EMPLOYMENT TRIBUNALS

Claimant: Mr Stephen McNicholas

Respondent: Camerons Stiff Ltd

Heard at: Watford Employment Tribunal, by video-link
On: 5 December 2025

Before: Employment Judge E Macdonald

Appearances
For the claimant: Mr McNicholas (litigant in person)
For the respondent: Mr N Singer of Counsel

A Record of Preliminary Hearing and Case Management Orders having been sent to the parties on 31 December 2025; and a Judgment having been sent to the parties on that same date; and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction and procedural history

1. At a Preliminary Hearing held on 5 December 2025 various matters were addressed, and are recorded in the Record of Preliminary Hearing as referred to above.

2. Insofar as is material, at that Preliminary Hearing:

    a. The issue of time limits was determined in relation to the claimant's complaints of unlawful deductions from wages; wrongful dismissal; whistleblowing detriment; and victimisation. Those complaints were found to be out of time, and were therefore dismissed for want of jurisdiction.

    b. The respondent applied for deposit orders. That application was refused.

3. On 5 December 2025 the claimant applied for reconsideration of the judgment.

4. On 6 January 2025 the application for reconsideration was refused, albeit that administrative error caused a delay in that decision being sent to the parties.

5. On 9 January 2026 the claimant requested written reasons for the Judgment sent on 31 December 2025. In making that request, the claimant also sought to challenge the factual basis on which the decision was reached, and asserted that his amendment application was submitted on 4 February 2025 rather than July 2025; that the Tribunal therefore relied on an incorrect date when calculating delay; and that, using the "correct" date, the period of delay would be 28 rather than 191 days.

6. I considered whether this should be treated as a reconsideration application. In my view it should not be so treated. The claimant has already made one reconsideration application, which has been determined. The claimant sought on 28 January 2026 to make a further application in identical terms; I therefore declined to consider that further application. The challenges to the decision which the claimant raises in his request for written reasons do not add to the challenges set out in his previous reconsideration applications.

7. On 12 January 2026 the respondent requested written reasons for the decision in respect of the respondent's application for a deposit order.

8. I apologise to the parties for the length of time it has taken to produce these reasons; delay was caused, variously, the need to obtain and review the recording of the hearing; illness; and technical difficulties with the case management system.

9. I will deal first with the reasons for the Judgment.

Judgement: Reasons

10. On 16 July 2025 the case was heard by EJ French at a preliminary hearing for case management. EJ French heard and granted applications made by the claimant to amend his claim, subject to the issue of time limits being determined at a later public preliminary hearing.

11. Directions were given to prepare for that hearing. In particular, the claimant was by 27 August 2025 to disclose any documents relevant to time limits, and to produce a witness statement dealing with the issue of time limits. The respondent was given permission to serve documents in response; and was directed to prepare a file of documents (a "bundle") for the preliminary hearing and to send a copy of that bundle to the claimant by 24 September 2025.

12. In the hearing on 5 December I was provided with a number of documents, namely:

    a. A "Preliminary Hearing Bundle – Final" running to 582 pages

    b. A skeleton argument prepared on behalf of the respondent

    c. A witness statement prepared by the claimant (3 pages)

d. A “supplemental skeleton argument” prepared by the claimant (6 pages)

e. A document titled “CLAIMANTS REBUTTAL” (5 pages)

f. A “Claimant’s Response to Respondent’s Late “Factual Detail” Application” (3 pages)

g. A “WRITTEN SUBMISSION OF THE CLAIMANT – STEPHEN McNICHOLAS” (6 pages)

h. A document titled “30th of July submission McNicholas” (3 pages)

i. The Respondent’s application for a deposit order, dated 26 September 2025 (5 pages)

j. A “supplementary bundle” (6 pages)

13. At the outset of the hearing I asked the claimant whether he was content that all of the documentary evidence on which he wished to rely was available. The claimant was unsure but said that he would confirm the position over lunch.

14. The hearing adjourned to permit time to read. When the hearing reconvened, I took time to explain to the claimant the arguments which the respondent was raising about time limits. I noted that EJ French had said that the claims for whistleblowing detriment, wrongful dismissal, unauthorized deductions from wages, and victimisation, were new claims (or new causes of action) and were 191 days out of time, having been brought on 4 July 2025 which was the date of the amendment application.

