



EMPLOYMENT TRIBUNALS

Claimant: Mr S Stevens

Respondent: Barchester Healthcare Ltd

Heard at: Leeds by CVP

On: 2 October 2025

Before: Employment Judge Maidment

Representation

Claimant: In person

Respondent: Mr C Glyn, KC

JUDGMENT

The claimant's claims of disability discrimination and unfair dismissal are struck out as having no reasonable prospect of success.

REASONS

1. A claim (or part of a claim) 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 the 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 for 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 **Anyanwu** 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. This is not an ordinary case where an application to strike out the claims on the basis of them having no reasonable prospect success is made. A number of sample cases have already been heard and determined in circumstances where it was always anticipated that the factual findings and decisions in those sample cases would influence the progress of this and other outstanding claims arising out of the implementation by the respondent of a policy to require employees to be fully vaccinated in the context of the coronavirus pandemic as a condition to their continued employment by the respondent in the care sector
3. This decision and reasons must be read against and with reference to the reasons of the tribunal in the case of Mrs G Dimitrova (case no. 1803315/2021) and others against the respondent and the appeal of Ms Dimitrova and 3 other claimants (case no. EA-2023-00110-RN and others) upholding the tribunal's judgment after a hearing on 27 June 2024. The tribunal appreciates that not all of its findings in all causes of action which the outstanding claimants wish to pursue formed part of the sample claimants' appeal to the EAT.
4. 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 out order.
5. An application is made in the alternative also for deposit orders which may be made pursuant to Rule 40 of the Procedure Rules 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.
6. 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, albeit the tribunal has already made detailed factual findings on many of the issues which form the battleground in the continuing claims. Whilst the test of little reasonable prospect of success is not as rigorous as the test whether 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.

7. The decision to terminate the claimant's employment was taken in 2021 during the coronavirus pandemic. The respondent operated care homes for predominantly elderly residents and had experienced significant deaths amongst its residents attributable to Covid. Whilst a range of practical precautions could and were taken to seek to reduce the risk of infection, there were limitations given the type of care the residents required and the impossibility of enforcing complete isolation. Once Covid 19 entered a care home, it was difficult to contain. On 5 January 2021, a further period of lockdown was implemented against a background of a new Covid 19 variant which appeared to be more transmissible. The respondent introduced a policy on 18 January 2021 requiring new employees to be vaccinated and setting out that promotion and discretionary bonuses to staff would only be available to those who were vaccinated. A proposal was then made to widen the policy to introduce a requirement for staff to be vaccinated to continue to work in care homes. There was consultation on this proposal and a draft risk assessment was produced. The unions supported staff being vaccinated, but opposed the policy in terms of the consequence of a loss of employment for employees who were not vaccinated unless exempted on medical grounds evidenced by a GP.
8. On 15 February 2021, all care home workers were eligible to receive a vaccine. The policy was then extended to all employees on 24 February with an anticipation that it would come into effect on 24 April 2021. Staff not medically exempt would, if they were not vaccinated, be subject to investigation under a formal procedure and face potential dismissal.
9. By 30 March 2021, the vast majority of the respondent's staff (all but 406 out of 17,000, with some of that number in the process of arranging for vaccination) had been vaccinated.
10. On 14 April 2021, the Government proposed making vaccination compulsory for those working in care homes. Regulations were ultimately issued which came into force on 11 November 2021 and had been modelled on the respondent's own policy preventing those who were not clinically exempt from entering healthcare premises without a full course of Covid vaccinations.
11. In the meantime, the respondent's revised policy was implemented from 24 April 2021, which led to the dismissal of the claimant in circumstances where they were not vaccinated and not medically exempt.

12. The tribunal made a number of factual findings which were not dependent upon the evidence of any individual claimant and which the claimant has not advanced any basis upon which they could challenge the findings other than by raising arguments which have already been heard and rejected. In such circumstances, the tribunal, in the absence of a strike out order in respect of any contentions unsustainable on those facts, would be allowing the re-litigation of a case with no reasonable prospects of success. The tribunal would hear the same evidence from the respondent's witnesses which it has already accepted and no materially new evidence relevant to any sustainable challenge on its findings.

