



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103303/2025

Held in Glasgow on 13 April and 26 May 2026

Employment Judge E Mannion

Mr M Tang

**Claimant
In Person**

University of Glasgow

**Respondent
Represented by:
Mr N McLean -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is as follows:

1. The claim of detriment as a result of making a protected disclosure under Section 47B of the Employment Rights Act 1996 is struck out for having no reasonable prospects of success.
2. The claim for other payments is not struck out and will proceed to a hearing.
3. The application for a deposit order is refused.

REASONS

Introduction

1. This is a claim of whistleblowing detriment and other payments which is contested by the respondent.
2. At a preliminary hearing for case management on 10 December 2025, it was decided that an open preliminary hearing would be scheduled to consider the following points:
 - a. whether the claimant's relationship with the respondent fell within the definition of "worker" as defined by section 230(3) of the Employment Rights Act 1996 at any point after 31 January 2025;

- b. whether the claimant's relationship with the respondent fell within the definition of "employee" as defined by section 230(1) of the Employment Rights Act 1996 at any point after 31 January 2025;
 - c. whether any or all of the complaints should be struck out under rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 because they have no reasonable prospect of success.
3. A bundle of documents had been prepared in advance of the hearing by the respondent and both parties had this available at the hearing. A second hearing day was required and took place on 26 May 2026. A supplemental bundle of documentation was provided for that hearing day.
4. At the outset of the hearing, we discussed the issues to be determined. Mr McLean submitted that the issue of worker or employee status was included primarily as the alleged protected disclosures were made after the relationship between the respondent and claimant came to an end, in June and July 2025. At the previous preliminary hearing, Judge Whitcombe noted that if this was the case, those disclosures may not be protected under the Act. Mr McLean confirmed that the respondent was not taking this point. Only worker status would be necessary for the other payments claim. He submitted that it was preferable to deal with the strike out application first and once that was decided, look at what preliminary issues remained outstanding. This was discussed and explained to the claimant and he agreed that the hearing would determine the respondent's application on strike out only.
5. In advance of the hearing, the claimant emailed to say that he wished for the Tribunal to also determine whether his contract with the respondent was performed illegally. After some discussion, the claimant confirmed the illegality related to how the respondent administered the grant which funded the work undertaken by the claimant and others in publishing a paper ("the RNACare paper"). This overlaps with the claimant's disclosures and it was explained to the claimant that it will not be necessary to prove the substance of the disclosures. It was explained to the claimant that were a Tribunal to determine the contract was illegal or performed illegally, that could impact of his ability to enforce his rights under that contract. Mr McLean submitted that the respondent does not accept the contract was an illegal one or performed illegally. He submitted that the question of illegality feeds into an issue of importance for the claimant, but one that ultimately the tribunal cannot determine, which is that the respondent either mischaracterised or incorrectly administered grant funding (as per the claimant's position) which made the claimant ineligible for a Global Talent Visa. This is set out in the ET1. I determined that the question of illegality was not for determination in this preliminary hearing. The claimant asked if he could argue illegality in defending the strike out application and I confirmed that he could.

6. During and at the end of the respondent's submissions on the first day of hearing, the claimant raised concerns that the respondent had not provided him with their submissions or position in advance and that this was unfair and that he was disadvantaged as he would not be able to address all the respondent's points adequately. There was no obligation on the respondent to share their submissions in advance nor a direction or order from the Tribunal to do so. The notice of hearing was clear that the grounds for strike out were no reasonable prospect of success. Taking into account the overriding objective, the requirement for a reasonable opportunity for a party to make representations as per Rule 38(2), and the time left that afternoon for the claimant to make his submission, I adjourned the hearing on completion of the respondent's submission and set aside one further day to hear the claimant's submissions.

