



# EMPLOYMENT TRIBUNALS

**Claimant:** Bose Omisore  
**Respondent:** Milton Keynes City Council  
**Heard at:** Bury St Edmunds Employment Tribunal  
**On:** 9 March 2026 (by video)  
**Before:** Employment Judge Annand

**Representation**  
**Claimant:** In person  
**Respondent:** Ms Sharp (Counsel)

## JUDGMENT

1. The Respondent's application to strike out the Claimant's claims is refused.

## REASONS

### Introduction

1. The Respondent made an application to strike out the Claimant's claims for unfair dismissal and direct race discrimination on the basis that the claims have no reasonable prospects of success. In the alternative, the Respondent applied for a deposit order on the basis that the claims have little reasonable prospects of success.
2. The Respondent's application for an order striking out the Claimant's claims and the Respondent's application for a deposit order are refused.
3. Prior to the hearing, I was provided with a bundle of documents, and two draft Lists of Issues, one of which contained some comments in red, which was additional information provided by the Claimant. At the hearing, I was able to hear from both parties but there was not time to reach a decision and give oral reasons for it, and therefore I reserved my decision.
4. As the Respondent's applications have been refused, the case will now be listed for a preliminary hearing for case management.

### The factual background

5. The Claimant was employed by the Respondent as a Telecare Officer from 15 November 1999 to 18 December 2024.
6. The Claimant contacted Acas for early conciliation purposes on 6 October 2024, and the early conciliation certificate was issued on 1 November 2024. The Claimant submitted a claim form on 8 March 2025. In her Claim Form, the Claimant indicated she was bringing claims of unfair dismissal and race discrimination.
7. Below I have set out a brief description of the factual background to the Claimant's claims as are set out in the Claimant's Claim Form and the Respondent's Grounds of Resistance. I am not making any findings of fact and I am not reaching any decisions that would bind any future judge who decides the case.
8. On 24 May 2023, an incident occurred. The Respondent says the Claimant did not follow the escalation process once a vulnerable local authority resident pressed their alarm and had not responded when the Claimant attempted to make contact. The Claimant says she had inadequate knowledge of the new call system and had not had sufficient training on it. The Respondent says it met with the Claimant on 2 June 2023 to establish the circumstances and, on 3 July 2023, the Claimant was informed that an investigation would be undertaken. The Respondent says the Claimant was invited to an investigation meeting on 17 July 2023 but went off work sick that day. She returned on 23 July 2023, and the investigation meeting took place on 2 August 2023.
9. In her Claim Form, the Claimant complains about the manner in which the people involved in the investigation managed the process. She found the process stressful and unclear, and she felt she was the subject of gossip.
10. The Claimant says on 4 August 2023 the shift manager wrote her name on the board in red pen and allocated her different duties from that of her colleagues. The Claimant felt she was being treated differently and segregated from the team. The Claimant said she was told by a colleague that day that she was not allowed to pick up calls and he instead sent her on errands. The Claimant also says that on 5 August 2023, she was told by a different colleague, Jenny, that she (Jenny) had been told by the shift manager that the Claimant had attended a disciplinary hearing the day before.
11. On 10 August 2023, the Claimant went off sick. She did not return to work prior to her dismissal.
12. On 29 August 2023, the Claimant raised a grievance regarding the investigation process.
13. The Respondent says on 13 October 2023, the Claimant was invited to attend an informal grievance meeting, but the Claimant did not attend. The Respondent says on 19 October 2023, the Claimant was written to and asked if she still wished to progress her grievance, but no response was received.

