Case Number: 6007037/2024

EMPLOYMENT TRIBUNALS

Claimant: K Regula

Respondent: (1) Compass Group UK & Ireland Ltd
(2) Royal Free London NHS Foundation Trust

Heard at: Reading **On:** 26 November 2025

Before: Employment Judge Shastri-Hurst

Representation
Claimant: in person
Respondent: (1) Mr Joicey (lay representative)
(2) Ms Spencer (counsel)

RESERVED JUDGMENT

1. The claimant's claim is struck out as having no reasonable prospect of success.

REASONS

Introduction

1. The claimant was employed by the first respondent, a provider of contract catering and other support services, from May 2008. Her employment with the first respondent ended on 30 January 2024. At the time of her termination, the claimant was employed as a supervisor on the first respondent's contract with the second respondent. Her employment transferred by way of TUPE transfer to the second respondent on 1 February 2024: at the time of this hearing, she remained employed but on sick leave.

2. Early conciliation started on 30 May 2024 and ended on 8 July 2024.

3. By claim form of 29 July 2024, the claimant presented a claim form, ticking the boxes for age, disability and sex discrimination as well as arrears of pay/other payments. At the hearing on 26 November 2025, I spent some time with the claimant understanding her claim and discussing it with the

parties. Those discussions and a record of the List of Issues are set out in the associated Record of Preliminary Hearing. Following our discussions, the claimant's claims were confirmed as being a claim of age discrimination, discrimination arising from disability and unauthorised deduction of wages, all relating to the same single factual allegation: that the claimant was not given a pay rise from £12.45 per hour to £12.95 per hour in January 2023.

4. The respondents' defence is that the claimant was on Agenda for Change ("AfC") terms and conditions, whereas those she compares herself to were not. The reason for the lack of pay rise was that those on AfC contracts were not entitled to that specific pay rise.

5. This matter was listed for a public preliminary hearing on 26 November 2025 in order, firstly, to clarify the issues and, secondly, to consider the first respondent's application to strike out the claim (or for a deposit order in the alternative). To assist me, I was provided with a bundle of 132 pages, including the strike out application at [50] and the claimant's objections at [53].

Issues

6. The issues for determination in relation to the first respondent's application were as follows:

    6.1. Should the claim or any part of it be struck out because it has no reasonable prospect of success? If not,

    6.2. Does the claim or any part of it have little reasonable prospect of success?

    6.3. If so, should the claimant be ordered to pay a deposit of between £1 and £1000 as a condition of continuing with it?

Facts

7. As above, the claimant worked for the first respondent initially, working on a service provision for a client of the first respondent, namely the second respondent.

8. The service provision on which the claimant was employed with the first respondent had colleagues on a variety of contractual terms. The claimant was on terms aligned to Agenda for Change ("AfC") terms.

9. Any changes to AfC terms are subject to negotiation between the Government and the relevant trade unions. Once agreement is reached, the new terms are set out and published by NHS England – see for example [129]. Then, once the appropriate funding is received by the first respondent, any agreed, published changes to terms and conditions are applied to all employees on AfC contracts. This is the process by which any pay rates and changes to those rates are determined.

10. In the claimant's case, at the relevant time, her rate of pay was £12.45 per hour in line with the above outlined negotiation procedures. The claimant

also received London Weighting of £2.20 per hour, making her basic hourly rate £14.65.

11. The respondents accept that the claimant did not receive a pay increase from £12.45 to £12.95 in January 2023, unlike some of her colleagues. The salary rise from £12.45 to £12.95 for the claimant's colleagues who were awarded that increase included London Weighting.

12. The first respondent says that the reason for this difference was that the claimant was on AfC terms, whereas those who received a pay increase were not. Therefore, the respondents contend that the reason why she did not receive a pay increase was the fact that her contract is subject to AfC; it was therefore not because of her age or something arising in consequence of a disability.

13. In any event, the respondents allege that, due to the claimant receiving London Weighting, her overall hourly wage is greater than the others on her team (£14.65 is £1.70 greater than £12.95). As such, they say that there is no less favourable or unfavourable treatment.

14. Regarding unauthorised deduction of wages, the respondents say that the claimant was and is paid in line with her AfC terms and conditions. As such, no unlawful deductions were made.

15. The claimant was off for a period of a long-term sickness absence between May/June 2023 and September 2023. It was on her return that she discovered that she was on a different hourly rate of pay compared to her supervisor colleagues. She entered a pay query about this on 11 November 2023 – [96].

16. The claimant's line manager spoke to the claimant about her pay, following which the claimant was not satisfied and raised the issue to the first respondent's Payroll Team on 17 January 2024 – [118]. In that email query, the claimant stated:

> "I would like to emphasize that I have been transferred between different hospitals on Agenda for Change terms and conditions. Being on these terms and currently receiving London weighting now appears to cause me detriment, especially when compared to my colleagues who have received the recent pay increase".

