EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr L Loverseed	**v**	Virgin Atlantic Airways Limited

Heard at: Norwich

On: 9 October 2025
13 and 14 November 2025

Before: Employment Judge M Warren

Appearances
For the Claimant: Mr O Segal, KC
For the Respondent: Ms C McCann, Counsel

JUDGMENT
Pursuant to a Public Preliminary Hearing

1. The Claimant's claim is struck out on the grounds that it is an abuse of process and that the claim is out of time and the Claimant has no reasonable prospects of persuading the tribunal that it would be just and equitable to extend time.

REASONS

Background

1. At a Case Management Preliminary Hearing on 6 May 2025, I directed this Public Preliminary Hearing to decide whether or not Mr Loverseed's claim should be struck out as an abuse of process and, in the alternative, whether his claim should be struck out on the grounds that he has no reasonable prospects of successfully arguing that his claim is in time or, if it is out of time, that it would be just and equitable to extend time.

2. Mr Loverseed is employed by the Respondent as a pilot. He was a claimant, one of twelve, in proceedings against the Respondent arising out of redundancies during the Covid crisis of 2020. The hearing of those claims before me commenced in January 2025 and settled before

conclusion. Mr Loverseed's claim included a complaint of discrimination on the grounds of age.

3. In the course of the previous proceedings, on 17 June 2024, Mr Loverseed sought to amend his claim to include a complaint of victimisation arising out of the Respondent's failure to progress him to Captain. The protected act relied upon was the issue of those proceedings.

4. I refused the application to amend, but flagged the possibility of issuing fresh proceedings, as a consequence of which Mr Loverseed issued these proceedings on 16 July 2024.

5. There were originally six detriments relied upon:

   5.1. That he failed a Command Review Board on 21 June 2022;

   5.2. That he failed the Captaincy interview on 14 March 2023;

   5.3. That there was an unfair grievance appeal process following that failure, (the appeal was dated 8 July and the outcome 29 August 2023);

   5.4. That he failed a second Captaincy interview on 6 October 2023;

   5.5. That he was told on 22 April 2024 that he would have to wait two years before his next Captaincy interview; and

   5.6. That he was told on 22 April 2024 that if he failed a third time he would not be permitted any further attempts to achieve Captaincy.

6. By the start of this hearing, allegations 1, 5 and 6 were no longer pursued. The detriments pursued now are the failed Captaincy interviews on 14 March 2023 and 6 October 2023 and the grievance and appeal process in between.

7. The previously alleged detriment of 22 April 2024 potentially brought the claim in time, (it was issued two months later). I had framed the time issue for today in terms of Mr Loverseed's prospects of successfully arguing that his claim was in time, because a straight determination of whether it was in time would have required a determination of whether there had been a continuing act throughout the period of the alleged detriments, a question that can only really be answered after hearing all of the evidence and not therefore appropriate for a preliminary hearing. The logic of framing the time issue in terms of reasonable prospects, (rather than was it in time and if not, is it just and equitable to extend time?) fell away with Mr Loverseed's withdrawal of alleged detriments 5 and 6. There is no question now, the claim is most certainly out of time, having been issued some eight months after the last alleged detriment. Had that been the case at the Case Management Preliminary Hearing in May 2025, I would have directed the issue would be simply whether it is just and equitable to

extend time and therefore, whether the claim should be struck out as having been issued out of time.

8. However, as it is, the case has been listed on the basis that the test to be applied is the reasonable prospects test and that was the basis of the parties' submissions.

9. On the abuse of process point, the Respondent argues Mr Loverseed could and should have applied to amend his original claim at an early stage in those proceedings or, certainly by late 2023. They say that by his not doing so until a point that his victimisation claim could be out of time and when the issues in the previous claim had to all intents and purposes, been closed, his actions are an abuse of process contrary to the principles of what lawyers refer to as the rule in Henderson v Henderson, (see below).

The Law

Abuse of Process

10. Employment Tribunals Rules of Procedure, rule 38 provides that:

> *(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*
> *(a) that it is scandalous or vexatious or has no reasonable prospect of success;…*

11. The rule in Henderson v Henderson [1843] 3 Hare 100, reformulated by the House of Lords, (as was) in Johnson v Gore Wood and Co [2002] 2 AC 1 HL in essence provides that if a party fails to raise an issue in one set of proceedings that could have been raised, he or she may be estopped from raising that issue in future proceedings, if to do so would amount to an abuse of process.

