



EMPLOYMENT TRIBUNALS

Claimant: Ms. S Alfred

First Respondent: Greenwich Health Limited
Second Respondent: David James
Third Respondent: Shikha Singh

Heard at: London South, by video

On: 6 July 2026

Before: Employment Judge Cawthray

Representation
Claimant: In person, not legally qualified
Respondent: Mr. C Crow, Counsel

RESERVED JUDGMENT

1. The Respondent's application for strike out of the whistleblowing detriment/section 47B complaint is successful. The Claimant's complaint of whistleblowing detriment is struck out on the basis of no reasonable prospect of success against all three respondents.
2. The Claimant is ordered to pay a deposit order in accordance with the separate deposit order of the same date in relation to her automatically unfair dismissal complaint.

FULL REASONS

Background and procedure

1. The hearing today was listed to consider the Respondent's application for strike out, and in the alternative a deposit order,
2. Unfortunately, it was not possible to reach a decision and provide it orally as submissions only concluded shortly before the end of the hearing time

allocated. I explained to the parties that I would send my decision as soon as possible.

3. It is important to set out the background to this hearing and claim, as it is relevant in reaching my conclusions.
4. The claim was presented on 31 October 2023. Attached to the claim was a particulars of claim, page 17. In her claim form the Claimant has a section, at paragraph 22, headed Protected Disclosures. There are five paragraphs labeled a to e.
5. A case management preliminary hearing took place before Employment Judge Ord on 7 October 2024.
6. Prior to that hearing the Respondent had produced a draft list of issues, based on its understanding of the complaints. The draft had been provided to the Claimant, and Mr. Bunzel (Counsel representing her at that hearing) on 30 September 2024. The draft list of issues identified areas where clarification and information were needed from the Claimant.
7. That draft list of issues was at page 68. The Respondent had considered the Claimant to be relying on four alleged protected disclosures. Paragraph 22d of the original particulars of claim states:

“d. On 22nd May 2023, having been advised to overlook the above concerns and wait for the First Respondent to take over the service, I believed that the Interested Party was in potential breach of the Transfer of Undertakings (Protected Employment) Regulations. By not disclosing the events and concerns, there was a risk that they would not be dealt with appropriately.”

8. The Respondent did not consider that paragraph 22d identified any conveyance of information that amounted to an alleged protected disclosure.
9. The Respondent had put the information in paragraphs 22a, b, c and e in date order in the list of issues (as they had not been set out chronologically in the particulars of claim) and labelled them PD1, PD2, PD3 and PD4. The draft list of issues also cross references the paragraphs in the particulars of claim. For completeness, PD4 in the draft list of issues reads:

“PD4: (Particulars, paragraph 22(e)) : on 13th October 2023, verbally/in writing/email [C to confirm] to [Name: C to confirm], C raised concerns about the investigation process (which C believed demonstrated bias and lack of due process), namely

- *Concerns that three performance allegations had never been previously raised, and*
- *Taking witness statements after completion of the investigation report and the decision to proceed to a disciplinary hearing.”*

10. The Claimant was represented by Counsel, Mr. Bunzl, at the Case Management Preliminary Hearing on 7 October 2024, but it appears he left mid way through. The Record of Hearing notes that the draft list of issues was discussed. In relation to the list of issues, the following orders were made:

“17. By 4.00pm on 8 October 2024 the Claimant is to send to the Respondents’ the outstanding information discussed today (including names), which is required to complete the draft list of issues. (Should the Claimant’s amendment application and/or application to add a Fourth Respondent succeed, this list will be subject to change.)

18. The Respondents will then complete the draft List of Issues and send it to the Claimant for agreement. By 4.00pm on 14 October 2024 the Respondents will send the agreed draft list (in word format) to the Tribunal and to the Claimant.”

11. There is no record of the Claimant objecting to or seeking to clarify the alleged protected disclosures as identified in the list of issues during the hearing.

12. Following that hearing, the Respondent’s representative and the Claimant exchanged emails about the draft list of issues on 8 October 2024 and the Claimant sent the Respondent’s representative a document. Within it, in relation to PD4 the Claimant stated:

“PD4 unfair disciplinary process – breach of GDPR regulations sharing my disciplinary responses, evidence without consent to a third-party organization – subsection (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation which he is subject to, subsection (c) that a miscarriage of justice has occurred, is occurring or likely to occur”.