15. I discussed with the parties whether adequate notice of the issues to be determined had been given, as required by Rule 53. I considered that, in substance, the parties had been given notice by virtue of the issues for determination having been set out in the orders made by EJ French on 16 July 2025. If there was a breach of a requirement in Rule 53, I would elect to waive that requirement, on the basis that no prejudice would be caused to either party; it would not be unjust to proceed; and it would cause additional delay and expense were the matter to be adjourned, and – in particular for that reason – it would be in accordance with the overriding objective to proceed. Both parties were content for me to determine the issue of time limits and the deposit order application.

16. The claimant confirmed the truth of his statement and was cross-examined. Both parties made closing submissions.

17. The claimant, in particular, argued that the question was whether, given the claimant’s circumstances as a litigant in person, it was reasonably practicable to bring the claims earlier and whether it was just and equitable to extend time.

18. I made the following findings of fact on the balance of probabilities and having regard to the evidence in the round.

Facts

19. The claim was issued on 6 November 2024. The claimant said that he had been employed from 13 March 1999 to 14 August 2024 as a senior sales negotiator. The claimant said that he had been automatically unfairly dismissed contrary to s 103A; the respondent's position was that he had been dismissed for gross misconduct, in that he had been preparing to compete with the respondent company.

20. ACAS Early Conciliation ran from 14 August 2024 to 25 September 2024, a period of 42 days. The latest date on which a claim could be presented (within the time limit as extended by ACAS Early Conciliation) would therefore be 25 December 2025 (as Mr Singer correctly stated).

21. As of 25 September 2024 the claimant had engaged lawyers to act on his behalf. I was shown redacted copies of correspondence. There was further correspondence by the claimant's lawyers to the respondent's lawyers on 8 October 2024 and 21 October 2024 and on 29 October 2024.

22. At the point at which the claimant submitted his Tribunal claim in November 2024 he believed that he had to "get it in by a certain time". He did conduct some research: he looked online and used AI to a certain extent. He found out, or believed, that he had a "3 month and one day" time period to submit his ET1 if he wanted to go to Tribunal, which he did. To that claim, he attached his solicitor's letter, because he believed it covered his legal complaints.

23. There was a small error in the claimant's belief, because the primary time limit is "3 months *less* one day" rather than "3 months *and* one day".

24. On 29 January 2025 the claimant wrote to the Tribunal and to the respondent under the heading "FORMAL RESPONSE TO THE RESPONDENTS STATEMENT". That document appeared to reference a number of legal complaints which were not included in the Form ET1.

25. On 5 February 2025 Ms Tessa Fry (of the respondent's solicitors) wrote referring to the claimant's email of 29 January 2025. Ms Fry's correspondence is significant. In that e-mail she wrote (insofar as is material):

> "Dear Sir/Madam
>
> We act for the Respondent.
>
> We refer to the Claimant's email below and his subsequent email dated 30 January attaching various documents [. . .]
>
> Obviously, the tribunal procedure does not allow for the Claimant to respond to the ET3.
>
> It is not clear if the Claimant wishes to amend his ET1 to incorporate the points raised in his email below. If yes, then he would need to apply to the tribunal for permission to amend and we will respond accordingly.
>
> [. . .]

26. By 5 February 2025, therefore, the claimant was aware that he would need to make a formal application to amend his claim.

27. On 8 March 2025 the Tribunal sent to the parties Orders requiring the parties to prepare for an upcoming preliminary hearing. In particular, those Orders required the claimant to produce details of each and every disclosure relied upon; and detailed particulars of each and every detriment to which he said he had been subjected as a result of blowing the whistle.

28. On 14 July 2025 the respondent provided the claimant with a bundle of documents and draft list of issues.

29. In response, the claimant stated (amongst other things):

> "I acted promptly and diligently in pursuing my rights. Any delays were due to the need to obtain legal advice, gather evidence, and respond to the Respondent's shifting narrative . . ."

30. At the end of his evidence, the claimant confirmed that, at the point at which he had submitted the claim, he knew that if he wanted to go to Tribunal he had to submit an ET1 "within 3 months of ACAS Early Conciliation", but said that he was not aware of the exact timings.

31. I reproduce the following five paragraphs from the reconsideration decision, insofar as is material; they accurately reflect the reasons which underpinned the decision given orally.

32. In the Case Summary section of the Record of Preliminary Hearing sent to the parties on 28 July 2025 EJ French recorded (paragraphs 24 – 33) that the claimant had submitted an amendment application dated 11 December 2024; that there was a further amendment application dated 4 July 2025; that the claimant had confirmed in the hearing that he did not pursue the amendment application dated 11 December 2024; and that (in terms) the claimant sought to bring claims of wrongful dismissal; unauthorised deduction from wages; victimisation; and whistleblowing detriment, all of which were "new causes of action which were presented by way of the amendment application on 4 July 2025. As such the complaints on the face of it have been brought out of time . . ."

