



EMPLOYMENT TRIBUNALS

Claimant: Mr A Abuelmagd

Respondent: Leeds Teaching Hospitals NHS Trust

Heard at: Leeds

On: 4 September 2025

Before: Employment Judge Maidment

Representation

Claimant: Mr Singh, Pupil Barrister

Respondent: Mr A Sugarman, Counsel

RESERVED JUDGMENT

1. The claimant's complaints of direct disability discrimination and discrimination arising from disability in respect of his exclusion from work under MHPS on 4 March 2025 are dismissed upon the claimant's withdrawal of them.
2. The claimant's complaint of unfair dismissal is struck out as having no reasonable prospect of success.
3. The claimant's complaints of discrimination arising from disability, a failure to make reasonable adjustments and indirect disability discrimination are struck out as having no reasonable prospect of success.

REASONS

1. A complaint may be struck out if it has no reasonable prospect of success. The tribunal is given this power by Rule 38 of the Employment Tribunal Procedure Rules 2024. A complaint of discrimination should only be struck out as having no reasonable prospect of success in the most obvious and plainest of cases, it being recognised that discrimination cases are generally

fact sensitive - **Anayanwu v South Bank Students' Union and South Bank University [2001] IRLR 305**. The claimant's case must be taken at its highest. Nevertheless, a tribunal is entitled to strike out claims which are so inherently improbable that they can be regarded as "fanciful" and "baseless" – **Ahir v British Airways Plc [2017] EWCA Civ 1392**. In that case the Employment Judge came to a calculation that there was no reasonable prospect of the claim succeeding partly because of its inherent implausibility and partly because the claimant pointed to no material which might support his case. The Court of Appeal considered that this was a permissible basis for his conclusion. It was said that employment tribunals should not be deterred from striking out the claims, including 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 of reaching such a conclusion in circumstances where the full evidence is not being heard and explored. In **Anayanwu** it was recognised that the time and resources of employment tribunals ought not to be taken up having to hear evidence in cases that are bound to fail.

2. Tribunals must first consider, as relevant in these cases, whether a claim or part of a claim has no reasonable prospect of success. It must then decide whether to exercise its discretion to make a strike order.
3. An application is made in the alternative also for deposit orders which may be made pursuant to Rule 40 where the tribunal considers that any specific allegation or argument has little reasonable prospect of success. The tribunal must make reasonable enquiries into the ability of the person against whom the deposit is ordered to pay when deciding the amount of the deposit.
4. Again, in determining whether to order a deposit, the tribunal may consider legal issues and the likelihood of a party being able to establish the facts essential to the case. Again, a core factual conflict, only resolvable at a full merits hearing, would render the ordering of a deposit inappropriate. Whilst the test of little reasonable prospect of success is not as rigorous as the test that the claim has no reasonable prospects, the tribunal must still have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim. The tribunal still retains a discretion whether or not to order a deposit if the grounds for so doing are met.
5. The claimant asks the tribunal that, if it comes to the conclusion that a deposit order should be made in respect of any individual allegation, it should instead strike that allegation out. It appeared that the claimant would not wish, in respect of any allegation, to pay a deposit and put himself at risk thereby of a successful application for costs by the respondent at a later date. The tribunal explained that, regardless of the claimant's preferences,

it had to come to any conclusions on a principled basis. The claimant, as a litigant in person prior to today's hearing, is genuinely upset at how he has been treated but has struggled to attach legal causes of action to his allegations. At times, the attribution of the legal claim has appeared quite arbitrary, and the claimant has struggled to define the allegation in line with the legal test. He is in danger of obscuring rather than illuminating the sense of grievance he has and of making the final hearing more difficult for himself.

6. The tribunal considers firstly the claim of unfair dismissal which is based on the claimant having been constructively dismissed. There is no assertion of any express dismissal by the respondent.
7. The claimant lodged his tribunal application on 4 March 2025. He ticked a box in the Form ET1 indicating that his employment was continuing. In his grounds of complaint, he referred to having been absent from work due to sickness and excluded from work, consistent with a continuation of his contract of employment, but not with him having been dismissed. The claimant was in receipt of his wages when he submitted his complaint and has continued to be paid.
8. At the preliminary hearing on 19 June 2025, he asked the tribunal for an order to be released from the respondent, clearly still believing there was an ongoing contractual relationship. The summary of the preliminary hearing discussions includes a record of an acceptance by the claimant that he had not resigned and continues to be paid. A person must have resigned from their employment in order to claim to have been constructively dismissed.
9. The claimant thereafter, in the further particulars submitted, continued to argue in favour of a constructive dismissal on the basis of alleged repudiatory breaches. However, the claimant referred to himself being "nominally employed" and sought to argue that, if an individual was compelled to remain in employment despite such breaches, a claim of constructive dismissal could still be brought. The claimant's reference to authorities supporting the proposition that an employee can remain employed yet claim to have been constructively dismissed is misconceived. In a subsequent paragraph the claimant refers to the contractual relationship being already "functionally severed" by 4 February 2025, which is inconsistent with a number of the claims otherwise being pursued.
10. The claimant's contract of employment was to subsist for a period from 7 August 2024 until 4 February 2025. The claimant was then due to rotate as part of his speciality training programme to work in Hull. The claimant however clearly understood that his employment was continuing beyond that date as illustrated by an email he sent on 25 February 2025 announcing his return to work from annual leave on 3 March 2025. An email from him

