EMPLOYMENT TRIBUNALS

Claimant: Ryan Canning

Respondent: Plymouth City Council

Heard at: Plymouth (in public, by video) **On:** 7 October 2026

Before: Employment Judge Walters

Appearances
For the Claimant: In person
For the Respondent: Ms. Kelly-Lyth of counsel

JUDGMENT

1. The Claimant's claim of direct sex discrimination has no reasonable prospect of success and is dismissed.

2. The Claimant's claim of indirect sex discrimination is withdrawn and is dismissed.

3. The Respondent's application for a deposit order is not adjudicated upon in light of the dismissal of the sex discrimination claim.

4. The Claimant's claim of unfair dismissal is withdrawn and is dismissed.

REASONS

Introduction

1. This matter came before the Tribunal for determination of the Respondent's application to strike out the Claimant's claims of discrimination on the basis that they have no reasonable prospects of success. In the alternative to consider making a deposit order. The Tribunal considered the ET1, the Claimant's document entitled Claimant's Application to Clarify Claim and Further Particulars of Sex Discrimination Claim, the Grounds of Resistance, the Respondent's strike-out application, the Respondent's skeleton argument and the authorities relied upon, the hearing bundle and the closing submissions of the parties.

2. The indirect sex discrimination claim was abandoned by the Claimant having heard the submissions of counsel for the Respondent. It was withdrawn and, therefore, dismissed. The unfair dismissal claim was withdrawn by the Claimant and is, therefore, dismissed.

3. For the purposes of determining the strike-out/deposit order applications, the Tribunal has proceeded on the basis most favourable to the Claimant and has assumed that all factual matters pleaded by him are capable of being proved.

4. The Tribunal has reminded itself that strike out is a draconian power. It is particularly important to exercise caution in discrimination cases, which frequently depend upon inferences drawn from primary facts. Nevertheless, where a claimant's case, even taken at its highest, is incapable of satisfying the legal requirements of the cause of action relied upon, strike out remains appropriate.

5. The Tribunal has had regard to **Anyanwu v South Bank Student Union [2001] ICR 391 (HL)**. The House of Lords stressed that discrimination claims often require careful consideration of evidence and inferences and that Tribunals should therefore exercise caution before striking them out summarily.

6. However, discrimination claims are not immune from strike out. The Tribunal has also had regard to **Ezsias v North Glamorgan NHS Trust [2007] ICR 1126 (CA)**, which confirms that strike out may be appropriate where there are facts in dispute. These would be cases which even assuming the claimant's factual case to be true, the claim remains incapable of success.

7. **In Cox v Adecco [2021] I.C.R. 1307** the EAT reminded tribunals that:

a. The strike-out power is to be approached with caution in discrimination claims.

b. No-one gains by truly hopeless cases being pursued to a hearing.

c. The Tribunal will ordinarily take a claimant's case at its highest when assessing whether it has a reasonable prospect of success, assuming the facts to be as alleged by the claimant.

d. 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

8. In **Wangtian Xie v E'Quipe Japan Ltd 2024 EAT 176** HH Judge Tayler summarised the authorities. 'Rule 37 of the Employment Tribunal Rules 2013 [now r 38] provides a discretion to strike out a claim if it has no reasonable prospect of success.

- Strike out is a draconian step to be taken only in clearcut cases.

- There is a public interest in discrimination cases being heard on the merits.

- Care should be taken when an application for strike out is made against a litigant in person.

- That said, there is not an absolute prohibition on strike out in discrimination cases, particularly if the claim is contrary to undisputed documentary evidence.

- Where there is a core of disputed fact strike out is generally inappropriate.

- When assessing strike out the case of the party against whom the application is made should generally be taken at its highest."

9. A claimant bringing a claim of discrimination is required to advance an explanation as to why they believe that a purely innocent sequence of events is in fact not the real story. See **Ahir v BA plc [2017] EWCA Civ 1392.**

10. The Tribunal has further applied the principles contained in **Madarassy v Nomura International plc [2007] ICR 867 (CA)** and **Hewage v Grampian Health Board [2012] UKSC 37**. The first stage of the burden of proof exercise is that the claimant must prove facts from which a finding of unlawful acts could be inferred and which require an explanation from the respondent. However, a protected characteristic and adverse treatment, without more, do not suffice to shift the burden of proof. There must be facts from which a Tribunal could properly conclude, in the absence of an adequate explanation, that discrimination has occurred.

The Claimant's Case

11. The Claimant applied for employment with the Respondent as an Enforcement Officer on 1 February 2025. He was successful at interview and on 27 February 2025 he was offered employment subject to satisfactory references and other pre-employment checks.

12. The Respondent subsequently received information from the Claimant's former employer indicating that the Claimant had been the subject of a gross misconduct investigation.

13. The Claimant alleges that on 8 April 2025 he verbally and subsequently in writing informed the Respondent that:

    a. the investigation arose from allegations made by a former partner;
    b. he considered himself to be a victim of domestic abuse;
    c. he disputed the allegations made against him; and
    d. he was willing to provide further information and clarification.