13. On 9 October 2024 the Respondent’s representative wrote to the Claimant and explained that it needed to understand what alleged disclosures linked to what alleged detriments and set out a template table for the Claimant to complete together with a revised draft list of issues, pages 84 and 85.

14. The Claimant did not provide the information requested and further correspondence was exchanged.

15. The Claimant sent the Tribunal an amended particulars of claim, which was drafted by Counsel, namely seeking to add a race discrimination complaint, on 21 October 2024. In relation to paragraph 22 the only changes she sought to make was so amend the dates in c and d from May to June 2023.

16. On 18 December 2026 the Tribunal ordered the Claimant to complete the box at paragraph 6 of the draft list of issues, namely the box linking the alleged detriment to the alleged disclosure, by 1 January 2025.

17. The Claimant completed the table on 1 January 2025 and for all 9 allegations of detriment she cited PD4 only. For completeness, the box is copied below.

Detriment no.	Which PD (i.e. PD1, PD2, PD3 and/or PD4) does C contend was the reason R subjected he to each detriment?
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5.1	PD4
5.2	PD4
5.3	PD4
5.4	PD4
5.5	PD4
5.6	PD4
5.7	PD4
5.8	PD4
5.9	PD4

18. On 10 February 2025 the Respondent made an application to strike out (amongst other things), and in the alternative make a deposit order, in relation to the Claimant's detriment (section 47B) claim and set out the basis of its arguments relating to PD4. On 3 March 2025 Employment Judge Leith ordered that the Respondent's application be considered at the preliminary hearing scheduled for 21 July 2025.
19. On 30 April 2025 the Respondent's representative wrote to the Claimant seeking to ascertain if the Claimant would make any concessions in relation to its applications.
20. A further preliminary hearing took place on 21 July 2025. The Respondent's application to strike out could not be considered as, in short, the hearing had not been listed as a public hearing. The Claimant was again represented by Mr. Bunzl at the hearing.
21. A further preliminary hearing was due to take place on 16 October 2025 but this was postponed by the Regional Employment Judge.
22. A preliminary hearing took place on 13 January 2026, before Employment Judge Tueje. The Claimant was represented by Counsel, Mr. Harris. The hearing was mostly occupied with an application to amend made by the Claimant and the Respondent's strike out order was not considered.
23. The Claimant was permitted to amend her claim in relation to adding additional protected disclosures was permitted and on 2 February 2026 the Claimant submitted an Amended Particulars of Claim, page 321. At paragraph 22 the Claimant added alleged disclosures under paragraphs f, g and h.
24. The Respondent updated the list of issues, taking into account the permitted amendments. There was no change to PD4.
25. At the start of the hearing today I ascertained what documents had been provided. The Respondent had submitted an updated application on 22 June 2026 (in compliance with Employment Judge Tueje's order), an updated bundle, index, list of issues and procedural chronology.
26. At 23:27 on Saturday 4 July 2026 the Claimant sent the Tribunal and the Respondent a response to the application and a small bundle.

27. I considered the written application and the written response. Both parties made oral representations. All were considered in full, and I have not repeated them unless I felt it helpful or necessary to do so.

28. I explained to the Claimant several times, in very simple terms, the basis of the Respondent's key arguments. Despite this, the Claimant's oral representations were very confused, but she was permitted to say what she wished for approximately 45 minutes.

29. Due to time restrictions I did not, on agreement of the parties, consider the Respondent's application for costs.

The Issues

30. The issues for determination were as set out below:

31. Should the complaints of whistle blowing detriment and automatically unfair dismissal be struck out because they have no reasonable prospect of success?

32. Alternatively, do the complaints have little reasonable prospect of success?

33. If so, should the Claimant be ordered to pay a deposit of between £1 and £1,000 as a condition of continuing with the allegations?

Law

Strike Out

34. Under Rule 38 of The Employment Tribunal Procedural Rules 2024 states that a claim or part of a claim can be struck out on grounds that include it has no reasonable prospect of success. A claim cannot be struck out unless the party has been given a reasonable opportunity to make representations either in writing or, if requested by the party, at a hearing.

35. Striking out

38.—

(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply 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, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

(3) Where a response is struck out, the effect is as if no response had been presented, as set out in [rule 22](#) (effect of non-presentation or rejection of response, or case not contested).