13. Mr Glyn has helpfully and accurately listed such relevant findings as follows:

- 13.1. The respondent's vaccine policy was to reduce the risk of the spread of Covid infection in its homes and therefore death and serious illness amongst primarily its residents, but also its staff and any visitors.
- 13.2. The vaccine policy resulted in the claimant's dismissal, because the claimant was both unvaccinated and unable to show evidence of being medically exempt
- 13.3. The reason for the dismissal was genuine and one which could justify dismissal as being for a potentially fair reason
- 13.4. The risk was reasonably viewed by the respondent as far from remote against evidence of care homes being particularly vulnerable to the spread of Covid once it had entered any home
- 13.5. The respondent was not one-sided in its evaluation of the evidence and its policy - it considered alternative arguments
- 13.6. At the time the policy was implemented, the respondent still reasonably concluded that a risk of death remained with the uncertainty of future new variants of Covid 19
- 13.7. The respondent strove to make a serious and genuine case in favour of vaccination and to present staff with a substantial amount of evidence from sources upon which it reasonably chose to rely
- 13.8. The respondent did not act unreasonably in any lack of awareness or acceptance that an antibody test gave as good protection as the Covid vaccine
- 13.9. The respondent reasonably concluded that frontline care workers and those needing to work in a care home or to enter a care home as part

of the ancillary duties posed a risk to residents and other members of staff if unvaccinated.

- 13.10. It was a reasonable requirement by the respondent that any medical exemption was supported by a GP or medical professional
 - 13.11. A period of notice was given to allow employees to change their position and receive the vaccine.
 - 13.12. The respondent reasonably did not set a minimum safe level in terms of the proportion of staff members vaccinated but, reasonably, only tolerated the risk of those who were medically exempt from vaccination
 - 13.13. All employees understood and were properly informed of the policy and knew that if they changed their mind and accepted the vaccine or showed a medical exemption, they would not be dismissed
 - 13.14. The dismissals were not of a type covered by the ACAS Code on Disciplinary Procedures
 - 13.15. It was not unreasonable for managers not to re-evaluate the basis of the policy during the dismissal process of any individual.
14. Mr Stevens has brought a complaint of unfair dismissal and disability discrimination. He was employed at one of the respondent's care homes as head of maintenance until his employment terminated on 17 November 2021 after, in fact, the Government's own Regulations came into force.
15. The tribunal has determined to strike out the complaint of disability discrimination on the basis that it has no reasonable prospect of success. The claimant did not specify his disability in his grounds of complaint. He has not responded to the respondent's pleaded case that there is no evidence of any disability. In response to the respondent's skeleton argument, Mr Stevens has responded that he does not have a current recognised disability or an exemption certificate for the Covid vaccine. He requested, however, that it be taken into consideration that, at the time of the investigation process between February – November 2021, there was uncertainty about his health and he was engaging with his GP and updating the respondent as to his attempts to obtain accurate answers in relation to the effects of the Covid 19 vaccination on him.
16. The tribunal explained to Mr Stevens the test in Section 6 of the Equality Act 2010 which needs to be satisfied as at the date of his dismissal for him to be regarded as a disabled person. There must have been an impairment suffered by him which had a substantial adverse effect on his ability to carry out day-to-day activities. In particular there was a need for any such effect to be long term in the sense of having lasted or it being likely as at the date complained

of that the effects would last for a period of 12 months or more. Mr Stevens did not articulate that he had or has ever had an impairment which satisfies those requirements. A claim of disability discrimination cannot therefore succeed.

