in litigation. I deal with each of the allegations in turn:
 1. The allegation at paragraph 6.2.1 of the Case Summary is fact sensitive and cannot, in my view, be determined without the hearing of evidence. Whilst this allegation has little reasonable prospect of success without the hearing of evidence it cannot be said that it has no reasonable prospect of success. This allegation is not struck out.
 2. The allegation at paragraph 6.2.2 appears on the face of it to be out of time, but a determination will have to be made at the final hearing, having heard all the evidence, as to whether it was part of a continuing act. The allegation relates to the claimant's treatment whilst he was off sick. The Second Respondent was his line manager at the time and it cannot be said that there is no reasonable prospect of the allegation succeeding. It is not struck out.
 3. The allegation at paragraph 6.2.3 relates to the dismissal. The First Respondent admits dismissing the claimant. It is common ground that another manager took the decision to dismiss the claimant, not the Second Respondent. Evidence will need to be heard before the Tribunal can determine why the First Respondent took the decision to dismiss. For that reason the allegation is not struck out against the First Respondent. It is struck out against the Second Respondent however as she appears not to have been involved in the decision to dismiss, and there is no reasonable prospect of the allegation succeeding against her.
 4. The allegation at paragraph 7 of the Case Summary is an allegation that the First Respondent failed to make reasonable adjustments for the claimant. In order to determine this allegation, evidence will need to be heard to decide firstly whether the First Respondent applied the PCPs, secondly whether the claimant suffered the disadvantage he relies upon and thirdly whether it was reasonable for the First Respondent to have to make the adjustment. I do not accept the First Respondent's submission that the claimant is unable to establish any disadvantage. The disadvantage relied upon is that he was unable to attend work and was off sick, and experienced feelings of isolation.

It is not in dispute that the claimant was off sick between November 2023 and February 2024. It cannot be said that the reasonable adjustments claim has no reasonable prospect of success. It is not struck out.

5. The allegation at paragraph 8.1.1 of the Case Summary cannot in my view be determined without hearing evidence. It cannot be said that it has no reasonable prospect of success. It is not struck out.
6. The allegation at paragraph 8.1.2 is that the First Respondent leaked and distributed recordings of conversations. The claimant told the Tribunal today that he does not know who leaked and distributed the recordings. The allegation is also out of time. For these reasons it has no reasonable prospects of success and is struck out against both respondents.
7. I find that the allegation at paragraph 8.1.3 has little reasonable prospect of success, for the reasons set out in the Deposit Order. It will however need evidence to determine it, and for that reason it cannot be said it has no reasonable prospect of success. It is not struck out.

Employment Judge Ayre
Date: 4 July 2025

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