Relevant law

7. A Tribunal is required to have regard to the overriding objective, found in Rule 3 of the Employment Tribunal Rules of Procedure 2024 ("the ET Rules"). The overriding objective states as follows: *"The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*
- a. ensuring that the parties are on an equal footing;*
 - b. dealing with cases in ways which are proportionate to the complexity and importance of the issues;*
 - c. avoiding unnecessary formality and seeking flexibility in the proceedings;*
 - d. avoiding delay, so far as compatible with proper consideration of the issues; and*
 - e. saving expense.*

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

8. The strike out provisions are set out in Rule 38 of the ET Rules which states: *"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of 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 or response (or the part to be struck out)."*
9. Where a strike out application is made on the ground of no reasonable prospects of success the Tribunal must take a view on the merits of the case and only where satisfied that the claim or response has no reasonable prospects of success can it exercise its power to strike out. Cases are required to be taken at their highest. **Amber v West Yorkshire Fire and Rescue Service** [2024] EAT 146, considered what it means to take a case as its highest, stating at paragraph 28:
- "What such a process is to explore is whether a pleaded case cannot (strike out), or can only weakly (deposit), demonstrate a statutory requirement or a legal defence. This is not limited to legal issues, factual matters can be considered, but only in exceptional circumstances. Generally, this is a procedure that should not hear evidence from witnesses. However, contemporaneous documentary evidence can be considered in appropriate circumstances. A case advanced should be taken at its highest. That is a phrase regularly in use in courts and tribunals, but it does not mean, naively accepting the case advanced. At its highest requires the judge to test the factual account. This would include for example examining the case against basic logic, internal inconsistency or any contradiction by contemporaneous documentary evidence. Therefore, a claim or a part of a claim is not taken at its highest within its own terms, but is examined through the prism of reality. Thus a fanciful case is subject to strike out or if not quite so fanciful to a deposit being ordered. But it is important for me to remember in dealing with this that "realistic", as it was set out by Maurice Kay LJ, simply means "it could be the case"; it is not a substantial hurdle to cross."*
10. The EAT has provided guidance in cases of strike out for no reasonable prospects of success where the claimant is a litigant in person. Judge Taylor in **Cox v Adecco Group UK & Ireland** and ors 2021 ICR 307, the EAT set out the following at 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 special care must be taken in such cases as it is very rarely appropriate.

(3) 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.

(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."

11. The EAT held that the striking out process requires a two-stage test in **HM Prison Service v Dolby** [2003] IRLR 694, and in **Hassan v Tesco Stores Ltd** UKEAT/0098/16. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the Tribunal to decide as a matter of discretion whether to strike out the claim. The exercise of discretion includes consideration of proportionality and the overriding objective to deal with the case fairly and justly.

12. Rule 40 of the ET Rules provides:

"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")."

13. In **Van Rensburg v Royal Borough of Kingston Upon Thames and others** UKEAT/0096/07 the EAT stated that *"the test of little reasonable prospect of success...is plainly not as rigorous as the test that the claim has no reasonable prospects of success...it follows that a tribunal has greater leeway when considering whether or not to order a deposit. Needless to say, it must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response."*

Submissions

14. Both parties made submissions at the conclusion of evidence. For brevity, I have not included these here but for the avoidance of doubt, they have been fully considered in reaching my decision.

Decision

Do the claimant's claims have no reasonable prospect of success as per Rule 38(1)(b)?

15. In coming to this decision, I considered the submissions of the parties and the various documents referred to. The bundle for this preliminary hearing ran to 607 pages and a supplemental bundle for the second day was a further 50 pages. I was brought to the ET1, agenda documents, the note from the initial preliminary hearing as well as supplemental correspondence sent to the Tribunal by the claimant setting out and explaining his case. I was also brought to the contemporaneous documentation which the parties intend to rely on at the final hearing. I considered that the purpose of the strike out hearing is not to conduct a mini-hearing and that hearings on strike out should not deal with disputed matters of fact.

Protected disclosures

16. The agenda at page 85 set out that the claimant made protected disclosures to the respondent in June 2025 and UKRI in July 2025. Mr McLean submitted that the claimant relies upon an email to Christine Barr of the respondent's HR department on 8 July 2025 at page 513 of the bundle. Mr McLean also referred to an email (19 May) in the exchange which ended on 8 July which may amount to a protected disclosure. The respondent does not have sight of the correspondence to the UKRI which the claimant says amounted to a protected disclosure in July 2025. He conceded that taking the case at it's highest, both emails (19 May and 8 July) may amount to protected disclosures, but even so, this claim has no prospect of success.