17. The fact that her AfC terms were the reason why the claimant did not get the increase from £12.45 to £12.95 was explained to her by the first respondent on 25 January 2024 – page 119:

> "I can confirm that you were not eligible for the London living wage uplift at North Middlesex that was applied in September 2023. This uplift was only applicable to those not on agenda for change and not already in receipt of London weighting".

18. Not satisfied with the communication of 25 January 2024, the claimant escalated her complaint/query to a formal complaint on 31 January 2024 (reference at [120]), and a Stage 1 Formal Grievance Meeting was set down for 21 February 2024. On 16 February 2024, the claimant emailed Ms Pidduck at the first respondent, to request evidence as to the reason for the lack of pay rise – [122]. The claimant did not wish to attend a grievance

meeting but wanted the matter dealt with on the papers. The first respondent's outcome letter was sent on 11 March 2024 - [126]. That outcome letter explains in detail the logic and method behind the claimant's pay compared to others not on the AfC contract. Ms Pidduck specifically also says that the claimant's pay is aligned to the AfC pay scales – [127].

19. The claimant in her claim form appeared to accept that her contractual terms were the reason for any difference in treatment regarding pay increases – at [8], the claimant writes:

> "When I queried [the lack of increase], I was informed that my different contract, which includes a London Weighting Allowance, disqualified me from the pay rise. I believe I should not be penalized for having a different contract..."

20. The same conclusion was set out to the claimant again on 11 March 2024 – page 126-127:

> "I do accept that supervisors earning London living wage are being paid £12.95 (£1 more than the London living wage to maintain a differential) and that the supervisor Agenda for Change rate is £12.45. however, you must look at your hourly rate in its entirety with the London weighting added which effectively makes it £14.65.
>
> This does mean that your current contractual payrate that is aligned to Agenda for Change is £1.51 per hour above the London living wage received by those on a different contract to yours".

Legal framework – strike out

21. The power to strike out a claim (or part of a claim) is found within r38 of the Employment Tribunal Procedural Rules 2024 ("the Rules"). The relevant ground for strike out in this case is r38(1)(a), which provides as follows:

> 38(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of s claim, response or reply on any of the following grounds –
>
> (a) that it is scandalous or vexatious or has no reasonable prospect of success;...

22. For discrimination claims, the starting point regarding case-law is Anyanwu and anor v South Bank Student Union and anor [2011] ICR 391 UKHL. Here, the House of Lords emphasised that discrimination claims are often fact-sensitive and require close examination of the evidence at a full merits hearing. They should not be struck out except in the most obvious of cases.

23. Further caution has been advised in Bahad v HSBC Bank plc [2022] EAT 83, at paragraph 25:

> "The approach that should be adopted to applications to strike out is of extremely long standing. From the House of Lords to the EAT, the appellate courts have for many years urged caution in striking out discrimination and public interest disclosure claims. Yet, on occasions employment tribunals having directed themselves that it is an extraordinary thing to do, strike out claims that are far from unusual. Experienced employment judges may sometimes feel that it is pretty clear that a claim will not succeed at trial and wish to save the expense and, possibly,

> the distress to the claimant of a failed claim. But that is what deposit orders were designed for. To strike out a claim the employment judge must be confident that at trial, after all the evidence has come out, it is almost certain to fail, so it genuinely can be said to have no reasonable prospects of success at a preliminary stage, even though disclosure has not taken place and no witnesses have given evidence. When discrimination claims succeed it is often because of material that came out in disclosure and because witnesses prove unable to explain their actions convincingly when giving evidence."

24. In Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330, the Court of Appeal held that, as a general point of principle, cases should not be struck out when there is a dispute over the key facts. The reference to key facts also encompasses the reasons for a respondent's conduct, where those reasons are relevant to the applicable legal test – Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly [2012] IRLR 755.

25. I am also assisted by the case of Balls v Downham Market High School and College [2011] IRLR 217, in which Lady Smith held:

> "When strike out is sought or contemplated on the ground that the claim has no reasonable prospects of success, the structure of the exercise that the tribunal has to carry out is the same; the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has *no* reasonable prospects of success. I stress the word "no" because it shows that the test is not whether the claimant's claim is likely to fail nor is it a matter of asking whether it is possible that his claim will fail. Nor is it a test which can be satisfied by considering what is put forward by the respondent either in the ET3 or in submissions and deciding whether there written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be *no* reasonable prospects."

26. Mitting J in Mecharov v Citibank NA [2016] ICR 1121 EAT provided the following guidance at paragraph 14:

> "…the approach that should be taken in a strike out application in a discrimination case is as follows:
>
> Only in the clearest case should a discrimination claim be struck out;
> Where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence;
> The claimant's case must ordinarily be taken at its highest;
> If the claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and,
> A tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts."

27. There are some caveats to the general approach of caution towards strike out applications. In Ahir v British Airways plc [2017] EWCA Civ 1392 CA, it was held that, when a tribunal is satisfied that there are no reasonable prospects of the facts needed to find liability being established, strike out may be appropriate. This is caveated by the need to be aware of the danger of reaching that conclusion without having heard all the evidence.