14. The Respondent says on 23 January 2024, a long term absence review took place.
15. The Respondent says on 23 February 2024, the Claimant was sent the outcome of the investigation, which was an informal letter of concern.
16. In May 2024, the Claimant suffered a tragic family bereavement when her adult son died suddenly.
17. The Respondent says on 3 April 2024, and again on 6 August 2024, the Claimant was seen by Occupational Health. The Respondent says the OH report from August 2024 said the Claimant was unfit for work and would be unfit to work for at least three months.
18. The Respondent says on 6 September 2024, the Claimant was invited to a formal attendance meeting on 16 September 2024. By this time, the Claimant had been off sick for 13 months. The meeting was re-scheduled at the Claimant's request. On 26 September 2024, the meeting went ahead. The Claimant did not attend or ask for the hearing to be rescheduled. It was decided that the Claimant's employment would be terminated on the basis of her long-term ill health. The Claimant did not appeal, and her employment terminated on 18 December 2024.

### **The issues to be decided at the final hearing**

19. The parties have liaised to prepare a List of Issues. As set out above, the Claimant is bringing claims of unfair dismissal and direct race discrimination.
20. In respect of the claim for unfair dismissal, the parties are agreed that the issues will include the Tribunal considering whether the Respondent adequately consulted the Claimant, sought an up to date medical opinion, and whether the Respondent could be expected to wait any longer. In addition, the Tribunal will consider the procedural fairness of the process, and whether the Respondent acted reasonably in all the circumstances as treating the Claimant's long term absence as a sufficient reason to dismiss the Claimant.
21. In respect of the allegations of direct race discrimination, the alleged less favourable treatment is as follows:
  - 1) On 4 August 2023, the Claimant's name was written on the white board in red pen in a different way to other employees, whilst the disciplinary investigation was ongoing. The Claimant felt this indicated she was being segregated and treated differently to her colleagues.
  - 2) On 4 August 2023, the Claimant was assigned to a quarantine role.
  - 3) On 4 August 2023, the Claimant was told by Paul Eastwood "You are not allowed to pick calls", and he sent her on errands, saying "can you do this, can you do that".

- 4) On 5 August 2023, the Claimant was told by her colleague, Jenny, that the shift manager had told Jenny that the Claimant had attended a disciplinary meeting on 3 August.
- 5) The handling of the disciplinary process, which took place between June 2023 and February 2024. The Claimant says other white British colleagues have had different outcomes.
- 6) Termination of employment on 18 December 2024.

22. The Tribunal will need to decide if the above incidents occurred, if they amount to less favourable treatment and if so, if they were significantly influenced by the Claimant's race.

## **The relevant law**

### **Strike out – Rule 38**

23. Rule 38(1)(a) of the Employment Tribunals Rules of Procedure 2024 provides that the Tribunal may strike out all or part of a claim or response on the following grounds:

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim, response or reply (or the part to be struck out).

24. The power may only be exercised if the claimant has been given a reasonable opportunity to make representations (Rule 38(2)).

25. When considering whether to strike out a claim, a tribunal must adopt a two-stage approach. First, it must consider whether any of the grounds set out in rule 38(1)(a)–(e) have been established, and then, having identified any established grounds, it must decide whether to exercise its discretion to order strike-out (*Hasan v Tesco Stores Ltd* EAT 0098/16).

26. In deciding whether to order strike-out, tribunals should have regard to the overriding objective of dealing with cases fairly and justly, set out in Rule 3 of the Tribunal Rules 2024. This includes, among other things, ensuring so far as practicable that the parties are on an equal footing, dealing with cases in ways that are proportionate to their complexity and importance, and avoiding delay.

27. In *Mallon v AECOM Ltd* [2021] ICR 1151, EAT, the EAT commented that it was important before applying for a strike-out order to consider the proportionality of doing so. Applications to strike out on the basis that there

is no reasonable prospect of success should only be made in the most obvious and plain cases.