of 27 February, in response to a notification of his exclusion from work, said that he was happy to be assigned to any workplace that aided his career progress. By email of 11 March 2025, the claimant's fixed term contract was extended to end on 5 August 2025. The claimant did not respond in disagreement. The evidence is of his exclusion from work being reviewed around every 4 weeks. The apparently most recent review was notified to the claimant on 6 August.

11. The claimant has told the tribunal that he resigned from his employment a couple of days prior to this preliminary hearing. Whether or not he has done so, fundamentally, the claim of unfair dismissal has no reasonable prospect of success because at the time the claim was brought, the claimant remained in the respondent's employment and had not, for instance, even given notice of termination or indicated an intention to resign. Mr Singh accepted that he could not shy away from the fact that when the claimant brought the claim, he confirmed that he was employed and in receipt of wages. He accepts that a claim of constructive dismissal is untenable if the claimant remained in employment. It is appropriate for the tribunal to exercise its discretion and to strike out the claim of unfair dismissal which is bound to fail.
12. As regards the claims of discrimination, the respondent does not seek to argue that the claims of direct discrimination based on a perceived disability and/or, in the alternative, those allegations brought as complaints of disability-related harassment should be struck out or a deposit ordered as a condition to their continuance. It is accepted that those claims must be taken at their highest and, in the circumstances, it would not be appropriate for the tribunal to conclude the claims to have no or little reasonable prospect of success.
13. The tribunal has identified in the record of the preliminary hearing on 4 September 2025 various complaints of discrimination arising from disability which the claimant pursues based on a perceived disability of psychosis and alternatively on his actual disability of autism.
14. However, a claim of discrimination arising from disability (as with a claim of indirect disability discrimination or alleging a failure to make reasonable adjustments) is only possible where the claimant has a relevant protected characteristic, i.e. satisfies the definition of disability in respect of the impairment relied upon. The claimant's case is that he is and was never a disabled person by reason of psychosis. In **Chief Constable of Norfolk v Coffey UKEAT/0260/16/BA**, the EAT recognised that, unlike section 13 of the Equality Act 2010, sections 15, 19 and 20 – 22 are framed in such a way that they "apparently" apply only where "B" has a protected characteristic. The reference to "apparently" was said to be because no direct argument had been heard on the meaning of those provisions. The EAT's expressed

view, however, represents a clear and obvious reading of the sections. There is certainly no authority supporting the ability of a person without a disability to bring claims beyond those of direct discrimination and indeed harassment. The claimant has no reasonable prospect of successfully bringing a complaint of discrimination arising from disability or indeed any discrimination complaint of perceived disability beyond those of direct discrimination and harassment based on a perceived but not actual disability of psychosis.

15. The claims of discrimination arising from disability reliant on something arising from the actual disability of autism must, however, similarly be regarded as having no reasonable prospect of success.
16. At the earlier preliminary hearing on 19 June 2025, the claimant said that his autism diagnosis was recent and he accepted that the respondent did not know about it at the relevant time. Whilst at paragraph 15 of the record of the preliminary hearing, Employment Judge Davies considered his assertions to be more like a complaint of discrimination arising from disability, she recorded that he was clear (at that time) that he was not bringing such a claim. She continued that there would in any event be a difficulty in bringing such a claim because it would be a complete defence of the respondent to prove that it did not know and could not reasonably have been expected to know about the claimant's autism.
17. Mr Singh does not suggest that the claimant has not previously conceded that the respondent lacked knowledge of a recent diagnosis of autism. The claimant's case, as then expressed, was not of the respondent having constructive knowledge. The claimant has alluded to the issue during this preliminary hearing, referring to the respondent considering that there were communication issues in the claimant's performance and that he was behaving in an abnormal fashion. The claimant has not, however, pointed to any facts which might lead a tribunal to conclude that the respondent was on notice of a disability impairment of autism and the reference to behaviours considered abnormal is insufficient to allow the tribunal to engage in an argument which had any reasonable prospect of success, again given the claimant's own lack of recognition and the insurmountable leap which would have to have been found to have been reasonable to make or enquire into - that the claimant was exhibiting any stated behaviour which might be suggestive of a disability impairment whether of autism or anything similar or related.
18. The discrimination arising from claim reliant on autism has no reasonable prospect of success. The claimant did not know himself that he was impaired by reason of autism until after the events complained of. He does not suggest that the respondent did or could have had actual knowledge. There is no basis upon which the respondent might have had constructive

knowledge in all the circumstances and be effectively put upon enquiry as to a disability impairment including in circumstances where the claimant, as a medical professional, suggests no earlier recognition by himself that he might be so impaired.