12. The burden is on the Respondent to establish that there has been an abuse of process, see Agbenowossi-Koffi v Donvand Limited [2014] EWCA Civ. 855, at paragraph 22.

13. The Court of Appeal said in Agbenowossi-Koffi:

> "The very fact that a defendant is faced with two claims where one could and should have sufficed will often of itself constitute oppression. It is not necessary to show that there has been harassment beyond that which is inherent in the fact of having to face further proceedings."

14. To deny a claimant the opportunity to argue a case or a point that has not been previously adjudicated is on the face of it a breach of Article 6 of the European Convention on Human Rights and so these principles should only be invoked where it is, (per Lord Millett in Johnson) necessary, "*to protect the process of the court from abuse and the defendant from*

oppression". There is no presumption that successive actions should not be brought.

15. Lord Bingham said this in Johnson at page 31:

> "The underlying public interest is … that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional elements such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the latter proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceedings involves what the court regards as unjust harassment of a party. It is however, wrong to hold that because a matter could have been raised in early proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad merit based judgement which takes into account of the public and private interests involved and also takes into account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. … "

16. The question is, not just, "could" but also, "should" the claim have been raised in the earlier proceedings. A broad, merits-based, approach is required in determining whether what is proposed is an abuse of process, (see Parker v Northumbrian Water Limited 2011 ICR 1172, EAT).

17. This is not a matter of discretion; there is a right and a wrong answer, (see Foster v Bon Groundwork Limited 2012 ICR 1027, CA).

18. Mr Segal cited a 2003 Court of Appeal decision to suggest that it was too dogmatic an approach to apply the rule of Henderson v Henderson by way of criticism of a claimant for not applying for leave to amend in an earlier set of proceedings, Chaudhry v Royal College of Surgeons [2003] EWCA Civ. 645. In that case, the Claimant had brought one complaint of race discrimination against the Respondent for not entering them onto a specialist register and then applied for entry on the specialist register on a different basis and complained in a second later claim of race discrimination in that respect. Mummery LJ did not consider an appeal against the refusal to strike out that second claim as an abuse of process,

as even arguable, describing the Respondent's approach as, "too dogmatic", see paragraph 75. He described it as a piece of overkill.

19. Ms McCann points out that in Chaudhry there had not yet been a full merits hearing of the first claim, there had merely been a preliminary hearing to consider a jurisdictional point. She also points out that in Chaudhry, the second claim had been issued within the time limit.

20. Mr Segal says that the cases of O'Brien and Szucs relied upon by Ms McCann are *per incuriam* because the Court of Appeal Authority of Chaudhry had not been referred to the learned Judges in either of those EAT cases. However, Ms McCann says not and points out that in O'Brien HHJ Eady cited Prakash which builds on the ratio in Chaudhry and HHJ Stout in Szucs applied O'Brien

21. In my view, it may be an abuse of process to fail to raise a matter that one could have raised by way of amendment in respect of something that happened after the issue of the original proceedings, see London Borough of Haringey v O'Brien EAT 0004/16 and Szucs v Greensquareaccord Limited [2025] EAT110, at paragraph 27.

22. In summary, the reformulated rule in Henderson v Henderson applies in circumstances where the issue in dispute should have been raised in earlier proceedings, either at the outset or by way of amendment during the course of those previous proceedings:

    22.1. The onus is on the party alleging abuse of process.

    22.2. The public interest is in finality in litigation.

    22.3. It is a breach of Article 6 to deny someone access to judicial determination of a claim and therefore the rule should only be invoked if it necessary to protect the court from abuse and the defendant from oppression.

    22.4. It is therefore necessary to balance those public and private interests.

    22.5. There is no requirement for dishonesty or a collateral attack on an earlier decision of the court.

    22.6. It would be rare to make a finding of abuse of process unless the later process entails some form of harassment.

    22.7. It is not simply a case of, "it could have been raised therefore it should have been raised".

    22.8. One should take into account all the relevant facts of the case.

    22.9. The crucial questions is, is a party misusing or abusing the court?

Strike out for unreasonable prospects of success

23. Section 123 of the Equality Act requires that any complaint of discrimination within the Act must be brought within three months of the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is treated as having been done at the end of that period, generally referred to as a continuing act.

24. The discretion as to whether or not it is just and equitable to extend time is a broad one meaning that all relevant factors should be considered, including in particular the length and any reason for, the delay, see Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23.