28. In *Abertawe Bro Morgannwg University Health Board v Ferguson* [2013] ICR 1108, EAT, the EAT remarked that, in suitable cases, applications for strikeout may save time, expense and anxiety. However, in cases that are likely to be heavily fact-sensitive, such as those involving discrimination or public interest disclosures, the circumstances in which a claim will be struck out are likely to be rare.
29. In *A v B and anor* [2011] ICR D9, CA, the Court of Appeal held that an employment tribunal was wrong to strike out an employee's claims of sex discrimination and unfair dismissal on the basis that they had no reasonable prospect of success. The Court concluded that there was a 'more than fanciful' prospect that the employer would not be able to discharge the 'reverse' burden of proof to show that the employee's dismissal was not sex discriminatory.
30. In *Mbuisa v Cygnet Healthcare Ltd* EAT 0119/18 the EAT overturned an employment tribunal's decision to strike out a claim of automatically unfair constructive dismissal for raising health and safety concerns. The EAT noted that strike-out is a draconian step that should be taken only in exceptional cases. Such an exceptional case might arise where it is instantly demonstrable that the central facts in the claim are untrue or there is no real substance in the factual assertions being made. However, the tribunal should take the claimant's case at its highest, unless contradicted by plainly inconsistent documents.
31. In *Cox v Adecco Group UK & Ireland and ors* [2021] ICR 1307, EAT, the Appeal Tribunal held that an employment tribunal had erred in striking out a litigant in person's claim that he suffered a detriment for making protected disclosures without properly identifying the issues and analysing whether there was a reasonable prospect of success. His Honour Judge Tayler provided guidance on how tribunals should approach strike-out applications against litigants in person:
  - If the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike-out will be appropriate.
  - There has to be a reasonable attempt at identifying the claim and the issues before considering strike-out or making a deposit order. The claimant's case must ordinarily be taken at its highest and the tribunal must consider, in reasonable detail, what the claim(s) 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'.
  - A fair assessment of the claim(s) and issues should be carried out on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim.
  - 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 he or she has set out in writing.

- In some cases, a proper analysis of the pleadings, and of any core documents in which the claimant seeks to identify the claim, may show that there really is no claim and therefore no issues to be identified. More often, however, a careful reading of the documents will show that there is a claim, even if it might require amendment.
- Strike-out is not a way of avoiding rolling up one's sleeves and identifying, in reasonable detail, the claims and issues; doing so is a prerequisite of considering whether the claim has reasonable prospects of success. Often it is argued that a claim is bound to fail because there is one issue that is hopeless. For example, in the whistleblowing context, it might be argued that the claimant will not be able to establish a reasonable belief in wrongdoing. However, it is generally not possible to analyse the issue of wrongdoing without considering what information the claimant contends has been disclosed and what type of wrongdoing the claimant contends the information tended to show.
- Respondents, particularly if legally represented, should, 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, assist the tribunal in identifying the documents, and key passages of 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, and should take particular care if a litigant in person has applied the wrong legal label to a factual claim that, if properly pleaded, would be arguable.
- 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.
- Litigants in person also have responsibilities in this context. So far as they can, they should seek to explain their claims clearly, even though they may not know the correct legal terms, focusing on core claims rather than trying to argue every conceivable point. The more prolix and convoluted the claim is, the less a litigant in person can criticise an employment tribunal for failing to get to grips with all the possible claims and issues. Litigants in person should appreciate that, usually, when a tribunal requires additional information it is with the aim of clarifying, and where possible simplifying, the claim, so that the focus is on the core contentions. The overriding objective also applies to litigants in person, who should do all they can to help the employment tribunal clarify the claim.
- The employment tribunal can only be expected to take reasonable steps to identify the claims and issues. But respondents, and tribunals, should remember that repeatedly asking for additional information and particularisation rarely assists a litigant in person to clarify the claim. Requests for additional information should be as limited and clearly focused as possible.

32. In *Anyanwu and anor v South Bank Student Union and anor* [2001] ICR 391, HL, the House of Lords highlighted the importance of not striking out discrimination claims except in the most obvious cases. This was because

discrimination claims are generally fact-sensitive, and it is a matter of public interest that they should be fully examined to make a proper determination.