19. Regardless of the issue of knowledge, the complaints of discrimination arising from disability had no reasonable prospect of success due to a lack of cogent identification of a relevant “something arising” from disability. The claimant says that this was a verbal diagnosis or concerns being raised, but the claimant does not know what any concerns were because his case is that he was not informed. No other “something arising” has been identified in respect of any section 15 claim.
20. A similar issue of knowledge arises in the complaints alleging a failure to make reasonable adjustments in circumstances where there must be actual or constructive knowledge of both the impairment and the disadvantage to which the claimant was put by the relevant practice of the respondent relied upon. For the same reasons, the reasonable adjustment complaints reliant on autism are bound to fail and must be regarded as having no reasonable prospect of success.
21. The first reasonable adjustment claim relates to the allegations that the claimant was put on sick leave without consent and without investigation. The PCP to be relied upon is said to be the respondent’s failure to follow a process of investigation. No general practice is asserted. In his direct discrimination claim it is asserted that hypothetical comparators would have been treated more favourably rather than that there was a general practice which disadvantaged him as a disabled person due to his autism impairment. Any individual disadvantage remains unarticulated.
22. The reasonable adjustment complaint is effectively brought in the alternative is one of indirect disability discrimination, where the tribunal recognises that there is no requirement of knowledge of disability on the part of the respondent, but again such claim has no reasonable prospect of success given the lack of a workable pleaded PCP as above. Further, there is no explanation as to how a group disadvantage might exist or be proven.
23. The allegation regarding the claimant’s rotation to Hull being blocked is pursued as discrimination arising from disability with no additional “something arising” having been identified. In the alternative, complaints of a failure to make reasonable adjustments and of indirect disability discrimination are brought reliant on the PCP of the respondent allowing employees who are sick to continue with their training programme subject to investigation. The claimant has no reasonable prospect of showing that the respondent adopted such a practice. It is not conceivable that the respondent would have. If the medical practitioner in training was sick and

unable to work, the respondent could not have simply permitted such individual to continue with their workplace training which involved indeed ordinary hospital work caring for patients. The respondent could and would not have made sick doctors work. There is no pleaded PCP more directly relevant to the cancelling of his rotation. The respondent puts forward that, in any event, any decision on rotation rested with the deanery rather than the respondent. If so, it is not clear how any complaint might arise against the respondent, but the tribunal does not base its assessment on any lack of involvement by the respondent, a matter in respect of which it has heard no evidence.

24. Dr Adams' alleged failure to take into account a second opinion is brought as discrimination arising from disability with no additional "something arising" having been identified. It is also pursued as a failure to make reasonable adjustments, but no applicable PCP has been identified.
25. The respondent's practice of restricting acceptance to face-to-face psychiatric assessments is brought as a complaint of discrimination arising from disability with again no additional "something arising" identified. It is also separately pursued as a complaint of a failure to make reasonable adjustments and indirect disability discrimination. Those later complaints have no reasonable prospect of success in circumstances of reliance on a PCP of insisting on face-to-face medical assessments. There is no arguable case that face-to-face medical assessments, rather than remote ones caused the claimant any disadvantage relating to his autism. Indeed, the claimant is elsewhere criticising the respondent for not having face-to-face discussions in circumstances where he maintains that his autism disadvantages him in terms of processing information and responding to questions in meetings held remotely whether by video or telephone. The claimant in fact is arguing unfavourable treatment because he had already arranged to obtain his own medical report, which was done online, yet the respondent did not accept it. Any disadvantage therefore is said to flow from the fact that he already had a report which had been based on a remote assessment of his condition. That did not flow from any disability and certainly not his impairment of autism.
26. The claimant's complaint regarding ignoring occupational health advice to return his case for a management decision on his exclusion is brought in part as one of discrimination arising from disability but with no additional "something arising" identified. The same consideration applies to the allegation of a failure to manage a conflict of interest in the appointment of a responsible officer.
27. The complaint of being excluded under MHPS is brought, as an alternative to a harassment complaint, as one of a failure to make reasonable adjustments. Regardless of the knowledge issue, such complaint has no

reasonable prospect of success. The claimant has no prospect of saying that there was a general policy to exclude people who were subject to the MHPS process in circumstances where he suggests that others were allowed to continue working under supervision. In the context of his harassment complaints he is saying that his individual exclusion was related to his perceived disability i.e. that non-disabled employees were not so excluded. The tribunal can foresee that in certain circumstances medical practitioners subject to MHPS might be excluded, for example, if they did not cooperate with occupational health requirements, but the claimant does not suggest then how he might have been disadvantaged as a disabled person. If the claimant had not been fit and, for instance, had not cooperated with the respondent, there is no prospect of the tribunal concluding that he was unreasonably not allowed back to work.

Employment Judge Maidment

Date 7 October 2025

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