THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON CENTRAL**
BEFORE: **EMPLOYMENT JUDGE ELLIOTT**
BETWEEN:

Mr C Furlong

Claimant

AND

Hazelcast UK Ltd

Respondent

ON: **8 October 2025**
Appearances:
For the Claimant: **In person**
For the Respondent: **Mr L Harris, counsel**

REASONS

1. This decision was given orally on 8 October 2025. On 22 October 2025 the claimant requested written reasons.

2. By a claim form presented on 14 February 2025 the claimant Mr Colm Furlong brings claims of unfair dismissal and breach of contract. As the claimant argued that by his grievance he had done a protected act, the tribunal also considered that he may be seeking to bring a victimisation claim. The claimant also brought claims for misrepresentation and protection from harassment.

This remote hearing

3. The hearing was a remote public hearing, conducted using the cloud video platform (CVP) under Rule 46. The parties consented to the matter being heard by video.

4. In accordance with Rule 46, the tribunal ensured that members of the

public could attended and observe the hearing. This was done via a notice published on Courtserve.net. No members of the public attended. The attendees for the respondent were part of the legal team.

5. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. From a technical perspective, once the hearing got started, there were no difficulties of any substance.

6. The participants were told that was an offence for them to record the proceedings.

7. No witness evidence was taken.

The issues for this hearing

8. The case was originally listed for a full-merits hearing on 8 and 9 October 2025. It was converted to this preliminary hearing by Employment Judge Snelson.

9. The issues for the hearing today were identified by Judge Snelson and the parties were notified by a letter dated 17 June 2025 as follows: whether the claims (or any of them) should be struck out as having no reasonable prospect of success, alternatively made the subject of a deposit order as having little reasonable prospect of success.

10. At the outset the claimant said that he no longer relied upon a misrepresentation claim or a breach of contract claim. His case now only related to the unfair dismissal claim. I asked the claimant to say whether he sought to bring a victimisation claim and he said he did so this was also considered.

Documents for the hearing

11. There was a bundle of documents of 90 pages.

12. Both sides presented written submissions to which they spoke. All submissions including any authorities referred to were fully considered, whether or not expressly referred to below. Shortly before the hearing the claimant presented a written rebuttal of the respondent's argument, which the respondent had read.

The claim

13. The claim as originally presented appeared to be for unfair dismissal and breach of contract. Having reviewed the digital file, Employment Judge Snelson made the following comments, set out in a letter to the parties of 30 May 2025.

"The complaint of unfair dismissal appears untenable given that the Claimant was not continuously employed by the Respondent for the

minimum period of two years prescribed by the Employment Rights Act 1996, s108(1). The breach of contract claim faces the difficulty that the contract to which the Claimant was appointed was terminable upon notice and notice was given. The underlying complaint that he was recruited on a false premise or in bad faith or on the basis of a misrepresentation appears not to fall within the Tribunal's jurisdiction. And the complaint of 'retaliation for raising a grievance' does not disclose any evident basis for a legal claim in the Tribunal".

14. The Particulars of Claim cover 1.5 pages (bundle pages 15-16) under four headings, Background, Unfair dismissal (sham redundancy), Implied Breach of Contract & Bad faith and Retaliation for raising a grievance.

15. On the claim for unfair dismissal, the claimant described "*a sham redundancy*". He said that the decision to dismiss was predetermined, there was a lack of genuine consultation and invalid reasons for the redundancy.

16. The claimant also said that his dismissal was retaliation against him for raising a grievance because termination of employment immediately followed his grievance.

The parties' submissions

<u>The claimant</u>

17. The claimant's position is that in relation to lack of qualifying service for unfair dismissal, that he was dismissed for asserting a statutory right under section 104 Employment Rights Act 1996 (ERA). He also asserts that a grievance he presented on 26 November 2024 was a protected act such that he is bringing a victimisation claim. He says he was dismissed within 24 hours of raising a grievance. I gave the claimant an opportunity to have a look at section 27 Equality Act in relation to a protected act.

18. The claimant's case is that he raised a grievance during the redundancy consultation process, asserting his right to a fair redundancy process and the conduct of the executive leadership and he was dismissed the next day.

19. The grievance was at page 76 of the bundle. As a headline, it complained of:

- *The attempted execution of a sham redundancy to terminate my contract*
- *Consistent abusive behaviour and unprofessional conduct towards senior executives*

20. He described the attempt to make him redundant as unprofessional and gave his view that it was "*in part a personal matter*" based on a strained

working relationship. He also described it as an attempt to avoid the cost of terminating his contract when there were no grounds for redundancy.

21. The claimant submitted that his grievance was a protected act because it cited amongst other things, harassment and abuse by senior executives. I asked the claimant to have a look at section 27(2) Equality Act and to let me know how he said that his grievance qualified as a protected act under that legislation. He dealt with this in oral submissions (referred to below).