25. In the case of Robertson v Bexley Community Services [2003] IRLR 434 the Court of Appeal stated that time limits are exercised strictly in Employment Law and there is no presumption, when exercising discretion on the just and equitable question, that time should be extended. Nevertheless, this is a matter which is in the Tribunal's discretion.

26. That has to be tempered with the comments of the Court of Appeal in Chief Constable of Lincolnshire v Caston [2010] IRLR 327 where it was observed that although Lord Justice Auld in Robertson had noted that time limits are to be enforced strictly, his judgment had also emphasised the wide discretion afforded to Employment Tribunals. Lord Justice Sedley had noted that in certain fields such as the lodging of notices of appeal in the EAT, policy has led to a consistently sparing use of the power to extend time limits. However, this has not happened and ought not to happen in relation to the discretion to extend time in which to bring Tribunal proceedings which had remained a question of fact and judgment for the individual Tribunals.

27. More recently in Jones v Secretary of State for Health and Social Care 2024 EWCA Civil 1568 the Court of Appeal suggested that there was much to be said for focussing less on Bexley and more on some of the other Court of Appeal authorities, such as those summarised by Leggatt LJ in Morgan.

28. The limitation act checklist is illustrative of the sort of factors that might be relevant, but not determinative and not to be used as a checklist, see Adedeji v United Hospitals Birmingham NHS Foundation Trust [2021] ICR D5. Those illustrative factors are the relative prejudice to the parties, the length and reason for delay, the impact on cogency of evidence, cooperation in the provision of information, promptness of action by the claimant when aware of relevant facts, steps taken to obtain advice.

29. The onus is on the Claimant to persuade the tribunal that there is some good reason why it would be just and equitable to extend time, see Wells Cathedral School Ltd v Souter UKEAT/2020/00801.

30. The potential merits of the case may, with caution, be taken into account. See Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022]EAT 132.

31. Rule 38(1)(a) of the Employment Tribunal's 2024 rules of procedure provides that a claim may be struck out on the grounds that it has no reasonable prospects of success.

32. On a strike out application on these grounds, where the claim is one of discrimination, the general principle is that the claimant's case should be taken at its highest and that complaints of discrimination should be heard. See Anyanwu v Southbank Student Union 2001 ICR 391 and Ezsias v North Glamorgan NHS Trust 2007 CA ICR 1126.

33. Which is not to say that discrimination cases cannot be struck out, they can, when the claim taken at its highest, has no reasonable prospects of success, see ABN Amro Management Services (1) and Royal Bank of Scotland (2) v Mr Hogben 2009 UKEAT 026609 and Shestak v Royal College of Nursing EAT0270/2008.

34. In the context of assessing prospects of success on the question of time, the appropriate approach is to consider whether the claimant has no reasonable prospect of successfully arguing that it would be just and equitable to extend time, which requires the respondent to show that there is no reasonable basis on which one could say that it would be just and equitable to extend time, see Mesuria v Eurofins Forensic Services Ltd [2025] EAT 103.

35. In Szucs v Greensquareaccord Limited [2025] EAT110, at paragraph 37 it was also observed:

> "A claimant who wishes to bring forward a claim must do so within the time limits. In particular where the claimant has other proceedings already "on foot", he'll have no prospect of getting an extension of the primary time limit. He must thereafter act within the time limit, and thus in a claim under the EA 2010, within the period of three months plus extension for Acas conciliation. It cannot therefore be an error of law for a judge to hold that the claim is an abuse of process because it has not been advanced as an application to amend during the primary time limit. Once the time limit has expired, it will probably not be possible to bring the claim at all."

36. Mr Segal refers to three Court of Appeal Authorities in support of his contention that Mr Loverseed has reasonable prospects of persuading the Tribunal that it is just and equitable to extend time on the basis that he had discovered new information. These are cases where the Tribunal's decision came after hearing substantive evidence and that it was their actual decision whether to extend time or not that was at issue. In Mr Loverseed's case, the question is whether he has reasonable prospects of

persuading the Tribunal that it is just and equitable to extend time. The three cases Mr Segal refers to are:

36.1. Southwark London Borough v Afolabi [2003] EWCA Civ. 15, Mr Afolabi discovered the facts that he relied upon in his race discrimination claim nine years after he had been unsuccessful at interview, upon gaining access to his person file. Although the delay was exceptional, he had no reason to discover relevant evidence any sooner and he presented his claim within three months of discovering it. The period of delay was said to be equally prejudicial to each side. It was incumbent on the Respondent to produce actual evidence of prejudice. The Court of Appeal held that it was just and equitable to extend time.