(4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by [rule 26\(2\)](#) (replying to an employer's contract claim).

34. Operation of rule 38(1)(a) requires a two stage test.

36. Firstly, has the strike out ground (here "no reasonable prospect of success") been established on the facts.

37. If so, secondly is it just to proceed to a strike out in all the circumstances (which will include considering whether other lesser, measures might suffice).

38. When assessing whether a claim has no reasonable prospect of success the Tribunal must be satisfied that the claim or allegation has no such prospect, not just that success is thought to be unlikely (*Balls v Downham Market High School and College* [2011] IRLR 217). The Tribunal must take the allegations in the claimant's case at their highest. If there remain disputed facts there should not be a strike out unless the allegations can be conclusively disproved as demonstrably untrue or the claim is fanciful or inherently implausible (*Ukegheson v Haringey London Borough Council* [2015] ICR 1285; *Merchkarov v Citibank NA* [2016] ICR 1121). In other words a strike out application has to be approached assuming, for the purposes of the application, that the facts are as pleaded by the claimant. The determination of a strike out application does not require evidence or actual findings of fact.

39. In *Ezsias v North Glamorgan NHS Trust* [2007] EWCA Civ 330 the Court of Appeal held, as a general principle, cases should not be struck out on the ground of no reasonable prospect of success when the central facts are in dispute. On a striking-out application (as opposed to a hearing on the merits), the Tribunal is in no position to conduct a mini-trial, with the result that it is only in an exceptional case that it will be appropriate to strike out a claim on this ground where the issue to be decided is

dependent on conflicting evidence. Such an exception might be where there is no real substance in the factual assertions made, particularly if contradicted by contemporary documents or, as it was put in *Ezsias*, where the facts sought to be established by the claimant were '*totally and inexplicably inconsistent with the undisputed contemporaneous documentation*' (para 29, per Maurice Kay LJ).

40. A strike out application succeeds where it is found that, even if all the facts were as pleaded by the claimant, the complaint would have no reasonable prospect of success. It was said by Underhill LJ in *Ahir v British Airways* [2017] EWCA Civ 1392 that "Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment... Nevertheless it remains the case that the hurdle is high, and specifically that it is higher than the test for making a deposit order, which is that there should be "little reasonable prospect of success."
41. There is a special need for caution in strike out discrimination cases because they are generally fact sensitive, because of the public interest in examining the merits at a final hearing, and because of the shifting burden of proof.
42. Where a litigant in person is involved the tribunal should not simply ask the question orally to be taken to the relevant material in support of the claim but should also carefully consider the claim as pleaded and as set out in relevant supporting documentation before concluding there is nothing of substance behind it; *Cox v Adecco Group UK* [2021] 1CR 1307.
43. If a strike out application fails the argument about the overall merit of the claim is not decided in the claimant's favour. Both the claimant and the respondent argue their positions on the merits in full and afresh at the full hearing.
44. The EAT, in the case of *Mechkarov v Citibank NA* [2016] ICR 1121, summarised the approach to be followed by a Tribunal when faced with an application to strike out a discrimination claim, which should be adopted for detriment claims also, as follows:
 - a) Only in the clearest case should a discrimination claim be struck out.

- b) Where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence.
- c) The Claimant's case must ordinarily be taken at its highest.
- d) If the Claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out.
- e) A Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.

45. In *Yorke v Glaxosmithkline Serviced Limited*, at paragraph 51, HHJ Tayler states: *"Where the parties are represented it is the representatives that bear the principle responsibility for ensuring that the list of issues is up to the job"*.

46. Although a poorly pleaded case presents difficulties for the tribunal, striking out the claim is rarely the answer. In case where there is a litigant in person, as established in *Mbuisa v Cygnet Healthcare Ltd EAT 0119/18* the proper course of action would be to record how the case was being put, ensure that the original pleading was formally amended so as to pin that case down, and make a deposit order if appropriate.

Deposit Order

47. The power to make a deposit order is provided by Rule 40 of the ET Rules, as follows:

Deposit orders

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(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.

(5) Where a response is struck out under [paragraph \(4\)](#), the effect is as if no response had been presented, as set out in [rule 22](#) (effect of non-presentation or rejection of response, or case not contested).

(6) Where a reply is struck out under paragraph (4), the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim).

