



EMPLOYMENT TRIBUNALS

Claimant: Mr M Mulla

Respondents: 1. Darul Uloom Al Arabiya Al Islamia
2. Mr Naushad Abdul Aziz
3. Mr Sulaiman Hafejee
4. Mr Ibrahim Mohammad Amin Gajaria
5. Mr Rachid Daud Ismael

Heard at: Manchester (by CVP)

On: 20 September 2022
4 October 2022(in chambers)

Before: Employment Judge Feeney

REPRESENTATION:

Claimant: Mr M Winn-Smith, Counsel

Respondents: Nabila Malik, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The respondents' application for strike out and/or for a deposit order in respect of the claimant's claims is dismissed except in relation to the claim(s) referred to in paragraphs 74-78 .

REASONS

Case Summary

1. The claimant brings a claim of disability discrimination, public interest disclosure and unfair dismissal. The claimant worked as a Head Teacher on a part-time basis at the respondent school. He was promoted to Principal at one point and continued in that role for some time. It is his assertion that when the founder of the school died and there was a significant change with new trustees and a new person in charge, that he began to be bullied. The claimant went off sick in March 2020, the respondent said on the cusp of them seeking to investigate a student complaint against him, and he never returned to school but was dismissed in March 2021.

2. The respondents say the claimant was dismissed for failing to follow a reasonable management instruction to attend a back to work interview and an appointment with Occupational Health. In addition, he had attended school when off sick and was advised to leave but was difficult about this.

3. The respondent applies for a striking out of some of the claimant's claims for various reasons.

The Law

Striking Out

4. An Employment Judge or Tribunal can, on its own initiative or on the application of a party, strike out all or part of a claim or response on any of the following five grounds of the Employment Tribunals Rules of Procedure 2013:

- (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 respondent has been scandalous, unreasonable or vexatious;
- (c) For non compliance with any of the rules or with an order of the Tribunal;
- (d) That it has not been actively pursued;
- (e) That the Tribunal considers it is no longer possible to have a fair hearing in respect of the claim or response.

5. In this case we are concerned with paragraph (a).

6. The power to strike out is discretionary. Even if one or more of the five grounds in rule 37(1) is made out, the Tribunal must consider whether to exercise its discretion or make an alternative order. This two stage process was confirmed in **HM Prison Service v Dolby [2003] EAT**. The first stage is 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 or response (or part thereof), order the claim or response to be amended, or order a deposit to be paid.

7. A striking out is a judgment within the meaning of the 2013 Rules and is capable of being reconsidered on the grounds of the interests of justice.

8. In **Cox v Adecco [2021] EAT** the court stressed the importance of understanding a claim before it is possible to consider a strike out on the basis of the claim having no reasonable prospect of success, even if there have been earlier attempts to clarify the claim. Where there are litigants in person it may be more appropriate to seek further clarification and particularisation of the claim before making a strike out decision.

9. It is relevant to quote HHJ Eady quoting a passage from Lady Smith in **Balls v Downham Market High School and College EAT [2010]**:

“Where a strike out is sought or contemplated on the ground the claim has no reasonable prospect of success the structure of the exercise that the Tribunal has to carry out is the same. The Tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospects of success. I stress the word ‘no’ because it shows that the test is not whether the claimant’s claim is likely to fail nor is it a matter of asking whether it is possible that his claim may fail, nor is it a test which can be satisfied by considering what is put forward by the respondent, either in the ET3 or submissions, and deciding whether there are written or oral assertions regarding disputed matters are likely to be established as facts. It is, in short, a high test. There must be *no* reasonable prospects of success.”

10. In addition, a claim should not be struck out when the central facts are in dispute (**Ezsias v North Glamorgan NHS Trust [2007] Court of Appeal**):

“Where there is a crucial core of disputed facts...it was not susceptible to determination other than by a hearing and evaluating the evidence.”

11. Many weak cases may involve such a dispute and cannot be resolved by a strike out application but by a full hearing on the merits, as a Tribunal after strike out is in no position to properly weigh competing evidence, and it should not conduct an impromptu mini trial of oral evidence to resolve core disputes (**Mechkarov v Citibank NA EAT [2016]**).

12. In addition, the claimant’s case must be taken at its highest i.e. that it should be assumed the claimant will establish the facts which they have asserted in their claim are all true, however vehemently the other side takes issue with them.