36.2. HSBC Bank v Chevalier-Firescu [2024] EWCA Civ. 1550, the Claimant was unsuccessful in a job application in 2018. She suspected sex discrimination. She made a Data Subject Access Request. Two and a half years later she brought a claim of sex discrimination. Whilst she had suspicions in 2018, the DSAR revealed nothing. She issued proceedings against her previous employer, Barclays Bank, and in due course discovered further information in 2020. That formed the basis of her discrimination claim against HSBC Bank. This is important, says Mr Segal, because similarly, Mr Loverseed had suspicions but no information to crystalise those suspicions. He quotes the following passage from Underhill LJ:

> "As to whether suspicion, as opposed to knowledge, of the facts which we found a valid claim is sufficient when considering whether a claimant reasonably could or should have brought proceedings sooner, I do not think that this can be a black or white question. There is a broad spectrum between certain knowledge, which is obviously sufficient, and mere speculation, which is obviously not; and "suspicion" is an imprecise term which may connote a point anywhere on that spectrum. Clearly it will often be reasonable to expect a person to bring proceedings where their knowledge of the facts material to the prospects of success, or the availability of the evidence necessary to prove those facts, is less uncertain. Whether that is so in any given case depends on the particular circumstances, including, but not limited to, the degree of the uncertainty in question."

36.3. Jones v Secretary of State for Health and Social Care [2024] EWCA Civ. 1568, Mr Segal quotes Bean LJ as follows:

> "In many cases involving the "just and equitable" discretion it will be highly relevant if the Claimant knew all the facts necessary to establish a discrimination claim but then fail

> without good reason to act promptly. I am much less persuaded that suspicion, or a firmly held belief based on suspicion, is a relevant factor. Until 2014 the statutory questionnaire on procedure enabled prospective claimants for discrimination to ask questions, with failure to answer them giving rise to the possibility of adverse inferences. That procedure is no longer available. Promptness in bringing ET claims remain important but this court, the EAT and ETs should not encourage cases to be brought on mere suspicion."

37. Mr Segal also refers to Concentrix CVG Intelligent Contact Limited v Obi [2023] IRLR 35, where the EAT pointed out that it is possible to extend time in respect of most recent allegations, but not for more historic allegations. Ms McCann reminds me of North Glamorgan NHS Trust v Ezsias [2007] IRLR 603 and KUDOS Consulting Limited and Ors. v Swanson [2011] UKEAT/0495/11/RN: the test is not whether the argument is likely to fail, but whether there are no reasonable prospects of success, which is not the same as there being no prospects of success at all. In other words, are the prospects "real" as opposed to "fanciful". Real means that the point must be better than the arguable.

38. Ms McCann responds to Mr Segal's three cases as follows:

    38.1. In Afolabi the Claimant had no idea that he had been given a high score in his original interview until he inspected his personal file nine years later and then he issued his claim within three months, so he was not even aware of the less favourable treatment at all until that point.

    38.2. In both Afolabi and Chevalier-Firescu what was required to trigger an obligation to issue proceedings promptly was an arguable case, not absolute clarity and she quotes Underhill LJ,

    > "It will often be reasonable to expect a person to bring proceedings where their knowledge of the facts material to the prospects of success, or the availability of the evidence necessary to prove those facts, is less certain."

    38.3. In Chevalier-Firescu the Claimant had no idea of the discriminatory acts until later. She also points out that the basis of the Court of Appeal's decision in Chevalier-Firescu is the lack of reasoning by the Tribunal and not that it was legally erroneous.

    38.4. In Jones, the Claimant had no idea of the ethnicity of the successful candidate, a crucial element for the direct race discrimination claim, yet he did present his claim within three months of being notified that he had not been successful, (albeit more than three months after the interview and the decision not to appoint him). The suspicion until notified was insufficient.

38.5. Ms McCann also points out that in Jones and Chevalier-Firescu there was active concealment by the Respondents.

Chronology of Events

39. Mr Loverseed presented his first claim for unfair dismissal, breach of the Part-Time Worker Regulations, indirect age discrimination, wrongful dismissal, holiday pay and unlawful deduction from wages on 21 December 2020. He relies upon this claim as his Protected Act. At the time, Mr Loverseed was represented by Solicitors and remained so until December 2023.