(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—

(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of [rule 74](#) (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and

(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit must be refunded.

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

48. The test for the ordering of a deposit is therefore that the party has little reasonable prospect success. It was said by the Employment Appeal Tribunal in *Hemdan v Ishmail* [2017] IRLR 228 that 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, ultimately, if the claim fails*” and it is “*emphatically not...to make it difficult to access justice or effect a strike out through the back door.*” A deposit order should be capable of being complied with and a party should not be ordered to pay a sum which he or she is unlikely to be able to raise.

49. As for the approach the Tribunal should take, in *Wright v Nipponkoa Insurance* [2014] UKEAT/0113/14 and *Van Rensburg v Royal Borough of Kingston-Upon-Thames and others* [2007] UKEAT/0095/07 it was said, a Tribunal is not restricted to a consideration of purely legal issues; it is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case and, in doing so, to reach a provisional

view as to the credibility of the assertions being put forward. That said there is a balance to be struck as to how far such an analysis can go. It was also made clear in Hemdan that a mini-trial of the facts is to be avoided. If there is a core factual conflict it should properly be resolved at a full merits hearing where evidence is heard and tested.

50. The Respondent pursues the application as an alternative to their strike out application. The test is therefore one of “little reasonable prospect of success” as opposed to “no reasonable prospect of success” for a strike out application.

51. Rule 40 allows a tribunal to use a deposit order as a less draconian alternative to strike-out where a claim or response (or part) is perceived to be weak but could not necessarily be described as having no reasonable prospect of success.

52. In *Jansen van Rensburg v Royal London Borough of Kingston-upon-Thames* UKEAT/0096/07, the EAT observed: “27. ... the test of little prospect of success ... is plainly not as rigorous as the test that the claim has no reasonable prospect of success ... It follows that a tribunal has a 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.”

53. A deposit order application has a broader scope compared to a strike out application and gives the Tribunal a wide discretion not restricted to considering purely legal questions. The Tribunal can have regard to the likelihood of the party establishing the facts essential to their claim, not just the legal argument that would need to underpin it.

54. In a case where a Tribunal concludes that a claim or allegation has little reasonable prospect of success, it does not mean that a deposit order must be made. The Tribunal retains a discretion in the matter and the power to make such a deposit order has to be exercised in accordance with the overriding objective and with having regard to all of the circumstances of the particular case.

Whistleblowing

55. The key relevant legislative provisions within the Employment Rights Act 1996 are set out below.

43A Meaning of “protected disclosure”.

In this Act a “protected disclosure” means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H

43B Disclosures qualifying for protection.

(1) In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(da) that sexual harassment has occurred, is occurring or is likely to occur,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part “the relevant failure”, in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

47B Protected disclosures.

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or

(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in subsection (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

(a) from doing that thing, or

(b) from doing anything of that description.

(1E) A worker or agent of W's employer is not liable by reason of subsection (1A) for doing something that subjects W to detriment if—

(a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Act, and

(b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of subsection (1B).

(2) This section does not apply where—

(a) the worker is an employee, and

(b) the detriment in question amounts to dismissal (within the meaning of Part X).

(3) For the purposes of this section, and of sections 48 and 49 so far as relating to this section, “ worker ”, “ worker’s contract ”, “ employment ” and “ employer ” have the extended meaning given by section 43K

103A Protected disclosure.

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Conclusion

56. The Respondent’s key argument, as refined and made orally at the hearing, are based around the central contention that the Claimant confirmed that the detriment she relies on flows from/was caused by alleged PD4. As set out above, it is clear that the Claimant set out this out in writing.

57. I was not directed to any document where the Claimant has rescinded from this position.
58. The Claimant herself does not directly address this particular point. The Claimant's focus was that PD 4 has been mislabeled by the Respondent. She says, in oral submissions, that her PD4 should actually be paragraph 22 d in the various versions of the particulars of claim.
59. I do not accept this to be the case.
60. Paragraph 22d of the Particulars of Claim (any version) does not contain any identifiable conveyance of information that on a plain meaning could be considered to contain the basis of an alleged protected disclosure.
61. Further, as set out in the background above, the Claimant has had the draft list of issues in various forms since October 2024. No argument has been made about any misidentification or seeking to add paragraph 22d as an alleged protected disclosure. Indeed, the Claimant has been represented at all previous hearings including one which dealt with seeking to add further alleged protected disclosures. The Claimant, in October 2024, when she sent back further information clearly understood what PD4 had been identified as.
62. Accordingly, I do not consider PD4 as set out in the list of issues to be mislabeled or mis identified.
63. PD4 relates to an alleged disclosure on 13 October 2023.