33. EJ French granted that amendment application subject to the issue of time limits being determined at a subsequent public preliminary hearing.

34. Written reasons were produced by EJ French in relation to the decision on the amendment application and were sent to the parties on 24 September 2025. I had sight of those reasons in the hearing. Those reasons explained again that the claimant had submitted an amendment application dated 11 December 2024; that there was a further amendment application dated 4 July 2025; that there was a further undated amendment application before EJ French which the claimant said had been submitted in the last few days [i.e before the hearing on 16 July 2025]. It was clear that the claimant in making his application relied on the document which EJ French considered to have been dated 4 July 2025.

35. At paragraph 20 of those reasons EJ French recorded that "the primary application to amend [was] made on 4 July 2025 . . ." and then at paragraph

21 “I consider therefore that the Tribunal will treat those complaints as having been made on 4 July 2025 and granted on 16 July 2025 . . .”

36. In the hearing on 5 December 2025 I considered, amongst other documents, a statement from the claimant in which he stated:

“As a litigant in person, I was not aware of the strict requirement to present all additional complaints within a specific statutory time limit . . . Once I became aware of this requirement, I acted promptly by applying to amend in July 2025

[. . .]

. . Once I was clearer about the facts and their legal basis, I acted promptly by applying to amend my claim in July 2025.”

37. I also had sight of the email sent by the claimant dated 4 July 2025 in which he applied to amend his claim to include wrongful dismissal; unlawful deduction from wages; victimisation; and “breach of implied term of trust and confidence”.

38. This, therefore, was a case in which the claimant had had input from professional advisors, i.e. a firm of solicitors, at the time at which the claim was first issued. He continued to have that representation through to 22 December 2024 at least. The claimant must have known, at the point of issue, that there was a time limit, and that he needed to say what claims he intended to bring.

39. The claimant is clearly technologically literate. He relied on being a litigant in person and not an employment law specialist, but nothing prevented him from ticking the box marked “discrimination” on the Form ET1, nor indeed the “other payments” box.

40. I find as a fact that any ignorance on the part of the claimant was not reasonable. He ought reasonably to have made enquiries, and it appears that he did: he sought legal advice. Any responsible solicitor would have warned their client about time limits, whether or not they were instructed to issue a claim.

41. I accept that the claimant thought he had done what he needed to do by attaching the solicitor’s letter with his claim form.

Law

42. For discrimination complaints, the time limits are set out in s 123 Equality Act 2010 which provides insofar as is material

> **123 Time limits**
>
> (1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

[. . .]

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

[. . .]

43. A claim for wrongful dismissal is a claim for breach of contract, and the relevant statutory provision is therefore Article 7 The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 which provides insofar as is material

7. Subject to article 8B an employment tribunal shall not entertain a complaint in respect of an employee's contract claim unless it is presented—

(a) within the period of three months beginning with the effective date of termination of the contract giving rise to the claim, or

[. . .]

(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within whichever of those periods is applicable, within such further period as the tribunal considers reasonable.

44. Similar provisions apply to claims of whistleblowing detriment. Section 48(3) Employment Rights Act 1996 provides insofar as is material

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on

[. . .]

45. Complaints of unlawful deductions from wages proceed under s 23 Employment Rights Act 1996, and the “time limit” provisions are in materially the same terms. That section provides, insofar as is material

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or

(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or

(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates,

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

46. “Reasonably practicable” means something like “reasonably feasible”: **Palmer and anor v Southend-on-Sea Borough Council [1984 ICR 372.**

47. The correct test is not whether the claimant knew of his rights, but whether he or she ought to have known of them: **Porter v Bandridge Ltd [1978] ICR 943.**

48. Where an individual is aware of a right, they are under an obligation to seek information and advice as to how to enforce that right: **Trevelyans (Birmingham) Ltd v Norton [1991] ICR 488.**

49. Mere ignorance of time limits will not satisfy the "not reasonably practicable" test. The Tribunal will need to be satisfied that the ignorance was reasonable: **Wall's Meat Company Ltd v Khan [1979] ICR 52.**

50. In a case where the claimant has consulted skilled advisors, the question of reasonable practicability is to be judged by what he could have done if he had been given such advice as they should reasonably in all the circumstances have given him: **Northamptonshire County Council v Entwhistle UKEAT/0540/09.** There may be exceptions, such as where the skilled advisor was misled by the respondent about a key fact: **ibid.**