40. Mr Loverseed has also throughout been a member of the Pilot's Trade Union, British Airline Pilots Association, (BALPA).

41. Mr Loverseed was one of twelve pilots who presented claims against the Respondent and who's claims were consolidated.

42. The Lead Claimant was Mr Fenton. He presented a second claim, (in time) on 9 February 2022, complaining of victimisation in not being offered re-employment at interview, being allocated reduced scores at interview for re-employment which did not reflect his capabilities / professional history and in the Respondent producing an inaccurate record of his interview.

43. Contrary to Mr Fenton's experience, Mr Loverseed was re-employed by the Respondent as Senior First Officer on 28 February 2022.

44. In April 2022, a draft List of Issues in the group claim was produced. It included victimisation complaints by 2 others, one of which was pleaded and the other, subject to an application to amend.

45. There was a Case Management Preliminary Hearing of the group claims on 9 May 2022, at which there were discussions about further claims to be presented by others. At that time, Mr Loverseed was represented by solicitors Farrer and Co. and counsel, Mr Milsom.

46. On 21 June 2022, Mr Loverseed was informed that the Command Review Board, (CRB) had decided that he was not suitable to be invited to undertake the Command Assessment Process, (CAP), (a precursor to advancement to Captaincy).

47. Mr Loverseed appealed the CRB decision on 8 July 2022.

48. On 12 July 2022 one of the 12 Claimant's, Mr Laverty, presented a further ET1 claiming victimisation.

49. Disclosure in the group claims took place in 2 stages, on 11 August and 11 November 2022.

50. There was a Case Management Preliminary Hearing on 5 December 2022 which considered, amongst other things, applications to amend by Mr

Laverty and Mr Fenton, which included complaints of victimisation. At this point, the Final Main Hearing of the group claims was listed for six weeks during February and March 2024.

51. On 4 January 2023, the CRB assessed Mr Loverseed as ready for CAP.

52. On 3 March 2023, Mr Loverseed underwent a CAP interview, but was unsuccessful. He received feedback at a meeting on 14 March 2023, at which he was accompanied by a BALPA representative. He sent an email to the assessors, (NS and HH) following feedback, suggesting a potential connection with, "Tribunal proceedings against the company in relation to my dismissal". He made reference to the Operations Manual Part D, Annex 4 which contains the policy that after a second CAP fail there must be a minimum of two year before the pilot can try again and that after three attempts, no further attempts will be permitted.

53. On 11 April 2023, Mr Loverseed wrote that he wished to appeal the CRB decision of June 2022 and his unsuccessful CAP interview.

54. The List of Issues in the group claim was agreed on 13 April 2023. It included claims of victimisation by two other claimants.

55. Disclosure took place between the parties between August 2022 and June 2023. Mr Fenton's Hold-Pool interview notes were disclosed 16 January 2024.

56. On 22 June 2023, Mr Loverseed attended an appeal meeting and the next day, 23 June 2023, he attended a Case Management Preliminary Hearing in the group claim at which he was represented by Leading Counsel Mr Simon Cheetham KC. On that occasion there was discussion about amendments being sought by one of the other claimant pilots.

57. In August 2023, Mr Loverseed raised concerns through BALPA that he may not be offered a command course in line with seniority. He was told on 15 August 2023 that upon having a successful CAP outcome, he was in line for the next available course.

58. He had also written to the Respondent to say, (page 250),

> "I have met so many barriers in my way to establish myself on a Command course, and it is my view I should have had my CAP Assessments back in the middle of 2022, when I was incorrectly deemed not to have passed CRB."

59. Mr Loverseed was represented at a further Case Management Preliminary Hearing on 29 August 2023, by Farrer and Co. and Mr Cheetham KC.

60. Also on 29 August 2023, Mr Loverseed was informed that his appeals were unsuccessful.

61. A further Case Management Preliminary Hearing took place on 29 September 2023, at which Mr Loverseed was again represented by Farrer and Co. and Mr Cheetham KC.

62. On 6 October 2023, Mr Loverseed attended a further second CAP interview and was unsuccessful. He was informed about that on the same day. Feedback was originally arranged for 6 December 2023 but there was a mix up over the date or time, it was re-arranged for 30 January 2024.

63. There was a further Case Management Preliminary Hearing determining amendment applications and discussing other amendment applications, on 23 and 24 November 2023. On this occasion Mr Loverseed was represented by Farrer and Co. and another experienced senior employment specialist barrister, Ms M Tether. The Final Main Hearing scheduled for February and March 2024 was postponed and the case was re-listed for Hearing over 45 days in January through to March 2025.