5.1, 5.2, 5.5 and 5.7

64. The Respondent submits the alleged detriments set out at paragraphs 5.1, 5.2, 5.5 and 5.7 of the draft list of issues all pre-date the 13 October 2023, and therefore as matter of logic they cannot succeed as they took place before the only alleged protected disclosure relied upon.
65. The Claimant did not address, orally or in writing, the fact she had on 1 January 2025 set out that she only sought to rely on PD4 as the causative link for the alleged detriment. In her written submissions she says she relies on a series of alleged protected disclosures, but does not deal with the table she submitted on 1 January 2025 table.
66. I consider that the Claimant, on 1 January 2025, clearly set out that she was only relying on PD4 as the causative link to all the alleged detriments, and at that time it was understood that PD4 related to 13 October 2023. The Claimant has, at no time, sought to change her position and say other PDs were the cause. Her focus for this hearing is misidentification, which I have not accepted to be the case.
67. There were some confused comments made by the Claimant in oral submissions that appeared to be an assertion that she was repeating on 13 October 2023 what she had said previously as an allegation of fraud. This is not the pleaded case and I was not directed to any documentary evidence that demonstrates this.

68. As a matter of logic, detriment that takes place before a protected disclosure has been made cannot be because of the protected disclosure.
69. In considering the request two stage test I consider that that detriments 5.1, 5.2, 5.5 and 5.7 have no reasonable prospects of success.
70. I then went on to consider if it was just, in all the circumstances, to strike out those complaints. In view of the background as set out above I do consider it to be just to strike out those complaints. The Claimant has clearly set out in writing that she relies solely on PD4, there cannot reasonably have been any confusion on her part about what PD4 was, the Respondent's position on this has been set out since February 2025 and the Claimant has not at any stage, until two days ago, sought to rescind or amend her position. These are all factors which lead me to conclude striking out of those detriment complaints against all three respondents is just, and that an alternative option such as a deposit order would not be suitable.

The entire detriment/section 47B complaint

71. The Respondent's next argument was that all the detriment / s.47B complaint should be struck out because PD4 has no prospects of succeeding as being determined as being a protected disclosure.
72. When considering whether a conveyance of information constitutes a protected disclosure one of the elements a Tribunal must consider whether it was made in the public interest. This is a two stage test, and as set out in *Chesterton Global v Nurmohamed 2015 IRLR 614* involves:
- i) Did the claimant have a genuine belief at the time that the disclosure was made that it was in the public interest; and
 - ii) If so, did he or she have reasonable grounds for so believing.
73. The Respondent makes no representation in relation to limb (i), noting the Tribunal, in strike out applications takes the Claimant's case at its highest this is a matter that requires consideration of evidence at the final hearing.
74. The application is focused on limb (ii). The Respondent submitted that PD4 is only about the Claimant's own disciplinary process and how it was conducted.
75. For ease I have set out the Chesterton factors below:
- (a) the numbers in the group whose interests the disclosure served;
 - (b) the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed – a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;
 - (c) the nature of the wrongdoing disclosed – disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent

wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer – as [counsel for the employee] put it in his skeleton argument, “the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest” – though he goes on to say that this should not be taken too far.

76. The Respondent submitted that when considering the number and nature of interest affected it is relevant that only the Claimant was affected. It was submitted in relation to (c), the nature of the alleged wrongdoing disclosed, that it is a day to day complaint that employees regularly make about internal process when they feel a procedure has not been followed and the Respondents are not high profile and that the public would have no interest in such a complaint.

77. The Claimant said orally the breach she identified threatened an entire class of employees and therefore satisfies the public interest test. The Claimant’s written submissions are unclear, and she uses different labelling to the alleged protected disclosures, and it is not clear what label she has, if at all, attributed to the alleged disclosure on 13 October 2023. The Claimant’s comments at paragraph 13 onwards of her written response are not clear, but appear to relate to the alleged disclosure on 13 October 2023 and she referred to an email she received from the Second Respondent dated 12 October 2023 demonstrating the Respondent’s have “stripped the legal rights of the entire workforce.” The submissions refer to an allegation of fraud having previously been made, but this is not in the list of issues, and does not appear to be in the particulars of claim.