14. The Respondent nevertheless withdrew the conditional offer of employment on 9 April 2025.

15. The Claimant contends that the Respondent ought to have undertaken further enquiries and should have engaged more constructively with his disclosure that he was a victim of domestic abuse.

16. The Claimant alleges that those matters give rise to claims of direct sex discrimination.

Direct Sex Discrimination

17. The protected characteristic relied upon is sex.

18. The less favourable treatment relied upon is the withdrawal of the conditional offer of employment.

19. The essential question is whether the facts pleaded by the Claimant are capable of supporting an inference that the withdrawal of the offer occurred because the Claimant is male. The Tribunal concludes that they are not.

20. The pleaded facts disclose an obvious and complete non-discriminatory explanation for the Respondent's actions. The offer of employment was expressly conditional upon satisfactory references. The Respondent received information indicating that the Claimant had been the subject of a gross misconduct investigation. The Respondent considered the reference unsatisfactory and withdrew the offer. The Respondent was in no position to investigate the circumstances of the allegations made against any prospective employee by their former employer.

21. Those facts, which are central to the Claimant's own pleaded case, fully explain the decision complained of. The withdrawal of the offer followed receipt of the adverse reference and the Respondent's conclusion that the relevant pre-employment condition had not been satisfied.

22. The Claimant is male and suffered an adverse outcome. Those matters alone do not permit an inference of discrimination.

23. The Claimant has identified no primary facts capable of supporting a conclusion that sex played any part in the Respondent's decision-making process.

24. The Claimant relies upon his disclosure that he was a male victim of domestic abuse. However, there are no pleaded facts suggesting that any decision-maker expressed a view about male victims of domestic abuse, held stereotypical assumptions regarding men, demonstrated hostility towards men, or otherwise treated the Claimant less favourably because he was male.

25. The Claimant identifies no actual comparator.

26. The hypothetical comparator advanced by the Claimant is a female applicant who disclosed domestic abuse in similar circumstances. However, there is no pleaded factual basis for supposing that such an applicant would have been treated differently.

27. The Claimant has pleaded no example of a female applicant being treated more favourably. The Domestic Abuse Policy is not engaged when considering employment offers whatever the gender of the alleged victim. The Claimant has identified no policy, practice, statement, document or conduct that could support the inference he seeks to draw.

28. The assertion that a female applicant would have received further support or enquiry is entirely speculative.

29. Applying the above authorities the pleaded facts are incapable of satisfying the first-stage burden of proof under section 136 Equality Act 2010.

30. At its highest, the Claimant's case amounts to the proposition that:

    a. he disclosed that he regarded himself as a victim of domestic abuse;
    b. the Respondent did not undertake further enquiries; and
    c. discrimination may therefore have occurred.

31. That reasoning is insufficient. Section 136 does not permit the burden of proof to shift merely because a claimant disagrees with the decision made or considers a different course could have been taken.

32. Even assuming every factual allegation advanced by the Claimant to be true, the Tribunal is unable to identify any evidential route by which a Tribunal could properly conclude that the withdrawal of the conditional offer was because of the Claimant's sex rather than because the Respondent considered that the condition requiring satisfactory references had not been met.

33. The direct sex discrimination claim therefore has no reasonable prospects of success.

Conclusions

34. This is not a case of the type contemplated in **Anyanwu**, where disputed facts, witness credibility or competing factual inferences require exploration through oral evidence.

35. The pleaded facts themselves do not disclose the essential ingredients of direct discrimination. Even if every factual allegation made by the Claimant were accepted in its entirety, the claim would remain incapable of satisfying the relevant statutory test.

36. This case therefore is a claim which remains incapable of success even if all pleaded facts are assumed to be true.

37. The Tribunal is satisfied that the defects identified are not evidential deficiencies capable of being cured through cross-examination or further factual investigation. They are fundamental deficiencies in the pleaded cause of action themselves. A full merits hearing could not alter that outcome.

Conclusion

38. The Tribunal accepts, for the purpose of this application, that the Claimant disclosed that he regarded himself as a victim of domestic abuse and that he wished the Respondent to investigate the surrounding circumstances more fully.

39. Taking the Claimant's case at its absolute highest, and assuming the truth of every factual allegation advanced by him, the Tribunal is unable to identify any pleaded fact capable of supporting an inference that the withdrawal of the conditional offer occurred because of the Claimant's sex.

40. The direct discrimination claim therefore fails to satisfy the initial burden of proof required by section 136 Equality Act 2010 and is incapable of succeeding at a final hearing.

41. The Tribunal is satisfied that the claim has no reasonable prospects of success.

42. The Respondent's application succeeds. In light of that conclusion, it is unnecessary to determine the Respondent's alternative application for a deposit order.

Employment Judge Walters
7 October 2026

Sent to the parties on:
19th October 2026
For the Tribunal Office