17. He noted that the claimant shifted his position after the case management hearing, in what he states is a feature of the claimant's litigation strategy, emailing on 3 January 2026 to assert that he also made protected disclosures in February 2023. I was referred to pages 383 – 391 of the bundle which was an email chain the claimant relies upon as a protected disclosure. This email chain is between two university employees discussing the potential for the claimant to apply for a Global Talent Visa rather than with the claimant. He is not a recipient, a sender nor is he copied into these emails. Mr McLean submitted that taking the case at its highest, this cannot amount to a protected disclosure.
18. Mr McLean then looked at the alleged detriments. He submitted that the claimant's eligibility for a Global Talent Visa was not impacted by the alleged protected disclosures, and the claimant confirms this himself in correspondence to the tribunal on 6 December 2025. As such this cannot be a detriment.
19. At the preliminary hearing on 10 December, the claimant confirmed the following three detriments:
 - a. The respondent refused to pay him for work done after 31 January 2025 for the paper published in April 2025. Mr McLean submitted that there was no agreement to pay the claimant for any work done on a voluntary basis and that was the position before the claimant made the alleged disclosures.
 - b. Access to his university email ceased in September 2025. Mr McLean submitted that this coincided with his affiliate contract coming to an end.
 - c. That when he submitted a complaint to the university, it was passed to other departments in the respondent organisation – HR, Research Service and Research Integrity. Mr McLean submitted that this is normal practice to allow for an investigation into the complaint.
20. Mr McLean also began to make a submission on a final detriment that emerged at the preliminary hearing, that the claimant suffered a detriment wherein he was promised access to the dataset underpinning the RNACare paper by Professor Otto, who then broke this promise, informing him that this dataset was not available to him. The claimant interjected during the submission clarifying that the use of the dataset was "not a detriment, never", that this was picked up by Judge Whitcombe in error. When I sought clarification from the claimant on this he confirmed that the dataset not being available was not due to his whistleblowing, but that the unpaid salary was due to the whistleblowing. However, in his submissions in May, the claimant

referred to the broken promise of Professor Otto in respect of the dataset. When I put it to the claimant that he had confirmed in April that the lack of access to the dataset was not a detriment, he responded “no, I didn’t declare that”. When I put it to him that he did, he responded that he would tell me about this later. He did not raise this further in his submissions.

21. The claimant’s submission on the disclosures saw a change in position. He submitted that he is not relying on emails to Christine Barr on 8 July but rather an email exchange where only the response from a Dr Sumi David was available. The claimant no longer has access to his emails to locate his initial email and the respondent does not appear to have this either. The response from Dr David appears to include a short quotation from the claimant which Dr David then responds to. The claimant asserted this was the disclosure relied upon. The email from Dr David was undated.
22. He further changed his position, submitting that there was another protected disclosure made to Research Integrity in May 2025. Research Integrity is an independent body within the respondent organisation that investigates issues of ethical aspects of grant funding and research. This alleged disclosure was not in the bundle and he could not say when exactly it was made.
23. In respect of the 2023 disclosures he confirmed the emails at pages 382 to 391 amount to protected disclosures and disputed that they failed to show any wrongdoing.
24. His submission on the detriments was that the respondent has not provided any evidence for their position.
25. I determined that, in line with the respondent submissions, the disclosure made on 19 May may amount to a protected disclosure so that aspect of his claim has reasonable prospects of success. As the disclosures in February 2023 were not made by the claimant, but were in fact a series of emails between two respondent employees about the claimant, there is no reasonable prospects of success that they amount to protected disclosures made by the claimant. The claimant is no longer relying on the 8 July email to Christine Barr and I have not had the opportunity to review the email sent by the claimant which prompts Dr David’s response at page 146. I therefore did not consider if there were reasonable prospects of success of these emails amounting to protected disclosures.
26. I then considered the detriments. I noted that there is not a dispute in facts on the first detriment – the alleged refusal to pay the claimant for work undertaken after 31 January 2025.
27. In his ET1 the claimant noted that he was asked to work 50 hours “*voluntarily on the project.....on the condition that the related dataset would be published.*

However after publication he withdrew his promise and I am now asking for compensation for my work.” He also stated that “the expectation that I contribute post-contract to the project with the implied promise of authorship raises significant ethical concerns including uncompensated labour: I was required to continue working after the official termination of my employment without any formal compensation, recognition or acknowledgement.” This was confirmed by the claimant’s email of 3 December in response to the respondent agenda where he stated “While I understood that I would not receive financial compensation at beginning, my post contract contributions were not voluntary. They were undertaken based on explicit assurances provided by my PI/supervisor that I would receive first authorship on the related publication and that the data I contributed to would be published. These promises constituted the expected form of compensation, replacing monetary payment.” (page 96) The claimant acknowledged at the preliminary hearing on 10 December 2025 that there was never any agreement to pay him after 31 January 2025 as recorded in paragraph 9 of the PH note (page 42). Taking this at its highest, there is no reasonable prospect of success of the allegation that the respondent refused to pay the claimant because he made protected disclosures. The claimant confirmed within his own claim form and correspondence that there was no agreement for payment of wages after 31 January 2025. As such, there is no reasonable prospects of this detriment succeeding.