33. In *Ahir v British Airways plc* [2017] EWCA Civ 1392, CA, the Court of Appeal asserted that tribunals should not be deterred from striking out claims that involve disputes of fact, even discrimination claims, if they are entirely satisfied that there is no reasonable prospect of the facts necessary to find liability being established, provided that they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been explored. In this case, the Court upheld an employment judge's decision to strike out the victimisation and discrimination complaints of an employee who had been dismissed for falsifying his CV. His claims were based on allegations that the employer had fabricated an anonymous letter in order to trigger a misconduct investigation and that six managers who had each separately considered the admitted misconduct during the disciplinary process had allowed their decisions to be tainted by his protected acts, even though there was no evidence to suggest that they were aware of those acts. The Court concluded that the employment judge had rightly described the allegations as 'fanciful' and struck out the claims as having no reasonable prospect of success.

#### **Deposit Order – Rule 40**

34. Section 9 of the Employment Tribunals Act 1996 provides that regulations may authorise a tribunal to order a party to pay a deposit of up to £1,000 as a condition of continuing to participate in proceedings or pursuing any specified allegations or arguments.
35. Rule 40(1) of the Tribunal Rules 2024 provides that where at a preliminary hearing a tribunal considers that any specific allegation or argument in a claim, response or reply to an employer's contract 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")'.
36. In *Spaceman v ISS Mediclean Ltd (t/a ISS Facility Service Healthcare)* [2019] ICR 687, EAT, the EAT held that when deciding whether to make a deposit order, a broad assessment of the merits is what is required. It is not necessary for the judge to engage in detailed analysis. However, tribunals should be wary of making an assessment of the strength of a party's case from a review of the documentary evidence where key facts are in dispute, especially in discrimination cases.
37. In *Sharma v New College Nottingham* EAT 0287/11 the EAT held that an employment tribunal had erred in concluding that the claimant's race discrimination claims had little reasonable prospect of success. This conclusion had been reached solely on the basis that the contemporaneous documentation was inconsistent with the claimant's account. However, there were underlying factual disputes.
38. In *Javed v Blackpool Teaching Hospitals NHS Foundation Trust* EAT 0135/17 the EAT allowed an appeal against a deposit order where the tribunal had relied on contemporaneous documentation to support its conclusion that the primary facts necessary to support the claimant's

complaint of direct race discrimination had little prospect of being established.

39. In *Hemdan v Ishmail and anor* [2017] ICR 486, EAT, Mrs Justice Simler observed that the assessment of the likelihood of a party being able to establish facts essential to their case is a summary assessment. Given that the purpose of a deposit order is to enable the opposing party to avoid incurring cost, time and anxiety in dealing with a point on its merits that has little reasonable prospect of success, a mini-trial of the facts should be avoided (just as it is to be avoided on a strike-out application) because that would defeat the object of the exercise. If there was a core factual conflict, it should properly be resolved at a full merits hearing where evidence would be heard and tested.
40. In *Sami v Nanoavionics UK Ltd and ors* [2022] IRLR 656, EAT, the EAT noted that Simler J's observations in *Hemdan* amounted to guidance and should not be understood as replacing the wording of the relevant rule, nor as preventing a tribunal, in an appropriate case, from deciding that a factual allegation has little reasonable prospect of success. However, her comments underlined 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.

