EMPLOYMENT TRIBUNALS

Claimant: **Ms A Sagar**

Respondent: **Harris Federation**

Heard at: London Central **On:** 8 September 2025

Before: EJ Joyce

Representation
Claimant: In-Person
Respondent: Ms J Molloy (Solicitor)

REASONS

Background

1. At a preliminary hearing on 8 September 2025, I decided an application to strike out under Rule 38 of the Rules of Procedure ("RoP"), and in the alternative an application for a deposit order under Rule 40 of the RoP, made by the Respondent. The application related to the claimant's claims of whistleblowing and discrimination on grounds of race.

2. I denied the application for strike out, but having decided that the claim in respect of race discrimination had little reasonable prospect of success, I made a deposit order in the sum of £100.

3. I delivered my reasons orally at the hearing. On 15 September 2025, the claimant asked for the reasons as to why I had denied the application for strike out. The reasons are set out below.

Law

4. Rule 38 of the RoP provides, in relevant part:

Striking out
38.—(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; (…)

5. Rule 40 RoP, in relevant part, provides:

> **Deposit orders**
> **40.—(1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply 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. (…)**

6. I also had regard to the following relevant authorities:

7. From *Cox v Adecco Group UK & Ireland and ors 2021 ICR 1307, EAT,* I derive the principle that 'no-one gains by truly hopeless cases being pursued to a hearing'

8. However, I noted that in *Anyanwu and anor v South Bank Student Union and anor, 2001 ICR 391*, HL, the House of Lords emphasised the importance of not striking out discrimination claims except in very obvious cases, because such cases are generally fact-sensitive and there is a broader public interest in such claims being fully considered and examined before arriving at a determination. *Ezsias v North Glamorgan NHS Trust 2006 ICR 1126*, CA it was held that essentially the same careful approach to strike out applications is applicable in cases of whistleblowing.

9. In *Silape v Cambridge University Hospitals NHS Foundation Trust, EAT 0285/16,* the EAT has recently reemphasised that, before determining whether a discrimination or whistleblowing claim has no reasonable prospect of success, it is necessary to take the claimant's case 'at its highest'. This means that the Tribunal must examine the pleaded facts and for the purposes of the strike-out consideration assuming (unless there is a compelling reason not to) that the claimant's version of any key disputed facts is correct.

10. From *Arthur v Hertfordshire Partnership University NHS Foundation Trust EAT 0121/19*, I took note of the following: When determining whether to make a deposit order, a tribunal is not restricted to considering legal issues; it is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case and, in doing so, to reach a provisional view as to the credibility of the factual assertions that they are making.

11. As to the burden of proof in claims of discrimination, I recall the guidance from the well-known authority of *Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258*. From that guidance, I recall the principle that at stage 1 of the two-stage test, it is only necessary that a tribunal could find discrimination, not that it would definitely find discrimination.

Conclusions

12. The respondent's submissions were, in summary, that the claimant's contract was due to expire in 2024, and that she was aware that this was the case. The respondent in particular relies on the fact that it advised the claimant that her part-time job would end and she was invited to apply for other jobs but she chose not to.

13. Even on the claimant's own claim in the ET1, she stated there has never been an issue with her working part-time until she challenged accuracy of a reference she received from the respondent. As such, the link she makes between a change in contractual status is due to whistleblowing and not due to her race.

14. Consequently, the respondent maintained there is no *prima facie* evidence that would shift the burden to the respondent to provide a non-discriminatory reason for non-extension. As to the whistleblowing complaint, the respondent maintained that there was no protected disclosure made. The respondent also maintained that based on the timing of events as alleged by the claimant, there was no detriment to her because of her challenge to the respondent's reference.

15. I determined as follows:

16. Dealing first with the whistleblowing claim, I recalled that I ought to be particularly cautious in dismissing such a claim where there are unresolved disputes as to the facts. While the respondent submits that no protected disclosure was made this is a matter that has to be determined as a matter of fact. It was not at all obvious on the face of the papers that the claimant informing the respondent that, in her view, the respondent had provided a misleading reference and her subsequent email discussions with members of the respondent, did not amount to (a) protected disclosure (s).

17. Whether or not there was a protected disclosure turns on, among others, a consideration of the claimant's beliefs and whether those beliefs were reasonable. These elements may only be properly determined following a full hearing. As to the causal link between the detriments alleged and the protected disclosure, it seemed to me that this is also a matter upon which there is dispute and it is a matter for evidence at a full merits hearing.

18. The respondent pointed to page 62 of the bundle wherein the claimant was notified that her part-time contract would not be renewed in September 2024 and inviting her to apply for a full-time role as evidence of an absence of a causal link between the alleged protected disclosure and detriment.

19. The respondent also pointed to an email of 25 March 2024 where the school informed the claimant that a contract for the whole school year may be possible for the following year as evidence of intent to keep C in employment.

20. I concluded that, even if correct, the above does not mean that the subsequent decision not to offer the claimant a contract for the full year (the detriment of which she complains) was not as a result of her complaint about the nature of the reference that the respondent provided in relation to her. The evidence is equally capable of being construed as supportive of the conclusion that while the respondent had intended to maintain the claimant

in employment, the claimant's subsequent questioning of the reference in July 2024, may have formed a basis for not offering her a longer contract.

21. I reiterated that I was making no finding on these matters, but it remains that there are important disputes of fact which go to the central issues to be determined in the claim. These are for resolution at the final hearing, and in my view were such that I was unable to agree that the claim has no reasonable prospect of success.

22. As to the claim of racial discrimination, I again recalled that I should be slow to strike out a claim of discrimination where there are material disputes of fact. I acknowledged (as submitted by the respondent) that in her ET1 form, the claimant seeks to draw a link between the above-mentioned negative reference and her not being offered a year-long contract of employment. As such, the respondent's position is that race discrimination did not form a basis for her claim. However, I noted that the claimant did tick the box related to race and this is something which she elaborated on at the preliminary hearing in January 2025. She asserted that part of the reason, at least, for her not being offered a year-long contract was because of her race.

23. As noted above, the respondent submitted that there is no *prima facie* evidence that would shift the burden of proof to the respondent to provide a non-discriminatory reason for the non-extension of the claimant's contract.

24. I recalled that per the authority of *Igen Ltd v Wong*, at stage 1 of the application of the burden of proof, I was not concerned with whether there is no reasonable prospect that the Tribunal would *definitely* find discrimination but whether there is no reasonable prospect that it *could* find discrimination.

25. The claimant alleged that there are two comparators – that is 2 other named staff members – who were offered at least year-long contracts and who were of a different race to her.

26. No doubt, the respondent will contend that there were material differences between the claimant and those comparators, but again that is a matter for trial. I did not consider, based on the information before me that there was no reasonable prospect of success of the claimant at least discharging the burden in stage 1 of the test in *Igen Ltd v Wong.*

27. However, I did consider that there was little reasonable prospect of success in relation to this claim. This was because it seemed to me that there was little reasonable prospect of the claimant being able to show on the facts that race was an issue in relation to the decision. She as much accepted this in her claim as the narrative was almost exclusively concerned with the negative reference she received and her reporting of it to the respondent as the basis for her not being given a year-long contract. Having enquired as to the claimant's means, I made a deposit order in the sum of £100 which the claimant was required to pay in order to pursue her claim for race discrimination.

Employment Judge **M Joyce**

13 November 2025
Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

26 November 2025
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FOR THE TRIBUNAL OFFICE