64. Farrer and Co. came off the record as acting for Mr Loverseed on 8 December 2023 and he has been self-representing since then.

65. On 17 December 2023, Mr Loverseed applied to amend his first ET1, (page 112) to include an allegation that his dismissal was also unfair because there was no need for him to be made redundant, that the redundancy consultation and the result of an appeal was pre-determined and that the Respondent had mis-lead employees as to the likelihood of redundancy and / or the criterion used for redundancy, thereby dissuading him from considering voluntary redundancy or early retirement. That application to amend was granted on 4 March 2024.

66. Draft hearing bundles were provided to all Claimants on 4 January 2024.

67. Mr Loverseed filed Amended Particulars of Claim on 18 January 2024.

68. On 29 January 2024, (page 454) somebody involved in his CAP interview reported a conversation with Mr Loverseed as follows:

> "Lee was interviewed on 6 October. He has requested this feedback to happen since the day I phoned him to tell him he was unsuccessful.
>
> Given the history of Lee, I recommend prioritising this and getting it done with some urgency as he is questioning why he is being treated differently and I wouldn't rule out Lee taking this further quoting discrimination."

69. On 30 January 2024, Mr Loverseed received the CAP interview feedback in a Teams meeting. In his Particulars of Claim, he said he decided against the Appeal / Grievance as it was a waste of time and he had lost all faith in the process. He also commented at paragraph 39, "failing the CAP interview is a rare event, to fail it twice is an extremely rare event".

70. On 15 February 2024, in a disclosed WhatsApp message from somebody anonymous, that person wrote to Mr Loverseed,

> "Failed again? Sounds like you've been marked I'm afraid, probably for daring to ask them difficult questions."

71. On 4 March 2024, Employment Judge Eeley determined a number of further amendment applications by a number of the claimants, (on the papers) including the application from Mr Loverseed in respect of detail on his unfair dismissal claim. At the conclusion of her decision, EJ Eeley wrote:

> "NOTE: The Tribunal considers that the process of clarification of the claims and finalising the list of issues is now at an end. No further amendment applications are anticipated or encouraged. The parties are encouraged to engage constructively in preparing the case for the final hearing."

72. The agreed Final List of Issues was produced on 22 March 2024.

73. On 22 March 2024, Mr Loverseed received an email informing him that he would have to wait another two years to be considered for a third CAP interview.

74. On 17 June 2024, (3 months later) Mr Loverseed wrote by email to the Employment Tribunal:

> "I have an ongoing issue that has become more evident in the last year where I have been failed at interview twice for promotion to become Captain with the Respondent.
>
> I say it is because of having the an active employment tribunal, and as I understand this could be an detriment for having a protective act […]
>
> Can I make an application to get the issue added to the list of issues. I would be falling in line with other claimants who have this on their list of issues, namely … "

75. On 25 June 2024, Mr Loverseed formally applied to amend his claim and to amend the Final Agreed List of Issues.

76. On 28 June 2024, solicitors for the Respondent objected to the amendment application on the basis that the complaints were out of time.

77. On 11 July 2024, I refused the amendment application. By this time, upon EJ Eeley transferring to another region, I had been nominated by the Regional Employment Judge both to case manage the case to its Final Hearing and to hear it. In rejecting the application to amend, I noted the huge amount of time and effort that had gone into achieving a Final Agreed List of Issues, that the finalisation of the bundle was imminent and

that witness statements due to be exchanged in three weeks. I also noted EJ Eeley had a number of times, attempted to draw a line under the List of Issues and to make it clear that no further applications to amend would be allowed. I noted that Mr Loverseed's failed promotions pre-date earlier amendment applications. I noted that if I were to grant the application, it would entail significant further work for the Respondent at short notice and additional cost. However, I pointed out that it is possible to issue a fresh set of proceedings, expressly drawing to Mr Loverseed's attention the three month time limit, of which he would have been aware.

78. Mr Loverseed issued these proceedings on 16 July 2024.

Discussion and Conclusions

79. At the time that he issued, Mr Loverseed's case was that there was a continuing act to 22 April 2024, when he was told that he would have to wait 2 years before he could apply for Captaincy again and that if he failed a third time, he would not be permitted to try again. Those have been dropped as allegations of discrimination. I do not consider it plausible that Mr Loverseed was not aware of the provisions in the policy that he would have to wait 2 years before his third go and that after that if he failed a third time, he would not permitted to try a fourth time. The policy is very clear and it is inconceivable that against the background of the ongoing litigation, he had not made himself fully aware of the relevant policy. He would have been well aware of what the claims of the others were, if only from the preliminary hearings and the various iterations of the list of issues.