## **The parties' submissions**

41. With regards to the Claimant's claim for unfair dismissal, in the Respondent's written application, the Respondent submitted that by the time of the Claimant's dismissal, she had been off sick for 16 months. The Respondent followed a full and fair process which complied with its own procedure and the ACAS Code. The Respondent will be able to establish at the final hearing that the Claimant was dismissed for a fair reason, the Respondent acted reasonably in treating capability as a reason to dismiss, the decision was within the band of reasonable responses, and a fair process was followed, including instructing and reviewing an Occupational Health report. There is no factual dispute in relation to the reason for the dismissal and the Claimant has not identified any credible procedural defect. As a result, the Claimant will face insurmountable challenges and as such her claim has no reasonable prospect of success.
42. In her oral submissions, counsel for the Respondent, Ms Sharp, stated that it was a very straightforward set of facts. The Claimant was not disputing a capability reason, and the Claimant had not set out in her Claim Form what was procedurally unfair about the process. The Tribunal will hear that the Respondent sought Occupational Health advice. By 26 September 2024, the date it was decided the Claimant would be dismissed, the Claimant had been absent for 13 months. She had not engaged with the process, she did not attend the disciplinary hearing, and she did not appeal. As a result, the claim did not have reasonable prospects of success.
43. With regards to the Claimant's claim for direct race discrimination, in the Respondent's written application, the Respondent stated that, in line with the case law, the Respondent had carefully reviewed the Claimant's

pleadings and received further information from the Claimant and therefore had taken reasonable steps to identify her claims. Even adopting a cautious approach, the discrimination claim has no reasonable prospects of success.

44. Further, the Respondent stated that the Claimant makes several allegations that relate to her treatment during her disciplinary investigation. For example, she complains that she was told that she was not allowed to take calls from vulnerable service users, her name was written in red pen (when others were written in black) on a white board and that she was treated differently to white British employees who also went through a disciplinary process. In respect of the 'quarantine role' she performed, the Respondent stated this was a necessary step taken during the investigation to safeguard vulnerable residents and is an alternative action to suspension within the disciplinary policy. There was no link to the Claimant's race. The Respondent will show that the comparators she has identified received the same treatment that she did during disciplinary processes. In addition, given the nature of her role as a call handler, the Claimant's name was written in a separate section of the board to identify that she was not taking calls on that day. There are different coloured pens used on the board, including red pen used on a different section of the board and the colours do not have any relevance to what is written. The Claimant has identified no link between her name being written on the board and her race. The Respondent contends that the reason for this is because she was on different duties due to being under disciplinary investigation, as can be evidenced by the Respondent and is not disputed by the Claimant.
45. In her oral submissions, counsel for the Respondent raised an issue with time limits. Based on the List of Issues the first five allegations were out of time and were separate from the sixth allegation, which is the dismissal. She said there was no obvious link between the first five allegations and the sixth and that would be obvious to the judge at the final hearing.
46. In respect of the first allegation of race discrimination ("On 4 August 2023, the Claimant's name was written on the white board in red pen in a different way to other employees, whilst the disciplinary investigation was ongoing"), Ms Sharp said that the Claimant must show more than just a bare assertion. Even taken at its highest, the allegation cannot in anyway have an inference of discrimination such that would discharge the burden of proof. She said the Respondent would put forward evidence that the colour of pen had no bearing and that it was absurd to suggest otherwise. She stated that white British comparators would have been treated the same.
47. In respect of the second allegation of race discrimination ("On 4 August 2023, the Claimant was assigned to a quarantine role"), Ms Sharp explained what the term meant and said it is the equipment that is quarantined, and not the Claimant. She said there was no inference of race discrimination. In any event, the Respondent would be able to show a simple non-discriminatory reason for the treatment. Further, the Claimant will not be able to prove that the comparators she relies upon were in the same circumstances.
48. In respect of the third allegation of race discrimination ("On 4 August 2023, the Claimant was told by Paul Eastwood "You are not allowed to pick calls", and he sent her on errands, saying "can you do this, can you do that"), Ms

Sharp stated that the Claimant needed to be on separate duties, when under investigation. She said the Respondent would be able to offer a simple explanation about why the Claimant could not answer the calls and it was a non-discriminatory explanation.