28. Looking at the second detriment, that his access to the university email ended in September 2025, it is not in dispute that the timing of this correlates with his affiliate or honorary contract with the university coming to an end in August/September 2025. The claimant provided screenshots of a conversation with a Bo Liu of the respondent discussing the affiliate contract which would run from February to August 2025. There was nothing from the claimant to suggest this was anything other than an administrative action at the end of that contract. The claimant continued to have access to his email address and inbox in the period where he maintains he made disclosures and the period immediately after this. Taking this at its highest, and in applying the Amber guidance, I found that this detriment has no reasonable prospects of success.
29. In terms of the third detriment, the respondent accepted that they shared the claimant’s information with other departments, stating this was done to allow an investigation into a complaint raised by the claimant. The claimant did not dispute that these departments were involved in the investigation of his complaint and so would have to review the information contained with the claimant’s complaint. I was not brought to any contemporaneous documentation by the claimant which set out his concerns or issues with this being shared with those departments. Instead, he argued that in Amber, the

EAT found that a breach of personal data – whereby the claimant's grievance was published on the respondent's intranet – amounted to a detriment and so it was open to me to do so. That is not quite what the EAT found. Instead, it considered whether the tribunal was correct in striking out that, and other, alleged detrimental act(s). Examining this allegation at its highest and through the 'prism of reality', this detriment has no reasonable prospects of success.

Other payments

30. Mr McLean's submission was that in order to make a case for other payments, the claimant required to be a worker or employee. He submitted that the claimant's employment ended on 31 January 2025 by reason of redundancy and that there was no mutuality of obligation after that date. If any work was undertaken after the 31 January, it was minimal, confined to April 2025, was not done in the basis of being a worker or employee and without the expectation of payment.
31. It is not in dispute that the claimant undertook (some) work post 31 January. He is now maintaining however that he should have been paid for this work. He submitted amongst other things that there was mutuality of obligation referring to emails from Professor Otto, there was an umbrella contract covering the period after the 31 January, that the post-contract work was part of a redeployment plan stemming from his redundancy on 31 January. He referred to correspondence about an affiliate contract post 31 January. This was with another school within the university which had funding for £5,000 of work but this was separate to the work on the RNACare paper.
32. In terms of substance of the claim, at the previous preliminary hearing (and in correspondence in or around that time) he confirmed that he was not seeking wages for unpaid work but some kind of compensation for the respondent's 'misconduct' for breaking their promise on publication and/or use of the dataset. This position has now changed. During his submission, he referred to a consortium agreement which sets out that employees will be paid "at least the minimum wage or a fair representation of the prevailing industry wages (whichever is higher)". He also maintained that he was due £40,000 on the basis that this is the required salary level for his visa. When asked if the level of work he maintains he did between February and April 2025 amounted to £40,000, he said no. He referred to a schedule of work of 54.5 hours (page 507) and stated he was charging £50-55 per hour. None of this has been conceded by the respondent, albeit they had no notice of this prior to the strike out hearing.
33. In contrast to the whistleblowing claim, there remains significant factual dispute at the core of this claim that require evidence to be heard – the legal status of the claimant post 31 January, what work was done and when,

whether payment was due, if so, on what basis and what amount. Taking this case as it's highest, I determined that this is not a case where there are no reasonable prospects of success.

Should discretion be exercised in favour of strike out of the protected disclosure claim?

