EMPLOYMENT TRIBUNALS

Claimant: Adrian Wixcey

Respondent: Vanguard Learning Trust

Heard at: Norwich Employment Tribunal (by video) **On:** 24 October 2025
Before: Employment Judge Taft

REPRESENTATION:

Claimant: Represented himself
Respondent: Mr Green, Counsel

RESERVED JUDGMENT

1. The respondent's application for strike out is dismissed.

2. The respondent's application for a deposit order is dismissed.

REASONS

Introduction

1. The respondent made an application to strike out the claimant's claims under Section 47B and 103A Employment Rights Act 1996 on the basis that they have no reasonable prospects of success because it is said there are no reasonable prospects of success of establishing that the claimant made qualifying disclosures. In the alternative, the respondent applies for a deposit order on the basis that there is little prospect of success in establishing that the claimant made qualifying disclosures.

2. At the time of making the application, the respondent further sought to establish that disclosures relied upon by the claimant in an email to the

Tribunal on 14 February 2025 were not contained within his claim and so could not be relied upon without an amendment. During the course of the hearing, the claimant clarified that he was not seeking to expand upon the disclosures identified in his claim form and discussed at a Case Management Preliminary Hearing on 10 February 2025. I have not therefore made any findings regarding that part of the respondent's application but confine my findings as to whether or not the claimant has no or little prospects of success of establishing that the following disclosures are qualifying disclosures:

(a) In a letter dated 17 April 2023 sent to the Chair of Governors (first disclosure):

  (i) That school staff had posted or reposted images of children on their personal Twitter accounts; and
  (ii) That this was not investigated when reported by the claimant to Mr Mullings.

(b) In an email sent to the Department for Education, NSPCC and local MPs on 23 September 2023 (second disclosure):

  (i) That school staff had posted or reposted images of children on their personal Twitter accounts;
  (ii) That this was not investigated when reported by the claimant to Mr Mullings;
  (iii) That Mr Mullings instead instructed staff members to delete evidence of misconduct;
  (iv) That a male staff member was spending time with a female student outside school;
  (v) That this was not fully investigated;
  (vi) That Mr Mullings threatened staff members with disciplinary action if they discussed the matter;
  (vii) That Mr Mullings told the student's friends that they should not discuss the matter; and
  (viii) That the staff member went on to work at another school without an independent investigation.

Law

3. Section 43B(1) Employment Rights Act 1996 (ERA) confirms that:

> In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

4. Section 43L(3) confirms that

> Any reference in this part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention.

5. In *Williams v Brown EAT 0044/19*, the Employment Appeal Tribunal summarised the five elements that cumulatively must be satisfied in order for a claimant to establish that he or she has made a 'qualifying disclosure':

   (a) there was a disclosure of information by the worker in question

   (b) the worker believed that that disclosure was made in the public interest

   (c) any such belief was reasonably held

   (d) the worker also believed that the disclosure tended to show one or more of the matters listed in S.43B(1)(a) to (f); and

   (e) any such belief was reasonably held.

6. In *Babula v Waltham Forest College* [2007] EWCA Civ 174, the Court of Appeal confirmed that the question for an Employment Tribunal is whether the claimant reasonably believed that the information disclosed tended to show that (in this case) a criminal offence had been committed. The fact that the information the claimant believed to be true does not amount in law to a criminal offence does not by itself render the belief unreasonable and therefore the disclosure not protected. The fact he is wrong is not relevant provided that his belief is reasonable.

7. Rule 38(1) Employment Tribunal Procedure Rules 2024 confirms that

> 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;
>
> …

8. In *Mbuisa v Cygnet Healthcare Ltd EAT 0119/18* the Employment Appeal Tribunal noted that strike out is a draconian step. In deciding whether or not to strike out, an Employment Tribunal should take the case at its highest.

9. In *Cox v Adecco Group UK & Ireland and ors* [2021] ICR 1307 the Employment Appeal Tribunal provided guidance on approaching strike out applications, noting that if the question of whether the claim has reasonable prospects of success turns on disputed facts, it is highly unlikely that strike out will be appropriate.

10. In *Ezsias v North Glamorgan NHS Trust* [2007] ICR 1126*,* the Court of Appeal stressed that it will only be in an exceptional case that a protected disclosure claim will be struck out as having no reasonable prospect of success when the central facts are in dispute.

11. Rule 40(1) Employment Tribunal Procedure Rules 2024 confirms that

> 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").

12. In *Arthur v Hertfordshire Partnership University NHS Foundation Trust* EAT 0121/19, the Employment Appeal Tribunal confirmed that when an Employment Tribunal is considering a deposit order, it is entitled to have regard to the likelihood of establishing the facts essential to a party's case and reach a provisional view on credibility of the assertion being put forward.

13. That said, care must be taken when there is a factual dispute. In *Sami v Avellan* [2022] IRLR 656 the Employment Appeal Tribunal referred to an earlier decision in *H v Ishmail [2017] IRLR 228*, which had discussed the difference between deposit orders and strike out. In *Ishmail* Mrs Justice Simler observed that if *"there is a core factual conflict it should properly be resolved at a full merits hearing where evidence is heard and tested"*. These words, Michael Ford QC, Deputy Judge of the High Court, said *"underline the need for caution before making a deposit order where core facts are in dispute"*.