49. In respect of the fourth allegation of race discrimination ("On 5 August 2023, the Claimant was told by her colleague, Jenny, that the shift manager had told Jenny that the Claimant had attended a disciplinary meeting on 3 August"), Ms Sharp said that there was no link to the protected characteristic of race, even if this allegation were to be established, and it would be a case of one person's word against the other.
50. In respect of the fifth allegation of race discrimination ("The handling of the disciplinary process, which took place between June 2023 and February 2024. The Claimant says other white British colleagues have had different outcomes."), Ms Sharp said the Claimant will not be able to establish that the comparators were in the same position as her. She has specifically named Paul Eastwood, but he faced a completely different type of allegation. In respect of Sonia Brennan, Ms Sharp said the Respondent could find nothing on the system which suggested she was involved in an investigation process, and so the Claimant would not be able to show that she is a comparator. In terms of Tony Knox, the Respondent said the investigation he faced was arguably not in the same circumstances, although there was some overlap. However, there were three parts to the allegations that the Claimant faced. When asked, Ms Sharp said she did not have instructions as to whether Mr Knox had been prevented from doing his usual role while the investigation was undertaken.
51. In respect of the sixth allegation of race discrimination ("The termination of employment on 18 December 2024"), Ms Sharp said none of the named comparators had as lengthy absence as the Claimant, and even if she relied upon a hypothetical comparator, there was no evidence the decision was related to the Claimant's race.
52. In terms of the time limit point, and the fact that the Tribunal could extend time if it considered it would be just and equitable to do so, the Claimant had put nothing forward to explain the delay. Ms Sharp said it was assumed the Claimant would rely on ill health but she could have made a claim immediately after her dismissal. On 3 March 2025 she was able to start work. She pointed out the Respondent has been prejudiced by the delay as they would need to undertake enquiries about what occurred in August 2023 regarding niche matters such as why a red pen was used. Ms Sharp said if the first five allegations were struck out on the time limit point that would leave just the dismissal and would reduce the number of witnesses needed at the final hearing. She noted it was not a particularly valuable claim as the Claimant had obtained a new role fairly quickly.
53. Ms Sharpe argued that in the alternative, the Respondent's position was that the claims had little reasonable prospects of success and she requested a deposit order of £1,000.
54. In the Claimant's written response, she set out that her dismissal was unfair because the primary reason for her prolonged absence was mental health difficulties caused by the stress of the disciplinary process. She set out that

her mental health challenges were further compounded by the bereavement of her adult son, which the Respondent failed to acknowledge or take into account when managing her absence or considering her dismissal. The Claimant set out that she was not provided with meaningful support, engagement, or reasonable adjustments in light of these circumstances.

55. With respect to her claim of direct race discrimination, the Claimant set out that during the disciplinary process, the Claimant was treated differently from colleagues who were not of her race, including being assigned to a “quarantine role,” having her name written in red pen while others were not, and other differential treatment during the investigation. The Claimant submitted that the Respondent’s explanations failed to fully account for these actions or the context in which they occurred.

56. In the hearing, the Claimant explained how distressing she found the investigation and how during the period of time she was off work, including when she was coping with the recent news of the loss of her son, she did not want to see anyone. She explained she sought therapy. The Claimant felt she should have been allowed to complete her course of therapy before a decision was made about her dismissal.

57. In respect of the claim for race discrimination, the Claimant said in the department they never used red pen on the whiteboard except in specific circumstances. She explained when she was assigned the quarantine role it was just her in the back room, which was unusual. She said when her colleague, Sonia, was in a similar situation she was permitted to continue in the same role. She said when others were investigated in the office, their confidentiality was respected and the matter was not discussed, but that did not happen in her case. She said she should have been given time to recover and undertake therapy before being dismissed and her colleague, Tony, was not dismissed when he was off work for a lengthy period. In respect of the application for a deposit order, she said she would be unable to afford any payment.

## **The Tribunal’s conclusions**

58. Applying the two stage process set out above, first of all, I considered if one of the grounds set out in Rule 38(1) had been established. In other words, I decided whether the Claimant’s claims have “no reasonable prospects of success”.