34. Having found that the grounds in Rule 38 are established for the protected disclosure claims, it does not automatically follow that the claim will be struck out. Rather this is a matter of discretion for the tribunal. I was also mindful of the guidance that where there are facts in dispute that require evidence to be heard, strike out is rarely appropriate.
35. I considered carefully the guidance in **Cox v Adecco**. The claimant, while a litigant in person who's first language is Mandarin Chinese rather than English, is a highly intelligent individual, with a good understanding of employment law and broad recall of caselaw. This included caselaw not set out in his pre-prepared notes. He had no difficulty in advocating for himself or in explaining or understanding more complex legal terms. He made his entire submission (which lasted from the start of the second day through to about 2.45pm) through English and used translation for the respondent's submission and questions/explanations from the Tribunal. Preliminary issues were also raised by him in English on the morning of the first day. That is not to say he is at the level of a legal representative or any other professional representative. Rather it is to explain that he does not have the vulnerability of some litigants in person, particularly the claimant in **Cox v Adecco**.
36. As outlined above, I considered more than just the ET1 but also the comprehensive and numerous emails submitted, the agenda for the preliminary hearing in December and the note following this. I was brought to a large number of contemporaneous documents but on the whole there were no significant disputed facts.
37. Mindful of the draconian nature of strike out, I considered if further particulars or an amendment could prove useful in progressing the case but neither option was relevant. The particulars are clear and there are no outstanding points on the protected disclosure claim that require an amendment. Strike out is not a punitive measure. Rather, it is a tool which allows the tribunal to ensure the overriding objective and proportionality is applied to the claim, that parties are not put to undue expense dealing with a claim that has no reasonable prospect of success, that tribunal resources are allocated appropriately.
38. I determined that the protected disclosure claim be struck out. As Judge Taylor set out in **Cox v Adecco** – no one benefits from a hopeless case. This

determination is in keeping with the overriding objective and proportionality. Should this claim continue where there are no reasonable prospects, a longer hearing is likely, requiring additional tribunal resources and both parties will be put to the expense of preparing for and conducting that hearing. While the claimant is representing himself, time spent on leisure, work or relaxation will instead be put to hearing preparation. He may require time off work to conduct the hearing.

Should the other payments claim attract a deposit order?

39. The test for this is little reasonable prospects rather than no prospects. The same difficulties that presented itself in looking at whether Rule 38(1)(a) was engaged are present here. There is too much in dispute to determine here if there is a proper basis for doubting the likelihood that the claimant will be able to establish the facts essential to this claim, particularly when I am required to take the case as its highest. Even looking at this through the prism of reality, with basis logic and consideration of the contemporaneous documentation as per **Amber**, it remains that the claimant undertook tasks post 31 January to finalise the RNA Care paper for publication. While he conceded that there was no agreement initially to pay him for this work, he has since sought payment claim and relies upon the consortium agreement and/or an umbrella contract and/or a redeployment plan. He maintains that as Professor Otto divided out tasks and chased him up for work, there was a mutuality of obligation, that he was required to undertake the tasks Professor Otto set him. He provided a schedule of hours of work.
40. Taking all of this into consideration, I determined that while there are inherent weaknesses in the claimant's claim, particularly given his early concessions on volunteer status and no expectation of payment, this claim is not one of little prospect of success and so a deposit is not ordered.

Further issues

41. During the course of the hearing, the claimant made submissions that he had also made a claim of constructive unfair dismissal, pointing to an email sent in advance of the preliminary hearing on 10 December where he set out that he wished to discuss this issue. In his view, this email and the return acknowledgment email was acceptance of this new claim. While constructive dismissal was discussed in the preliminary hearing, reference was also made to an amendment to add that claim.
42. It was explained to the claimant that a claim is raised either in an ET1 or by way of an amendment application. An amendment application has not been received by the tribunal to add constructive unfair dismissal to this case and

so as it currently stands, the constructive dismissal claim does not form part of the case.

43. I could not consider striking out a claim which has not formally been raised.
44. Further, in his submission, the claimant maintained that he also has a claim of ordinary unfair dismissal relating to the termination of his employment contract by redundancy on 31 January 2025. This has not been mentioned at any point before 26 May 2026. It is not in the ET1 and no amendment application has been received. As above, I could not consider striking out a claim which has not been formally raised.
45. The claimant also made submissions that the contract was performed illegally, due to the manner in which the grant fund was applied. This appears to go to his proposed remedy – “recover my eligibility of Global Talent visa”. It should be noted that this is not a remedy the tribunal can grant.

Further procedure

46. A two day hearing will now be scheduled to consider the claim of other payments. This hearing will also consider his employment or worker status. A separate notice of hearing will follow.

Date of judgment

16 June 2026