The respondent

22. The respondent said that the claimant did not assert that he had 2 years' service. So far as section 104 ERA was concerned, the respondent said that under subsection (4) (as set out below) the claimant did not assert a "*relevant statutory right*".

23. The claimant relies upon asserting statutory rights in his grievance. The respondent said that as at the date of the grievance, he had not been dismissed and could not be asserting that he had been dismissed for asserting a statutory right. In addition, the respondent said that the claimant was aware that his role was at risk of redundancy and he had attended consultation meetings on 22 and 25 November 2024.

24. The respondent submitted that to the extent that the reference to a "*sham redundancy*" might be said to be a reference to unfair dismissal rights, the claimant had not as of 26 November been dismissed, so that the grievance could not qualify as an assertion that any right had been infringed. The respondent submitted that an allegation that there might be a breach in the future is not enough for the purposes of section 104(1)(b) ERA (set out below).

25. The respondent's position was that as a matter of law and chronology, the case had no reasonable prospect of success. They relied upon ***Spaceman v ISS Mediclean Ltd 2019 IRLR 512 (EAT)***. The claimant said he had seen this authority.

26. The respondent sought a deposit order in the event that the Tribunal did not strike out the claims, on the basis that the claims had little reasonable prospect of success.

The parties' additional oral submissions

27. The respondent said that the claimant accepted that he was not brining an ordinary unfair dismissal claim due to lack of service so the claim for unfair dismissal was entirely based on section 104 ERA.

28. Section 104(4) sets out relevant statutory rights. In order to rely on the section, the claimant had to assert that a relevant statutory right had been infringed. A grievance that suggests that a process was not fair and may

result in an unfair dismissal did not fall within section 104. The respondent said that following ***Spaceman v ISS Mediclean*** section 104 did not apply.

29. The respondent said that in the claimant's rebuttal document at paragraph 10, he seemed to say that what he asserted in the grievance was a right to "*a fair redundancy process*" and protection from harassment and abuse, neither of which are relevant statutory rights under section 104. The respondent accepted that the employee does not necessarily have to have the right. The respondent made clear that they did not assert bad faith on the part of the claimant.

30. The respondent said that there is no right to a fair redundancy process but only as part of an unfair dismissal claim. There is also no right to "*protection from abuse*". The claimant was not asserting that a relevant statutory right had been infringed so section 104 did not apply as a matter of law.

31. On victimisation, although the term "*protected act*" had been used by the claimant, the respondent said he was not using that term within the meaning of section 27 Equality Act. He was not aware of that provision until today. In the rebuttal document at paragraph 23 he said that his reference to retaliation was "*simply the factual description of s104 ERA*".

32. The respondent said that the grievance itself made no reference to the Equality Act and the claimant was not meaning it in that sense. The term "*protected act*" was not used within the meaning of the Equality Act so there was no reasonable prospect of that claim succeeding.

33. The claimant relied on his two written submissions. He had simplified the claim. On 26 November 2024 he raised a grievance asserting his rights and on 27 November 2024 he was dismissed and said that this could not be ignored. He said he had asserted his right to a fair redundancy process and to protection from harassment. He said he did not need to cite legislation. In his view the redundancy was a sham and this reinforced his point.

34. The claimant said ***Spaceman*** was a case about a grievance about a future dismissal and his grievance was about an ongoing process. He said that the tribunal could not determine motive and causation at this point and where the reason was disputed it should not be struck out. The case should go to full hearing.

The relevant law

35. Rule 38 of the Employment Tribunal Rules of Procedure 2024 provides that the Tribunal may strike out all or part of a claim or response or reply on a number of grounds including at Rule 38(1)(a) that it is scandalous or vexatious or has no reasonable prospect of success.

36. A claim 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.

37. Rule 40 provides as follows

> *(1) Where at a preliminary hearing …. the Tribunal considers that any specific allegation or argument in a claim …. has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").*
>
> *(2) The Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*
>
> *(3) The Tribunal's reasons for making the deposit order must be provided with the order and the depositor must be notified about the potential consequences of the order.*
>
> *(4) If the depositor fails to pay the deposit by the date specified by the deposit order, the Tribunal must strike out the specific allegation or argument to which the deposit order relates.*
>
> *(5) …*
>
> *(6) …*
>
> *(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—*
>
> > *(a)the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown,….*

38. In ***Anyanwu v South Bank Students' Union 2001 ICR 391*** the House of Lords highlighted the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact sensitive and require full examination to make a proper determination. It may be necessary to determine whether discrimination is to be inferred.

39. ***Balls v Downham Market High School and College 2011 IRLR 217*** the EAT said that the test is not whether the claim is likely to fail; nor is it a matter of asking whether it is possible that the claim will fail. It is not a test that can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether

their written or oral assertions regarding disputed matters are likely to be established as facts. It is a high test. If can be unfair to strike out if there are crucial facts in dispute and there has been no opportunity to test the evidence. Strike out is a draconian power.

