



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001167/2025

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Held in Glasgow on 17 November 2025

Employment Judge F Eccles

Miss Urszula Polec

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Claimant
In Person
[with Polish
interpreter]

Pars Food Ltd

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Respondent
Represented by:
Mr A Philp -
Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal is to strike out the complaint of failure to make reasonable adjustments in terms of Rule 38(1) (a) of the Employment Tribunal Procedure Rules 2024 as having no reasonable prospect of success. The applications to strike out the complaint of victimisation and to issue a deposit order are refused.

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REASONS

1. The claimant complains of unfair dismissal, discrimination arising from disability, failure to make reasonable adjustments and victimisation. An application to amend the claim to add complaints of direct discrimination, harassment and indirect discrimination was refused at a preliminary hearing on 17 November 2025. At the same hearing, the respondent applied for strike out of the complaints of failure to make reasonable adjustments in terms of Sections 20 and 21 of the Equality Act 2010 and victimisation in terms of Section 27 of the Equality Act 2010 failing which a deposit order. The Tribunal heard submissions from the parties and reserved its decision.
- 35 2. It is the respondent's position that the complaints of failure to make reasonable adjustments and victimisation should be struck out in terms of Rule 38(1) (a) of the Employment Tribunal Procedure Rules 2024 as having no reasonable prospect of success.

3. In support of the application for strike out of the complaint of failure to make reasonable adjustments, the respondent relies on the claimant having been certified as unfit for work from 18 April 2024 and unable to give any indication of when she might be able to return to work until her dismissal on 11 February 5 2025. Referring to the cases of **Anderson v Anderson & Son UKEATS/0013/16JW** and **Doran v Department of Work and Pensions, UKEAT/0017/14/SM**, it is the respondent's position that given the facts of this claim, the obligation to make reasonable adjustments was not triggered and it must follow that a complaint that the respondent was in breach of the 10 obligation is misconceived and wholly without merit.

4. The claimant accepts that she did not inform the respondent that she was able to return to work at a particular time. She does not claim that there came a point at which she was fit to return to work if adjustments were made. The 15 adjustments identified in relation to communication by e mail and face to face meetings are adjustments which arise as and when the claimant is fit to return to work. The Fit Notes provided by the claimant record her as not fit for work as opposed to potentially able to return with support from the respondent. In response to health related questions in January 2025 about what adjustments or support (if any) the respondent could provide to help with her return to work, the claimant replied, "*Upon my return, I believe I would benefit from a phased return and reduced workload*". More recently, in her disability impact statement, the claimant states that according to her NHS Note she would remain unfit for work "*until at least 10 September 2025 with an expected treatment duration of three years*". 20

25 5. Taking the claimant's case at its highest and having carefully considered the claimant's pleadings, documents and representations at today's hearing, the Tribunal concluded that on the undisputed facts, the complaint of failure to make reasonable adjustments has no reasonable prospect of success. In all the circumstances of the case, the obligation to make reasonable adjustments did not arise as the claimant was unable to provide the respondent with any indication as to when she would be fit to return to work. The claimant will not therefore be able to establish that there was a breach of the obligation to make reasonable adjustments in relation to her return to work or when back at work. There is no suggestion that any further investigation into the facts is necessary or is likely to lead to a different conclusion. The Tribunal recognises that strike out is a draconian and exceptional step. In all the circumstances of 30 this case however, having concluded that the complaint has no reasonable prospect of success, the Tribunal considered it appropriate and in accordance with the overriding objective to exercise its discretion to strike out the 35 complaint of failure to make reasonable adjustments.

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6. The Tribunal was not persuaded that the complaint of victimisation should similarly be struck out. It is in dispute that the claimant's grievance was a protected act for the purposes of a complaint under Section 27 of the Equality Act 2010. It is the respondent's position, referring to the case of **Ms M Kokomane v Boots Management Services Ltd 2025EAT38** that the respondent was entitled to proceed on the basis that the claimant's grievance, when considered in context, was a generalised complaint of bullying. The alleged detriments identified by the claimant – for the most part in her Agenda and which the Tribunal accepted in respect of the complaint as additional information – are in dispute.

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7. The Tribunal concluded that as regards the complaint of victimisation, it requires to hear evidence and consider any documents in relation to the oral evidence of the claimant and witnesses before determining the merits of the claim. The Tribunal did not consider it appropriate or in accordance with the overriding objective to dispose of the complaint as having no reasonable prospect of success at this stage in the proceedings. The application for strike out the complaint of victimisation is therefore refused.

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8. The Tribunal was asked to consider making a deposit order in terms of Rule 40 of the Employment Tribunal Procedure Rules 2024. This would be appropriate if the Tribunal considered that the complaint of victimisation has little reasonable prospect of success. In all the circumstances, the Tribunal was not persuaded that it was able, without hearing evidence as referred to above, to conclude that the complaint had little reasonable prospect of success and that a deposit order was appropriate or in accordance with the overriding objective. The application for a deposit order has therefore been refused.

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Date sent to parties

16 December 2025