59. The case law set out above makes it plain that in cases that are heavily fact-sensitive, such as those involving discrimination, the circumstances in which a claim will be struck out are likely to be rare. The courts have repeatedly emphasised that strike-out is a draconian step that should be taken only in exceptional cases, and that if the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike-out will be appropriate. As noted above, such an exceptional case might arise where it is instantly demonstrable that the central facts in the claim are untrue or there is no real substance in the factual assertions being made.

60. This is a case where the question of whether the Claimant’s claims have reasonable prospects of success turns on factual issues that are disputed.

61. In respect of the claim for direct race discrimination, there is a dispute as to whether some of the allegations occurred, but the key issue in dispute in respect of each of the allegations is whether the Claimant was treated less favourably because of her race. At the hearing, the Respondent argued that a bare assertion was insufficient, there was no link between what was alleged and the Claimant's race, and there was nothing in what is alleged that gave rise to an inference of race discrimination. However, the question of whether the Claimant's race had a significant influence on any of the matters alleged is a key issue that *is in dispute*. A Tribunal will not just consider if it can draw an inference of discrimination based on the nature of the allegations but will consider if it can draw any inferences from all the surrounding facts and evidence.
62. In addition, the Respondent made a number of assertions about what the Respondent *would be able to show* at the final hearing. For example, it was suggested that some of the named comparators were in a different situation to the Claimant. It was also suggested the Respondent would adduce evidence which showed certain decisions were made for non-discriminatory reasons. But that was not undisputed evidence. Indeed, it was not evidence that was before me at all, it was merely the Respondent's assertions about what their explanation at the final hearing would be. It was not my role to conduct a mini-trial and weigh up the likelihood of the Respondent producing evidence to support the position it was telling me it would adopt or about the evidence it would adduce. These are matters that will need to be decided once the evidence has been presented and tested. The judge at the final hearing will need to make an assessment of all the evidence. Just as the judge at the final hearing will be able to make an assessment about whether there was conduct extending over a period or whether it would be just and equitable to extend time in respect of the first five allegations of direct race discrimination, once he or she has heard all the relevant evidence on these matters.
63. For these reasons, I did not reach the conclusion that the Claimant's claims for race discrimination have no or little reasonable prospects of success.
64. In respect of the claim for unfair dismissal, it was not disputed that the Claimant was off sick for a period of 13 months before the decision was made to dismiss her. However, a significant issue that the Tribunal will need to determine will be whether the Respondent could have been expected to wait any longer, particularly in light of the length of the Claimant's service and her recent bereavements. The Tribunal's conclusion in this respect is likely to be influenced by the advice of Occupational Health, and what, if anything, the Claimant was communicating to the Respondent about her return to work, as well as other matters. The Claimant suggested at the hearing that she needed some time to complete her therapy course. It was not clear to me if that was set out in the Occupational Health report or if this was information the Claimant relayed to the Respondent at the time. The Occupational Health report and the parties' correspondence over this period were not before me at the preliminary hearing. I also did not have all the paperwork relating to the procedural process that was followed. In short, there are numerous matters which are in dispute between the parties.

65. For these reasons, I did not reach the conclusion that the Claimant's claim for unfair dismissal has no or little reasonable prospects of success.

66. In any event, I would have declined to exercise my discretion to strike out the claims or to order a deposit order. This is not a case where it is instantly demonstrable that the central facts in the claim are untrue or there is no real substance in the factual assertions being made. This is not a case in which it can be said that the Claimant's claims are 'fanciful'. There are core factual conflicts which should be decided at a final hearing where evidence will be heard and tested. This case falls squarely into the category of cases where a strike out or deposit order is not appropriate.

67. I have therefore refused the Respondent's application to strike out the Claimant's claims and the Respondent's application for a deposit order.

**Approved by**

**Employment Judge Annand**

**23 March 2026**

JUDGMENT SENT TO THE PARTIES ON

2 May 2026

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:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)