80. Mr Segal says that between 16 January and 21 June 2024, Mr Loverseed received disclosure of documents that in essence, suggested that senior managers were influencing the outcome of re-employment interviews in respect of those who were claimants in the original case. I would say two things about that; firstly, Mr Loverseed was successful at such an interview and secondly, he knew very well that these were major parts of the cases of those involved, he knew it very well from their pleaded cases, from the preliminary hearings and from the draft list of issues.

81. In an email to the Tribunal on 28 June 2024, (page 136) Mr Loverseed said that his second interview feedback had been delayed until 29 January 2024, that had been cut short and in the meantime he had been chasing for the remainder, seeking further feedback, his interview score, a training plan and an indication of when he would be considered again for interview. He also said that the extent of the detriment had only just become clear on reviewing disclosure and studying the claims of the other claimants. I do not accept that as plausible either. As I have just noted, he was aware of the time frame for the next interview and we have seen from the chronology, he felt he was being victimised for bringing the original claim all along.

82. To be clear, these are not findings of fact, I have not heard evidence. I am assessing plausibility, prospects of success.

83. Ms McCann suggests the victimisation claim looks weak. I would not put it like that. Mr Loverseed has said that failing a Captaincy interview is very unusual. For present purposes I take his case at its highest and accept that as so. Mr Segal has referred me to some emails in the bundle which he says indicates hostility towards Mr Loverseed. In one of those, a currently anonymous author wrote on 20 December 2024, (page 511, I note, since the issue of these proceedings) "I am annoyed that we are having to do this. I can't believe we still employ Loverseed". I also note that the disclosed interview scores do not appear accord with a comment by one of the interviewers, Mr Lawson, that it was an absolute failure; something that resonates as I recall, from some of the evidence I heard in the original claim before it settled. I do not proceed in the basis that the claim looks weak. The basic elements are there, there was a Protected Act and there may have been detriment, (there will be no detriment if Mr Loverseed was rightly failed). The question for the tribunal will be whether there were linked. There may be something in it.

84. Mr Segal suggests that if Mr Loverseed had included the victimisation claim in his application to amend on 17 December 2023, it would have been rejected by EJ Eeley for the same reason that she rejected Mr Olson's application to amend, so as to allege a sham redundancy process, because substantial changes to the pleadings risked derailing case management. I do not accept that we can assume that at all, but even if it were so, at least then Mr Loverseed could have issued his fresh claim and importantly, would very probably have been in time and beyond reproach.

Should the claim be struck out as an abuse of process?

85. Mr Loverseed:

    85.1. Issued the first set of proceedings on 21 December 2020;

    85.2. Failed his first Captaincy interview on 14 March 2023;

    85.3. Unsuccessfully appealed that failure during the summer of 2023;

    85.4. Failed his second Captaincy interview on 6 October 2023, and

    85.5. Applied to amend the original proceedings on 17 June 2024, (8 months later).

86. A review of the chronology of events as set out above is important because:

    86.1. At the time of the captaincy interviews until 8 December 2023, Mr Loverseed had the benefit of representation by excellent employment lawyers.

86.2. Immediately after the March 2023 interview, Mr Loverseed suggested that his failure was because of his original claim.

86.3. He was expressing his feeling that barriers were being placed in his way.

86.4. He was well aware of the possibility of complaining about victimisation because of his having brought his original claim and that he could amend those proceedings to bring such complaint because others were making such new claims or amendments.

86.5. He was well aware of the huge amount of effort that was going into finalising the list of issues by the tribunal and the parties and that there were applications to amend to be dealt with before the list of issues could be finalised.

86.6. He made an application to amend in December 2023 that did not include amendment in relation to his failed captaincy interviews, which had already happened and about which he was already of the view that his failures were because of the original proceedings

86.7. EJ Eeley announced "closure" on the issues on 4 March 2024 and even then, it was another three months before he wrote to the tribunal seeking leave to amend.