Submissions

14. The respondent accepts that I must take the claimant's case at its highest but asserts that even if I do, there are either no, or in the alternative, little prospects of successfully establishing that

    (a) the claimant reasonably believed that there was a breach of a legal obligation; and/or

    (b) the claimant reasonably believed that his disclosure was in the public interest.

15. In its application, the respondent argued that the second disclosure was not received by the respondent and so could not have caused the detriments relied upon. At hearing, the respondent conceded that there was a factual dispute as to whether it was received, and that this factual dispute would need to be resolved at hearing.

16. The respondent argued that the first disclosure was an attempt to secure a financial settlement and so made for personal interest. It was said that the claimant can have had no reasonable belief that tweets posted prior to the publication of Keeping Children Safe in Education in 2015 were breaches of a legal obligation, and that the claimant cannot have had reasonable belief that his disclosure was in the public interest given that the tweets were posted 8-10 years ago.

17. The respondent highlighted that the claimant relied on internal policies, which it says were not legal obligations and that the claimant himself accepted in paragraph 8 of his claim form that he shared the information about the tweets to *"highlight the difference in the way I was being treated"*, i.e. a personal motivation. The respondent further asserted that the tweets in question were around 10 years old and that the claimant has not pointed to any specific policy or provision regarding sharing images of children or that there was a legal obligation to investigate that.

18. Further, the respondent argues that the claimant has no (or little) prospects of successfully arguing that he had a reasonable belief that repeating "gossip" about a male teacher and female student was in the public interest, because everyone knew about that gossip anyway, and because the claimant was not asserting that the teacher had met the student out of school – he was simply repeating earlier allegations. They further assert that the claimant has no (or little) prospects of successfully arguing that this highlighted a breach of a legal obligation.

19. The claimant disputed the age of the tweets and said that whilst the purpose of his looking through twitter accounts was to highlight differential treatment, once he had found the tweets, he thought that they were a safeguarding issue that should be investigated. He says that I cannot determine the issue of prospects of success without hearing evidence both in respect of his understanding of the legal obligations he relies upon and in respect of his belief that the disclosures were in the public interest, relying on *Cox v Adecco*.

Conclusions

20. Since the 2013 reforms, a claimant's motivation for making disclosures is irrelevant at the liability stage, though the Tribunal can reduce compensation by up to 25% if it appears that the disclosure(s) were not made in good faith. What is relevant is whether or not the claimant can establish that he reasonably believed that his disclosure(s) were in the public interest, irrespective of his motivation for making them. Evidence is needed to test that belief and whether it was reasonable.

21. The claimant cannot have a realistic prospect of establishing that he reasonably believed that tweets posted prior to the publication of Keeping Children Safe in Education breached any legal obligation contained within that document. But that is not the only basis of the claimant's assertion that his disclosures were protected disclosures.

22. The respondent says that the claimant cannot have a realistic prospect of establishing that the policy documents he refers to were legal obligations. The claimant says that he believed policy documents contained legal obligations. That is possible: it is conceivable that a school's policy documents would detail the school's and teachers' legal obligations.

23. It is still not clear what legal obligation the claimant refers to but he does say that he believed that the tweets and the failure to investigate them breached a legal obligation. He further says that the instruction to delete the tweets tended to show that this breach was being concealed. He further alleges that the failure to investigate the "gossip" about the male teacher, and the alleged instructions to staff and students not to discuss the matter, breached a legal obligation and tended to show that this breach was being concealed.

24. *Babula* confirms that the test for the Tribunal is to consider whether the claimant had a reasonable belief that the information he disclosed tended to show a breach of a legal obligation, even if it turns out that no such legal obligation existed. Evidence is needed to test that belief and whether it was reasonable.

25. It is clear from Section 43L that a claimant can establish a qualifying disclosure even where the respondent knew the information already – so the fact that the claimant was repeating "gossip" already known to the respondent does not necessarily mean that the second disclosure is not a qualifying disclosure. What is relevant is whether or not the claimant reasonably believed that the disclosure was in the public interest and that he reasonably believed that it tended to show a breach of a legal obligation, or that information tending to show that had been deliberately concealed. Again, evidence is needed to test that belief and whether it was reasonable.

26. The core facts of this case are in dispute: whether the respondent was aware of the second disclosure, whether the claimant reasonably believed that his disclosures were in the public interest and whether he reasonably believed that they tended to show breaches of legal obligations and/or that they were being deliberately concealed. It is not therefore possible to say that the case has no, or indeed little, prospect of success without hearing evidence from the claimant about those facts. That is evidence that must be heard at the final merits hearing, as explained by Mrs Justice Simler in *Ishmail*. For that reason, I dismiss both applications made by the respondent.

Approved by:

Employment Judge Taft

17 November 2025

Judgment sent to the parties on:

9 December 2025

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For the Tribunal:

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Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/