28. In Community Law Clinics Solicitors Ltd & Ors v Methuen UKEAT/0024/11, it was stated that in appropriate cases, claims should be struck out and that

"the time and resources of the ET's ought not be taken up by having to hear evidence in cases that are bound to fail."

29. In Cox v Adecco & Others [2021] ICR 1307, HHJ Taylor gave the following summary of general propositions gleaned from the relevant case-law (paragraph 28):

> "(1) No-one gains by truly hopeless cases being pursued to a hearing;
>
> (2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;
>
> (3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;
>
> (4) The Claimant's case must ordinarily be taken at its highest;
>
> (5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;
>
> (6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;
>
> (7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;
>
> (8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;
>
> (9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances."

Legal framework – deposit order

30. The Tribunal has the power to make deposit orders against any specific allegations or arguments that it considers have little reasonable prospect of success under r40 of the Rules:

> "(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.

…

(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 –

i. 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.
ii. The deposit must be paid to the other party …

Otherwise the deposit must be refunded.

(8) If a deposit has been paid to a party under paragraph (7)(b) and a costs order or preparation time order has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement oft that order".

31. The rationale of a deposit order is to warn a claimant against pursuing claims with little merit, which may leave them open to a risk of costs should they proceed with the claim and lose on the same basis as identified as the reason for making a deposit order - Hemdan v Ishmail and anor [2017] IRLR 228.

32. The purpose of such an order is not to restrict disproportionately access to justice, hence any order made must be for an amount that is affordable by a party, and can be realistically complied with – Hemdan.

33. In terms of the test of "little reasonable prospect of success", the Tribunal is permitted to consider the likelihood of the claimant being able to establish the essential facts of his or her case. In undertaking this exercise, it is entitled to reach a preliminary view on the credibility of the allegations and assertions that the claimant is making in his/her claim – Van Rensburg v Royal Borough of Kingston-upon-Thames [2007] All ER (D) 187 (Nov). The Tribunal must have a proper basis for considering it unlikely that a claimant will be able to establish the necessary facts to prove his/her claim.

34. If the Tribunal decides to make a deposit order, it must give reasons, not only for the fact of the order, but also for the amount of that order – Adams v Kingdon Services Group Ltd EAT/0235/18.

Conclusions

35. Taking all the evidence before the Tribunal, the claimant's own case as to the reason for the lack of pay increase from £12.45 to £12.95 was that she was on a different contract to other supervisors on her team, namely the AfC contract. This is apparent from the internal complaints she entered, her ET1 claim form, and her representations to me today - specifically:

    35.1. On 29 July 2024, in her claim form, the claimant stated "I should not be penalized for having a different contract" - [8];

    35.2. On 17 January 2024, in a complaint to the first respondent, the claimant wrote, regarding being on AfC terms "[b]eing on these terms and currently receiving London weighting now appears to cause me detriment..." - [118];

    35.3. At the hearing before me, I asked the claimant "are you saying it is because you had a different contract to the other supervisors that you did not get the pay rise": she answered in the affirmative.

36. The claimant also accepted today that her AfC contractual rate of pay was £12.45.

37. Given the above admissions/statements, there is no central dispute in fact between the parties that needs to be resolved. Both parties consider that the difference between the claimant and her supervisor colleagues is that she is on an AfC contract which did not allow for a pay rise from £12.45 to £12.95 in 2023.

38. On the claimant's own case, the difference in treatment is because of the difference in contractual terms, and therefore not her age and not because of a decrease in her efficiency (which is said to be something arising in consequence of her disability).

39. It also follows that, in light of this acceptance that the difference in pay was because of her different contractual terms (being AfC), and her contractual rate of pay was £12.45 per hour, the claimant was paid in line with those AfC contractual terms.

40. Given the claimant's sustained position that the lack of pay rise is due to the difference in contract terms, rather than any of the unlawful reasons in her pleaded case, I conclude that there is no reasonable prospect of a tribunal concluding that the lack of pay rise was because of age or something arising from disability, or was an unauthorised deduction of wages by the first respondent.

41. Therefore, the claim against the first respondent has no reasonable prospects of success and is struck out.

42. In terms of the claim against the second respondent, that claim is dependent upon liability passing from the first respondent to the second respondent under the Transfer of Undertakings (Protection of Employment) Regulations

2006. Given I consider there is no reasonable prospect of the claims succeeding against the first respondent, it must follow that there is no reasonable prospect of any liability being established which would transfer from the first respondent to the second respondent at the point of the relevant TUPE transfer. As such, there is no reasonable prospect of the claim succeeding against the second respondent.

43. The claim against the second respondent is therefore struck out as well.

Approved by

Employment Judge Shastri-Hurst
3 February 2026

JUDGMENT SENT TO THE PARTIES ON
19 February 2026.....

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FOR THE TRIBUNAL OFFICE

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 here:

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