87. The foregoing going is in my judgement, an abuse of process.

88. It is an abuse of the tribunal, seized of multiple claims around the same matrix of facts, scheduled to be heard over 45 days as to liability, when significant effort is being made to manage those proceedings, at a time when he was aware of the potential victimisation issue, when he had applied to amend but not mentioning that issue and three months after when the list of issues was settled, when the parties were setting about preparing the case for final hearing, to decide only then, to bring it up.

89. I recognise that Mr Loverseed issued these proceedings because I highlighted that as a possibility in rejecting his application to amend in June 2024, but that does not change the fact that it was an abuse of process not to have raised the victimisation claim and sought leave to amend, at a time when it would have been in time. There is no reason why he could not have done so. I explained to Mr Loverseed at the time the potential difficulties in respect of time that he might face if he chose to issue fresh proceedings,

90. It is harassment of the respondent. I acknowledge that they are a large well-resourced commercial organisation which is also represented by excellent employment lawyers. It may therefore seem odd to refer to the Respondent as being harassed by Mr Loverseed. However, it was embroiled in a large, expensive piece of litigation with 12 claimants, based on the same overarching facts, although each case was different. Like the tribunal, it was working hard to bottom out the issues so that it could

proceed to prepare for a 45 day trial. Along the way there were, I counted 9, preliminary hearings. Finalising the list of issues was challenging for everyone, including the respondent.

91. Three months after all amendment applications have been dealt with and everything seemed sorted, Mr Loverseed came up with another claim, the basis of which he knew about before, but chose not to raise. Having failed in his application to amend, (Mr Segel concedes, rightly) he issued fresh proceedings. So that now, arising out of the same overarching matrix of facts, the respondent faces yet another claim, which is in fact, out of time.

92. Having put its resources into the original claim, the respondent has to start again.

93. It is in the interests of the public and the publics' resources, that all issues between the respondent and it's 12 pilots, including Mr Loverseed, should be dealt with as efficiently as possible. That would have been achieved by Mr Loverseed's victimisation claim being dealt with at the same time as his and the other pilots other claims. He knew about the possibility of amending his claim and had access to the legal resources to do so, and he chose not to do so.

94. If I strike out Mr Loverseeds claim, he loses his right to a judicial determination of his complaint, infringing his Article 6 rights, but that is ameliorated by the fact that he had the opportunity to have his complaint adjudicated, by applying to amend the existing original proceedings in good time and he failed to take advantage of that opportunity.

95. In my judgement, Mr Loverseed abused the court system by not applying for amendment sooner and it flows from that, the issue of these proceedings, significantly out of time, is also an abuse of process and I therefore strike out the claim on that basis.

Should the claim be struck out because Mr Loverseed has no reasonable prospects of successfully arguing that it would be just and equitable to extend time

96. The last incident relied on having been on 6 October 2023 and these proceedings having been issued on 16 July 2024, 3 months were up on 5 January 2024, the claim was 6 months late, (early conciliation was on 12 July, when time had already expired).

97. The question for me is, whether Mr Loverseed would have any reasonable prospect, taking his claim at its highest, of persuading the tribunal that it would be just and equitable to extend time.

98. The prejudice to Mr Loverseed would be that he would lose his right to have his complaint heard. That is ameliorated by the fact that he had his opportunity, in the previous proceedings, at a time when he was represented by Farrer and Co.

99. The prejudice to the respondent it that faces the cost of a fresh set of proceedings to deal with something that could have been dealt with in a previous set of proceedings and the passage of time is likely to have had some impact on cogency of evidence. One of its witness has left its employment, (although that is not an insurmountable obstacle).

100. Mr Loverseed knew of his potential claim, he did not need new evidence.

101. He did not act promptly, he had concerns at the time and did not act upon them.

102. I have made my observations on the merits above.

103. In this case most significantly, Mr Loverseed's failure to apply to amend his original claim in good time and to have issued these proceedings in relation to matters that could have been dealt with in the original proceedings, is an abuse of process and therefore, he has no reasonable prospect of persuading a tribunal that it would be just and equitable to extend time and I therefore strike out this claim on that ground also.

104. In layman's terms, Mr Loverseed knew that he had a potential claim for victimisation, at a time when he had access to excellent legal advice, when he knew amendments could be made to existing proceedings, when he knew issues of time were important, and he sat on it until it was too late. Then he tried to issue a new claim that would involve everyone going through the same litigation process all over again. That is an abuse of process.

Approved by:

Employment Judge M Warren

Date: 14 November 2025

Sent to the parties on: 9 December 2025

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For the Tribunal Office.

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