40. In relation to a victimisation claim, a protected act is defined in section 27 Equality Act 2010 as follows:

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
>
> > *(a)B does a protected act, or*
> > *(b)A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act—*
>
> > *(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 express) that A or another person has contravened this Act.*

41. Section 104 ERA 1996 says as follows:

> *(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or if more than one, the principal reason) for the dismissal is that the employee-*
> > *(a) brought proceedings against the employer to enforce a right of his which is a relevant statutory right, or*
> > *(b) alleged that the employer had infringed a right of his which is a relevant statutory right.*
>
> *(2) It is immaterial; for the purposes of subsection (1)*
> > *(a) Whether or not the employee has the right, or*
> > *(b) Whether or not the right has been infringed; but, for that subsection to apply, the claim to the right and that it has been infringed must be made in good faith.*
>
> *(3) It is sufficient for subsection (1) to apply that the employee without specifying the right, made it reasonably clear to the employer what the right claimed to have been infringed was.*
> *(4)The following are relevant statutory rights for the purposes of this section—*
> > *(a)any right conferred by this Act for which the remedy for its infringement is by way of a complaint or reference to an employment tribunal*
> > *(b)the right conferred by section 86 of this Act,*
> > *(c)the rights conferred by sections 68, 86, 145A, 145B, 146, 168, 168A, 169 and 170 of the Trade Union and Labour*

> *Relations (Consolidation) Act 1992 (deductions from pay, union activities and time off) . .*
> *(d)the rights conferred by the Working Time Regulations 1998, the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018…, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003, the Fishing Vessels (Working Time: Sea-fisherman) Regulations 2004 or the Cross-border Railway Services (Working Time) Regulations 2008, and*
> *(e)the rights conferred by the Transfer of Undertakings (Protection of Employment) Regulations 2006.*

42. In ***Spaceman v ISS Mediclean Ltd 2019 IRLR*** the EAT held that section 104(1)(b) requires an allegation by the employee that there has been an infringement of a statutory right and that an allegation that there may be a breach in the future is not sufficient. The EAT said that the thrust of the allegation must be *"you have infringed my right"* not *"you will infringe my right"*. In the context of the right not to be unfairly dismissed, it requires an allegation by the employee that he has been unfairly dismissed, not merely that the employer is taking action, which will or threatens to or may result in an unfair dismissal in the future (Judgment paragraph 32).

Decision on strike out or deposit order

43. In terms of the unfair dismissal claim I find that ***Spaceman v ISS Mediclean*** is on point. The claimant was asserting in his grievance that the redundancy process in which he was involved was a sham. If he had the necessary service, this might have resulted in an unfair dismissal, but the infringement of any such right had not happened. Consistent with ***Spaceman v ISS Mediclean*** the claimant was complaining about unfairness in the procedure adopted and of an intention to dismiss him in the future, but he was not alleging that he had been dismissed already (see ***Spaceman*** paragraph 34).

44. The claimant argued that ***Spaceman v ISS Mediclean*** was distinguishable because that case concerned a grievance about a future dismissal but in the present case, he was in an ongoing live process. The claimant in ***Spaceman*** was also in an ongoing disciplinary process, he made his assertions at a disciplinary hearing pre-dismissal, so I disagree with the claimant and find that ***Spaceman*** is directly on point and binding upon this tribunal.

45. There is no statutory right to a fair redundancy process. There is a statutory right not to be unfairly dismissed into which the redundancy process may fall to be considered.

46. In these circumstances section 104 is not engaged and the tribunal does not have jurisdiction to hear the claimant's unfair dismissal claim. This claim is struck out as having no reasonable prospect of success.

47. The claimant asserts that his grievance of 26 November 2024 was a protected act because it complains of harassment and abuse by senior executives. This tribunal does not have freestanding jurisdiction over complaints of "harassment". A protected act must be as defined in section 27(2) Equality Act.

48. I could see nothing in the claimant's grievance that fell within the scope of section 27(2). The claimant has brought no prior proceedings or given evidence in such proceedings, or at least has not asserted that he has. The claimant did not expressly use the word "*harassment*" in his grievance but mentioned abusive behaviour and personal attacks. I accept that this can amount to the same thing as harassment but there was no assertion in the grievance of any contravention of, or anything in connection with, the Equality Act 2010. There was no mention of any protected characteristic.

49. To the extent that the claimant argued that he has a right to protection from harassment, this tribunal does not have jurisdiction over the Protection from Harassment Act 1997. To be a protected act, the grievance had to fall within section 27(2) and my finding is that there is no reasonable prospect of the claimant establishing that it did.

50. The claimant argued that there are disputes of fact over the reason for dismissal, such that the claim must go to a final hearing and should not be struck out. Where the claimant does not show any reasonable prospect of establishing that he has the statutory rights he wishes to enforce, these factual issues do not fall for consideration.

51. For these reasons the claims for unfair dismissal and victimisation are struck out as having no reasonable prospect of success.

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Employment Judge T Elliott
Date: 24 October 2025

Judgment sent to the parties and entered in the Register on: 4 November 2025
_____ for the Tribunal