51. As to the phrase "such further period as the tribunal considers reasonable", this is question of fact for the Tribunal to determine having regard to all the circumstances: **Remploy Ltd v Brain UKEAT/0465/10**

52. As to the "just and equitable" extension, this is a broad and unfettered discretion: **Bexley Community Centre (t/a Leisure Link) v Robertson [2003] EWCA Civ 576.**

53. There is no requirement that the claimant must always be able to adduce a good reason for the delay, or that time cannot be extended in the absence of such an explanation: **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640.**

54. The factors set out in s 33 Limitation Act 1980 are a useful checklist, but not a strict legal requirement; they include the length of and reasons for the delay; the extent to which the cogency of evidence is likely to be affected by the delay; the extent to which the party sued had co-operated with requests for information; the promptness with which the claimant acted once they knew of the possibility of taking action; the steps taken by the claimant to obtain professional advice once they knew of the possibility of taking action: **DPP v Marshall [1998] IRLR 494.**

55. There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised: **Jones v Secretary of State for Health and Social Care [2024] EAT 2.**

56. Amendments to pleadings which introduce new claims or causes of action take effect for the purpose of limitation at the time when permission is given: **Galilee v The Commissioner of Police of the Metropolis UKEAT/0207/16/RN**

Decision

57. I deal first with the question of whether it was reasonably practicable to have presented the claims in time, and, if not, whether they were presented (by way of amendment) within such further period as was reasonable.

58. I find that it was reasonably practicable to have presented the claims in time. The claimant had the benefit of professional legal services, at the very least, when he submitted his claim. If he believed that he had been subject to wrongful dismissal, or unlawful deductions from wages, or whistleblowing detriments, he could have said so. He did not. It was reasonably feasible for the claimant to have presented the claims in time; there was no cogent evidence of any substantive impediment to him having presented his claims in time.

59. The claims were not presented in time: they were instead presented on 4 July 2025 by way of amendment.

60. If I had concluded that the claimant's ignorance made it not reasonably practicable to have presented the complaints in time, I would have gone on to consider whether they were presented within a further reasonable period.

61. The claims were presented 190 days out of time. That is a substantial period of delay. The period of delay by itself does not defeat the possibility of an extension, but it is a significant and weighty factor. No good reason was provided for the delay. Significantly, the respondent had expressly told the claimant on 5 February 2025 that he needed to apply to amend (if that is what he wished to do). Having been told that he needed to apply to amend, he waited until 4 July 2025 to make his application.

62. I would have concluded that they were not: I would have concluded that any period longer than two weeks after the email of 5 February (so, any point after 19 February 2025) would not fall within a further reasonable period.

63. I then turn to the question of a "just and equitable extension".

64. For the reasons set out above, the discrimination complaints were presented by way of amendment 190 days out of time.

65. The discretion, I remind myself, is a broad and unfettered discretion. Relevant factors to the exercise of the discretion include the following:

    a. The length of and reasons for the delay. This was, in my view, a simple mistake by the claimant. There were no reasons preventing him from applying to amend within time, or indeed at any point up to the date on which he applied to amend. To the extent that his ignorance of the need to make an application to amend is relevant, that ignorance does not account for the period between 5 February 2025 and the date on which the amendment application was eventually made. The length of the delay is significant.

    b. The extent to which the cogency of evidence is likely to be affected. I consider that this is of little weight, given that the alleged protected disclosures already form part of the claimant's case, although memories doubtless fade over time.

    c. The promptness with which the claimant acted once he became aware of the possibility of taking action (i.e. applying to amend): the claimant did not act promptly, for the reasons I have already stated.

    d. The steps taken to obtain appropriate professional advice: I note that

steps were taken to obtain advice in 2024, but the victimisation complaint was not raised at that point, whether in the letter from the solicitors or otherwise. There is no indication that the claimant took steps to apprise himself of what needed to happen once he had been told (again, in the e-mail of 5 February) that an amendment application was required.

e. As to the relevance of the data subject access request (the delayed compliance with which the claimant said prevented him from identifying his case, I conclude that this is not a relevant factor. The subject access request was not complied with prior to the amendment being applied for; it follows that it was not needed in order for him to make the application; in any event, I do not accept that the claimant needed the information in the data subject access request to decide whether he had been victimized for having done a protected act.