13. There will be cases where the propositions put forward by a claimant are so fanciful that it is appropriate to strike out. For example, in **Ahir v British Airways PLC** the claimant was dismissed for gross misconduct when it was disclosed that he had not been made redundant by his previous employers but dismissed for gross misconduct. The claimant's case was that the anonymous letter revealing this was part of a “set up” in order to get rid of him. It was a well laid plan. Underhill LJ said:

“In a case of this kind, where there is on the face of it a straightforward and well documented explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that the explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so. The Employment Judge cannot be criticised for deciding the application to strike out on the basis of the actual case being advanced.”

14. Tribunals are particularly guided to be cautious in respect of striking out discrimination and whistleblowing claims. Again in **Mechkarov v Citibank NA**, Mitting J stated:

- “(1) Only in the clearest case should a discrimination case be struck out.
- (2) Where there are core issues of fact that turn to any extent on oral evidence they should not be decided without hearing oral evidence.
- (3) The claimant's case must always be taken at its highest.
- (4) If the claimant's case is ‘conclusively disproved by’ or is ‘totally and inexplicably inconsistent’ with undisputed contemporaneous documents, it may be struck out.
- (5) A Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts.”

15. The Tribunal has been advised time and time again not to strike out discrimination cases except in the very clearest of circumstances.

Deposit Orders

16. Rule 39 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that:

- (1) Where at a preliminary hearing under rule 53 the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success it may make an order requiring a party (the paying party) to pay a deposit not exceeding £1,000 as a condition of continuing to advance the allegation or argument.
- (2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.
- (3) The Tribunal's reason for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.
- (4) If the paying party fails to pay the deposit by the date specified, the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out the consequences shall be as if no response had been presented as set out in rule 21.
- (5) If the Tribunal at any stage following the making of a deposit order decides a specific allegation or argument against the paying party for substantially the reasons given in the deposit order:
 - (a) The paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purposes of rule 76 unless the contrary is shown; and
 - (b) The deposit shall be paid to the other party otherwise the deposit shall be refunded.

17. The first step is obviously to decide, in view of all the facts where available, and generally taking the claimant's claim at its highest, whether the claim has little reasonable prospect of success. The claimant's means have to then be ascertained and taken into account in setting the level of the deposit.

Background

18. The claimant presented an original claim on 25 June 2021 and subsequently amended his claim by way of providing further and better particulars in response to an order from Judge Brewer as follows:

Claimant's amended grounds of claim/Further and better particulars

Public Interest Disclosure

Disclosure relating to the "illegal" appointment of the 2nd to 5th respondents as trustees of the first respondent's charity

19. It is said that these fall into B and F of section 43B(1)(b) and (f) Employment Rights Act 1996, i.e.:

- (1) that a person has failed, is failing or is likely to fail to comply with any legal obligation; and
- (2) information tending to show any matter falling within the preceding paragraphs has been, is being or is likely to be deliberately concealed.

20. The disclosures were made to staff members at the schools, parents of children attending the school, third parties with an interest in the management of the school, the Charity Commission, Department of Education, Greater Manchester Police and through a High Court action to the courts of England and Wales. The disclosures were made on multiple occasions and diverse dates including in writing on 8 November 2019, 16 March 2020, 27 May 2020 and 24 August 2020. They are in the public interest because proper governance of the first respondent is in the public interest.

21. The detriments arising from this disclosure are:

- (a) The claimant was denied log-on details for the shared email box to enable him to teach remotely;
- (b) Limited notice of meetings was given to the claimant in his normal working role and as part of the grievance disciplinary process;
- (c) Investigation of the claimant's grievance was stalled and the respondents failed to make reasonable adjustments to allow the grievance process to be determined fairly;
- (d) The rejection of the claimant's proposal that disciplinary measures against him be suspended pending the conclusion of an investigation by the Charity Commission in relation to the legitimacy of the 2nd to 5th respondents' status as trustees of the charity;

- (e) The respondents wilfully failed to make reasonable adjustments in the disciplinary processes involving the claimant;
- (f) The dismissal of the claimant; and
- (g) The wrongful rejection of the claimant's appeal against dismissal.

Disclosure relating to health and safety matters

22. The claimant and other members of the senior leadership team disclosed serious health and safety concerns relating to the main prayer hall roof, its excessive leaks and the dangers caused by work being carried out to it in contravention of health and safety regulations without appropriate insurance.