17. As regards the claim of unfair dismissal, the claimant was required to work in care homes. His situation is not materially different from that of Mrs Husain in the claims already determined. She was employed as a laundry assistant. The tribunal's factual findings as to the role of a laundry assistant are at paragraphs 105 – 108 of its reasons. The role involved going into care homes, interacting with residents and handling linen which came from and was sent back into care homes. Mr Stevens' role involved going in and out of a care home, interacting with residents whilst there and taking in and removing materials.
18. The tribunal has already considered the multiple arguments put forward to suggest unfairness, including that dismissal involved an unjustifiable interference with the sample claimants' human rights. Those arguments were rejected. The dismissal was found to be substantively fair. The EAT upheld those conclusions. Nothing in Mr Stevens' submissions is suggestive of a difference in his situation as might possibly lead to a different conclusion.
19. Mr Stevens' case is different in the sense that it is more fundamentally difficult for him to challenge the respondent's decision to dismiss. At the point of the termination of his employment, he could not legally be admitted to work in a care home unless fully vaccinated or medically exempt in accordance with the recently introduced Regulations. The respondent had to comply with them.
20. In all of the sample claimants' cases, the tribunal also engaged with various issues raised by the claimants of procedural failings in how their individual circumstances were addressed up to the point of dismissal and on any appeal.
21. The tribunal had recognised, during the case management process of this multiple of claims, that test cases were not appropriate, in particular in respect of claims of unfair dismissal where each employee dismissed went through their own individual process in terms of investigation and meetings.
22. As of today, Mr Stevens still has no medical exemption. Mr Stevens, according to medical records disclosed, had the first vaccine dose on 17 February 2021. He reported multiple symptoms to his doctor on 22 and 25 February. He was advised by his doctor that the second dose of the vaccine carried with it few side effects if any and that Mr Stevens should have it as he was not experiencing an allergic reaction. On 30 April, Mr Stevens is recorded as declining the second dose because of the severe reaction to the first. His records show a call made to him to book the second vaccine with Mr Stevens

reporting being very upset as he was under the age of 30 and had been advised that his age group should not receive the Astra Zeneca vaccine. He was waiting for an MRI scan. An entry in his medical records of 21 May 2021 refers to his request for a letter saying that any letter provided would be factual only and the medical practice was not able to offer an opinion on whether the vaccine was safe.

23. Mr Stevens spoke to his doctor on 2 July 2021 about his need for a full vaccination as he was under threat of dismissal. He was advised that there was no medical evidence to suggest that he should not have the second vaccine as he did not have an allergic reaction. However he could have a vaccine from an alternative manufacturer as there was evidence that mixing vaccines may work.
24. Mr Stevens, therefore, was dismissed in circumstances where he was unvaccinated and there is no basis for him saying that he should have received a clinical exemption. When Mr Stevens appealed the dismissal decision, he said that he only wanted to appeal on the basis of the lack of time he had been given to obtain an exemption through calling the “119” telephone helpline, as advised in a meeting he had attended on 10 November, up to his dismissal on 17 November 2021. That suggested “lack of time” would have to be viewed against the above narrative of events. He had been dismissed then, after it became a legal requirement not to allow people to work in a care home environment without being fully vaccinated.
25. Mr Stevens was asked at his appeal hearing on 30 December 2021 if he had by then received the required evidence of a medical exemption, but said that he did not wish to discuss that. He gave that response in circumstances where he had no medical exemption and there was no prospect of him obtaining one.
26. Mr Stevens’ submissions today suggested an unfair process in that there was a disregard for what he said. The respondent ought to have accepted that there might be a risk to his health in him receiving the second vaccine. There was a suggestion of delay and a failure to progress a referral to occupational health, but in circumstances again where the evidence is not of any basis for a medical exemption. Nor was that situation going to be changed by any contact he made with the “119” NHS service. Any challenge to the procedure adopted then needs to be seen in the context of the claimant, by the point of the appeal, not being medically exempt and not wishing to discuss that state of affairs with the respondent. He told the tribunal that he was told by the “119” service that he would not receive an exemption because he had not gone to hospital on the day of his post-vaccine symptoms. Whilst doubting that to be an accurate statement, again, the evidence is not of any basis for an exemption.

27. Whilst Mr Stevens might have some arguments as to defects in the procedure arising out of information given to him by the respondent, delay and timing, the fairness of the dismissal will be considered in the round with due regard for the appeal process. Given the position of Mr Stevens at the appeal, there is no reasonable prospect that any earlier defects might be sufficient to render dismissal unfair in all the circumstances.

28. Mr Stevens, it is noted, seeks to amend his complaint to add a claim for a statutory redundancy payment. The application to amend is refused. Regardless of issues of time limits, any such claim has no merit. To be entitled to a statutory redundancy payment, an individual must have been dismissed by reason of redundancy. There is no suggestion that the respondent was closing or reducing any of its operations nor that there was a reduced need for employees in Mr Stevens' claimant's role. Mr Stevens was dismissed for being unvaccinated. Had he been vaccinated, he would have continued in his role as head of maintenance.

Employment Judge Maidment

Date 31 October 2025