78. In considering all of the above, and the exact nature of PD4 as per the list of issues and the Chesterton factors I agree with the Respondent’s submissions and consider that the Claimant has no reasonable prospects of demonstrating a reasonable belief that PD4 was in the wider public interest.

79. The Respondent submits that if PD4 has no prospect of success the entire detriment/section 47B complaint falls away as the Claimant relies solely on PD4 as the causative reason for her allegations of detriment. I agree with this submission as a matter of logic. As set out above, the Claimant clearly and in writing has relied solely on PD4 as the basis of her detriment complaint and has not rescinded from that for some 18 months before the attempts to argue at this hearing that PD4 has been misidentified.

80. Accordingly, I consider that the Claimant has no reasonable prospect of succeeding in her detriment complaint as PD4 has no prospect of being a protected disclosure due to the Claimant not being able to demonstrate reasonable belief in wider public interest.

81. I considered if striking out was a proportionate and just sanction, and for the same reasons as set out above regarding detriments 5.1, 5.2, 5.5 and 5.7 I consider it is just, and that a lesser measure such as a deposit order is not appropriate.

Automatically unfair dismissal

82. The Respondent submitted, orally, that as the Claimant relied on dismissal as a detriment and said that only PD4 was relied on, that meant the automatically unfair dismissal complaint also has no prospects of success if PD4 falls away for not being in the public interest.
83. This submission was not made within the written application.
84. I was careful to explain the Respondent's argument on this to the Claimant and gave her time to consider the position.
85. The Claimant said, orally at the hearing, that she was relying on all her alleged protected disclosures in regard to her dismissal.
86. I reminded myself of the basic position that an employee cannot bring a dismissal complaint as a detriment complaint against an employer alone, and such complaints must be brought under section 103A.
87. However, there are some complicated exceptions.
88. Detriment under [S.47B\(1A\)](#) means that fellow workers and agents of the employer can be liable to an employee for detriments amounting to the termination of the employment relationship, even where that detriment could have been pursued against the employer as an automatically unfair dismissal claim under [S.103A](#). There are also exceptions in relation to vicarious liability.
89. In this case the Claimant had listed her dismissal as an allegation of detriment.
90. The Claimant was also pursuing the detriment complaint against individual named respondents.
91. The automatically unfair dismissal complaint can only be brought against her former employer, the First Respondent.
92. This is a complex matter. I can see the logic of the Respondent's argument that as the Claimant's own case appears to be that her dismissal was caused by PD4, that if PD4 falls away then automatically unfair dismissal complaint also has no reasonable prospects of success.
93. However, I am also mindful that the list of issues does not clearly identify which detriment complaint was pursued against which respondents, and this argument was not set out in the Respondent's written application. A deposit order was sought in the alternative.
94. On the information before me, noting all of the above, I cannot say at this stage there is no reasonable prospects of success. The application to strike out the automatically unfair dismissal complaint is refused.

95. However, I went on to consider whether there was little prospect of the automatically unfair dismissal complaint being successful.
96. I considered that, on the basis that the Claimant appears to have set out her position that PD4 was the causative link to her dismissal as part of her detriment complaint, that position undermines any argument that she is relying on any other, or all 9, alleged protected disclosure/s in her automatically unfair dismissal complaint.
97. Accordingly, I therefore consider that there is little prospect of success.
98. I have considered the limited information available to me in regards to means to pay, noting I asked the Claimant some questions about her means and outgoings but she was not under oath. I note the impact of making a deposit order. I have also considered whether or not in all of the circumstances it is fair and just to order the Claimant to pay a deposit order. The Claimant is ordered to pay a deposit.
99. For completeness, as the detriment complaint has been struck out, it is appropriate for the Second Respondent and Third Respondent to be removed.
100. The automatically unfair dismissal complaint will continue if the Claimant pays the deposit, but such claims can only be brought against an employer.
101. If the Claimant pays the deposit the Respondent must write to the Tribunal with suggested case management orders and next steps to get the matter ready for the listed final hearing.

Approved by:
Employment Judge Cawthray
Dated: 7 July 2026

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimant(s) and respondent(s).

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/