23. This disclosure was made on or about 5 October 2019 to the 2nd to 5th respondents.

24. Further disclosures were made after that date and in particular about January and February 2020 when the second respondent asked the claimant to open the main prayer hall notwithstanding its dangerous condition.

25. These disclosures fall within (b) and (d) of section 43B of the Employment Rights Act 1996:

- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; and
- (d) that the health and safety of any individual has been, is being or is likely to be endangered.

26. The detriments which flowed are the same as above.

Disclosure relating to safeguarding breaches

27. At the end of February 2020 and the beginning of March 2020 a series of discussions took place between the claimant and the second respondent wherein the second respondent demanded that Mr IS be recruited immediately for a potentially vacant position without regard to relevant policies or statutory regulations and DBS. The claimant did not agree to such recruitment.

28. The claimant learnt that whilst he was off sick this individual had been working at the school since the end of March 2020 with direct access to children without having a DBS check. He reported this default to the second respondent and relevant regulatory bodies.

29. The claimant also believed that the purported appointment of the fifth respondent as a trustee was done without any relevant UK base enhanced statutory background checks, DBS or similar clearance. The claimant disclosed his concerns about the fifth respondent's appointment to the second respondent and demanded an explanation as to why this was done without relevant checks and in breach of Part IV of the Education (Independent School Standards) Regulations 2014. This was reported to relevant regulatory bodies.

30. These disclosures fall under section 43B(1)(b) Employment Rights Act 1996 i.e. that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.

31. Detriments are the same as above.

Direct Disability Discrimination

32. Referring to paragraph 10 of the original grounds of claim the respondents knew the claimant was disabled as the claimant informed the second respondent on 3 October 2019 of his migraine attacks, panic attacks, asthma, high blood pressure and depression.

33. Concerns relating to the same matters were raised again in meetings with the second, third and fourth respondents on 5 October 2019 and on 16 and 17 March 2020.

34. On 18 March 2020 the claimant sent an email to the fourth respondent, copied to the second, third and fifth respondents, stating he was unwell with anxiety and stress. Formal fit notes were then provided on a regular basis which informed the respondents he was disabled.

35. The claimant was less favourably treated in the following ways:

- (a) Deliberate frustration of the claimant's attempts to return to work by the changing of the return to work procedures by which the claimant was required to attend a return to work meeting with individuals who were instrumental in causing the claimant's disability in the first place.
- (b) The claimant was formally made aware of the intention in the witness statement of the fourth respondent that he would no longer be able to be Principal/Head Teacher because of his disability.
- (c) The 2nd to 5th respondents encouraged a belief in other staff members at the school that the claimant would no longer be able to be Principal/Head Teacher because of his disability.

36. The claimant asserts that the alteration of the return to work procedure was a deliberate and cynical change brought about by the 2nd to 5th respondents precisely to cause difficulty for the claimant. A hypothetical comparator will be used. If the claimant had not been disabled, the 2nd to 5th respondents would likely have retained the previous return to work procedures.

37. In relation to communications to the claimant and other staff members, the claimant relies on other non disabled staff members as comparators.

Discrimination arising from disability – section 15 Equality Act 2010

38. By reason of the claimant's disability, he was less able to attend an "in person" meeting or to engage in an "in person" return to work process. Likewise, the claimant was unable to make effective representations at the grievance and disciplinary hearings because he was required to attend in person, which was not

practically possible for the claimant given his disability. This state of affairs was something arising from the claimant's disability.

39. The unfavourable acts done to the claimant are those set out in the previous section and are relied upon in this context i.e. the detriments referred to above.

Indirect disability discrimination – section 19 Equality Act 2010

40. The respondents applied the following PCPs to the claimant:

- (a) The claimant was required to attend "in person" meetings as part of the return to work procedure.
- (b) The claimant was placed on no pay when he was unable to work by reason of his disability.
- (c) Employees are required to attend "in person" grievance and disciplinary hearings and failing attendance those hearings will take place in the absence of the employee.

41. The return to work PCP the claimant asserts was introduced specifically for the claimant and was not in place prior to his case. The "no pay" PCP was applied to the claimant between May 2020 and December 2020, and the grievance disciplinary policy PCP was already in place prior to the claimant's case. The return to work PCP put the claimant at a disadvantage because he was required to meet face to face the individuals who had caused his known disability symptoms to develop and worsen.