f. As to the merits of the case: I remind myself that it is not appropriate to conduct a mini-trial; in reaching a conclusion on the "just and equitable" extension I do not consider the apparent merits of the case (or otherwise) to be a significant factor.

g. As to ignorance of legal rights: again, I do not accept that this ignorance was reasonable. If the claimant believed that he had been dismissed for complaining about sexism, then he could have said so in his Form ET1 and he could have researched the point himself. He is an intelligent and technologically-literate individual with internet access.

h. As to the prejudice to the claimant: I accept that there would be prejudice to the claimant were I to refuse to extend time, because he would not be permitted to advance a claim that his dismissal was discriminatory; and I note that there is a lower hurdle for victimisation complaints (where the question is whether the protected act had a significant influence on the decision) than for claims of automatically unfair dismissal for having made a protected disclosure (where the question is whether the protected disclosure(s) was, or were, the sole or principal reason for the dismissal).

i. As to the prejudice to the respondent: the prejudice here is the mirror-image of the prejudice to the claimant. The respondent would be faced with a claim of discriminatory dismissal (victimisation). The respondent would be put to additional cost and time in responding to the complaint. There is more prejudice to the respondent than to the claimant in respect of financial expense. In terms of balancing the prejudice to the parties, I consider that the prejudice to the respondent would somewhat outweigh the prejudice to the claimant, and I take that into account.

j. The claimant had, in my view, no reasonable basis for thinking that he had actually presented a victimisation complaint.

k. It is, in my view, highly relevant that the claimant knew (within time) of all the material facts which would be needed to advance a claim

of victimisation, even if not labelled as such.

66. Having weighed the above factors carefully, I concluded that it would not be just and equitable to extend time by the 190 days which would be required for the claims to have been presented (by way of amendment) in time.

67. As a result of the above, the complaints of unlawful deductions from wages; wrongful dismissal; whistleblowing detriment; and victimisation are dismissed for want of jurisdiction, having been presented out of time.

68. I now turn to the respondent's application for a deposit order.

Deposit order

69. The Employment Tribunal Procedure Rules 2024 (***"the Rules"***) provide insofar as is material as follows:

> **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.
>
> (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.
>
> [. . .]

70. The last seven of the nine principles set out in **Cox v Adecco and ors UKEAT/0339/19** apply equally in relation to deposit orders: **Amber v West Yorkshire Fire and Rescue Service [2024] EAT 146**. They include:

    a. If the prospects of success turn on disputed factual issues, it is unlikely that a deposit order will be appropriate

    b. The party's case must ordinarily be taken at its highest

    c. It is necessary to determine what the claim and issues are. It is not possible to determine whether it has reasonable prospects of success without doing so.

    d. Where one party is a litigant in person, their case should not be solely ascertained from the explanation they give at the hearing. The

pleadings and any key documents should be considered. Legally represented parties should not take procedural advantage of litigants in person and should assist the Tribunal in identifying the relevant documents.

e. If the case would have had reasonable prospects of success if it had been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test.

71. Taking the case at its highest requires testing the factual account and examining it "through the prism of reality". This would include examining the case against basic logic, internal inconsistency or any contradiction by contemporaneous documentary evidence.

72. Significant disputed matters of fact should not be determined at the interlocutory stage: **Amber.** I do not make any substantive factual findings.

73. The purpose of a deposit order is to identify at an early stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs if the claim failed: **H v Ishmail UKEAT/0021/16.**

74. The observations in **Ishmail** do not replace the wording of r 40 (above), although they do underline the need for caution before making a deposit order where core facts are in dispute, and the important safeguard of sufficient reasons before deciding a claim or allegation has little reasonable prospect of success. They do not prevent a Tribunal from deciding that a particular factual allegation has little reasonable prospect of success of success.

75. The respondent initially sought deposit orders of £1,000 in respect of seven separate allegations or arguments, later narrowed in oral submissions. A deposit order was not pursued In respect of allegations 54(c) and (e) identified in the respondent's skeleton argument, i.e. the allegation that the claimant was dismissed because he had done one or more protected acts; the allegation of wrongful dismissal). The allegations or arguments under attack were a) that the respondent did not have a genuine and reasonable belief that the claimant had committed an act of gross misconduct b) that the reason, or if more than one the principal reason, for the dismissal was that the claimant had made one or more protected disclosures; that he was unfairly dismissed; that he was owed compensation; that he made protected disclosures.

76. The basis of the application was, in short, that there was clear and uncontroverted documentary evidence which, taken at face value, and if treated in the way that the respondent says it was treated, would give a reason for dismissal which did not involve the making of protected disclosures.