Reasonable Adjustments – sections 20 and 21 Equality Act 2010

42. The claimant relies on the PCPs set out under the direct discrimination provision, being:

- (1) The return to work PCP;
- (2) The "no pay" PCP; and
- (3) The grievance and disciplinary hearings PCP.

43. The claimant believes that the first two were put in place deliberately to make his life more difficult because of his disability, but even if motivation is not established the mere fact that the return to work PCP put the claimant at a self evident substantial disadvantage. The respondent had knowledge that the PCPs would disadvantage the claimant and maximise pressure on the claimant with the specific aim of forcing the claimant out of his employment.

Harassment related to disability – section 26 Equality Act 2010

44. The relies on his direct discrimination claim and the failure to make reasonable adjustments. All those matters he also relies on as harassment. He says they were done deliberately with the specific intention of maximising his difficulties to force him out of employment.

45. The claimant also relies on the fact of increasing insistence of meetings with the 2nd to 5th respondents whilst he was still working before his sickness absence, despite the claimant advising they were not conducive for his health and wellbeing. The claimant stated this was unwanted conduct related to the protected characteristic of disability. The conduct outlined had the purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

Holiday Pay Claim

46. The claimant claims £1,790.91 for six weeks' holiday pay in respect of summer annual leave in 2020 at £8.91 per hour for 33.5 hours a week, and secondly £445.95 in respect of holiday pay for the Christmas holidays in 2020-2021. The claimant was paid £151 but the total amount should have been £596.97. The total amount due then in respect of holiday is £2,236.88.

Unauthorised deductions/arrears of pay

47. From May 2020 the claimant was not paid anything. He was then paid in December 2020 and January 2021 the sum of £302.29 for each month at the rate of the minimum wage for approximately 8.5 hours a week. The claimant is unaware why these particular sums were paid.

48. The claimant's paid working hours are 33.5 hours a week at the rate of £5 an hour. The monthly payment received was approximately £850 a month. On some occasions it would be less than this amount. Besides this the claimant would do a minimum of an extra 2-3 hours for seven days a week. Those additional hours were not logged into the main administrative system as they were not part of the contractually agreed paid hours.

49. If the claimant had been paid the minimum wage for 33.5 hours then he should have received £1,193.94 for every four weeks. The claimant will claim the difference between the sums received and the sums he should have received, which will be set out in due course.

Strike out application

50. The respondents apply for a strike out or a deposit order in respect of the claimant's claims for various reasons, as follows:

Disability Discrimination

- (1) The respondents say that the claimant's disability discrimination impact statement is insufficient to establish disability within the meaning of the Equality Act 2010 and that therefore this should be struck out. It is not clear either what the claimant relies on: it may be depression, migraine and sciatica.
- (2) In addition the respondents say that if this claim is allowed to proceed the medical evidence should be provided unredacted because at present it is redacted.

Disability Claims

- (3) The respondents argue that the disability claims are too vague to proceed and that they are speculative.

Knowledge

- (4) The respondents say that the claimant has not stated on what basis the respondents knew the claimant was disabled, either directly or constructively.

Discrimination, failure to make reasonable adjustments, harassment and victimisation

- (5) The respondents made general points in relation to these saying they were unsubstantiated, unsupported by the evidence, that the claimant was given a second bite of the cherry to particularise his discursive pleadings, but they remain mere assertions. The three acts the claimant relies on are:
- (i) Deliberate frustration from returning to work;
 - (ii) Dismissal as Head Teacher;
 - (iii) Encouragement amongst staff that the claimant would no longer be Head Teacher.
- (6) It is the respondents' case that the documentation shows that this is not correct as the respondents did everything they could to get the claimant back to work, but the claimant refused to attend a meeting with the respondents.

Section 15

- (7) In relation to section 15, the respondents say that the claimant could not be at a disadvantage by being asked to attend a meeting to discuss his return to work when he was saying he was fit to return to work which would have involved him attending at work. The respondents applied their standard policy.
- (8) In relation to the claimant's indirect discrimination claim, he relies on not being paid other than statutory sick pay during his absence. The respondents state this is inadequately pleaded as no substantial disadvantage is identified and in effect the respondents argue it was entirely justified that the respondents wished to have a face to face meeting with the claimant before he came back to work to make sure that there would be a proper handover in relation to any changes, that new COVID practices could be advised and any other changes or support he needed on his return could be discussed.