77. It is unlikely to be appropriate to make a deposit order or strike-out of whistleblowing or discrimination claims (but not impossible): **Amber**.

78. The Tribunal must take the paying party's means into account, as r 82 makes clear. I made inquiries into the claimant's means.

79. The respondent essentially challenges the likelihood that the claimant will succeed at trial in demonstrating that the reason – or principal reason for the dismissal – was that he had done a protected act.

80. As to the issue of genuine belief in (gross) misconduct, the claimant does have a difficulty here: on its face, there was clear documentary evidence which clearly suggested that the claimant had incorporated a company; and that the nature of that company was the running of an estate agent business. That evidence included in particular the code for the company; the incorporation document; text prepared by one of the claimant's colleagues to the effect that he and the colleague were preparing to run an estate agent business; and a logo. There was further evidence referred to in the dismissal letter. Those were clearly matters which *on its face* (I am not making any factual findings) makes it likely that a Tribunal will find indicated these were matters which the respondent took seriously and believed to be the true position.

81. I agree with Mr Singer that the claimant has little reasonable prospect of establishing that the respondent did not have a genuine belief in the misconduct alleged.

82. Turning to 54(b) in the respondent's skeleton argument, I also conclude that the claimant has little reasonable prospect of showing that the reason, or principal reason, for the dismissal was that he had made a protected disclosure.

83. The reason I say that is that there is ample documentary evidence which is uncontroverted and which – again on its face, taken at face value – if treated in the way that the respondent says it was treated would give a reason for dismissal not involving protected disclosures.

84. However, I do *not* conclude that there is little reasonable prospect of the claimant establishing that he made a protected disclosure or disclosures; the disclosures identified in the list of issues are *prima facie* capable of amounting to protected disclosures (although I make no finding as to whether they were), and this is fundamentally a matter of evidence to be considered at a final hearing.

85. As to 54(d) in the respondent's skeleton argument – i.e. the allegation that the claimant was *unfairly* dismissed – I do not find that the claimant has little reasonable prospect of establishing this, there is a live issue as to the fairness of the investigation, and I am not in a position to say the claimant has little reasonable prospect of establishing unfairness overall. I do not say that the claim has particular merit; I am simply not in a position to find that this allegation has little reasonable prospect of success.

86. That conclusion also means I cannot say the claimant has little reasonable prospect of establishing he is owed compensation; and nor do I find that there is little reasonable prospect of showing that he made *any* protected disclosures.

87. It does not follow from these findings that I am obliged to make a deposit order. I have given this point careful thought. I bear in mind that the Tribunal in any case will be looking at the fairness of the dismissal. Part of the

claimant's case as I understand it – taking it at its highest – is that the decision-making process was contaminated by being run by people who had taken against him. The Tribunal will therefore need to look at what the claimant says gave rise to this fact – and that reintroduces in any event the matters which the claimant says were protected disclosures. I then consider whether making a deposit order or orders would be in accordance with the overriding objective. I considered whether it will ensure that the parties are on an equal footing: it will not. If anything, it puts the parties on a less even footing by discouraging the claimant from ventilating automatically unfair whistleblowing dismissal as an argument. Proportionality is of little relevance here. A deposit order would not avoid formality or avoid delay. It might save the respondent a certain amount of expense if the claims were to be dropped; but in this case the deposit orders sought are unlikely to help the parties significantly to narrow the ambit of the factual inquiry.

88. I also consider the general public interest and the importance of whistleblowing complaints and the importance of not unnecessarily discouraging a party from ventilating those issues – see **Amber**. It is possible the claimant may succeed in his claims – and if he were to succeed in his whistleblowing claims that would be a significant matter. It strikes me that to discourage the claimant from ventilating that argument at a final hearing, by generating a concern about the concomitant costs risk, would not be appropriate. I find that this is a significant consideration. I therefore decline to make deposit orders. I remind the claimant that this is not to be treated as an endorsement of the claims. I have expressed my view on the merits above where appropriate.

89. I confirmed with the parties that the decision and the reasons given had not omitted any matter which needed to be addressed.

90. I noted an application by the respondent to amend its response to include matters relevant to compensation, which was granted and dealt with case management generally.

91. I express my thanks to Mr Singer and to Mr McNicholas for their courtesy and assistance.

Approved by:

Employment Judge E Macdonald

9 April 2026

SENT TO THE PARTIES ON

10 April 2026

FOR THE TRIBUNAL OFFICE