Public Interest Disclosure ("PID")

- (9) The claimant has not cross referenced each disclosure to any detriments, neither has he given the detail even with the second further and better particulars regarding what was said, exactly who to and when.
- (10) Paragraph 83, now described as a health and safety disclosure, was not set out in the pleadings but was information already known to the trustees regarding the state of the building. It was argued how were matters of standard discussion matters that became information germane to the protected disclosure, and there was no documentary evidence that these were ever raised by the claimant. For example, at paragraph 129 the claimant was asked if the main prayer room should be opened and he said not because of the state of disrepair of the roof but that is not sufficient to form the elements of a public interest disclosure.
- (11) In relation to amended grounds of resistance (13-18), the recruitment of Mr IS, the claimant was not clear what, when, how and to whom the PID was made.
- (12) In relation to paragraphs 1, 4, 7 and 9 of the grounds of claim, reference was made to smelling alcohol and it is stated that the claimant challenged Mr NA on the status of the DBS checks, to which he did not respond. Again, the respondents submit that does not satisfy the elements of a public interest disclosure, and in particular it was not made in the public interest, and more importantly it does not address how and why he raised the issue of the respondents' failure to make advance DBS checks. There is no supporting evidence such a disclosure was made.

Public Interest Disclosure Detriments

- (13) The claimant has not established a link between the PIDS and the detriments. The respondents submit that as the disciplinary process was conducted by a third party body who had no knowledge of any alleged PIDs, there could not have been a link between the PIDs and the decision to dismiss the claimant.

Claimant's Submissions

51. The claimant had originally based his submissions on the amended grounds of resistance but further elaborated at the hearing in response to the respondents' written submissions.

Conclusions (incorporating parties' submissions)

Protected Disclosures

52. The respondents' assertion is that particularly the dates of disclosure are not provided, however the claimant says dates are pleaded in paragraph 5 of the further particulars.

53. The respondents complain that protected disclosures relating to health and safety is a new claim and should not be permitted to proceed. The claimant says this has been pleaded as follows:

54. Paragraph 83 of the grounds of claim to which paragraph 9 of the further particulars refers pleads a meeting which took place on 5 October 2019. Paragraph 84 of the grounds of complaint continues:

“In this meeting the senior leadership team clearly highlighted grave health and safety concerns regarding the main prayer hall roof and excessive leaks throughout the building as a result of the work being carried out contravening health and safety regulations. The claimant and the senior leadership team made a protected disclosure.”

55. Paragraph 129 of the grounds of complaint, to which paragraph 10 of the further particulars refers, pleads the details of the January 2020 incident.

56. Paragraph 19 of the amended grounds of resistance contends that the pleaded disclosures relating to safeguarding breaches are also new claims, however pleadings relating to this are found at paragraphs 112-120 of the grounds of claims and 147-149 in relation to Mr IS.

57. Otherwise the claimant submits the respondents simply dispute the pleaded case on matters which are controversial and are matters which should be determined at trial.

Conclusion: I am satisfied the claimant has pleaded these matters and that otherwise it is a matter for evidence

Disability Status

58. The claimant had made a reference to matters other than depression i.e. migraine, on page 15 paragraph 10, page 134 paragraph 19, and sciatica was referred to in the original complaint at paragraph 10 and in the disability impact statement. Whilst the original claim form was discursive, as is the disability impact statement, a number of paragraphs in the disability impact statement do set out the effects of his disabilities (page 165 paragraph 12, paragraph 13, paragraph 14 and paragraph 16), which do go to the issues of substantial adverse effect.

59. Regarding the issue of whether there should be a separate disability hearing the claimant wishes to have everything referred to in one hearing, as whether or not he is disabled there will always be a public interest disclosure and unfair dismissal claim.

Conclusion: I am satisfied that the claimant has raised the three disabilities he relies on. I do not accept the respondent's case that his disability claims should be struck out on the overarching ground that he has not adduced enough evidence to establish them, that is a matter for the claimant and the tribunal adjudicating on the claims. However in view of the fact that disability discrimination claims are a substantial part of his claim it is appropriate to hold a preliminary hearing on disability status.

Unredacted medical records

60. The claimant would be happy for the unredacted medical records to be considered by the Judge and for the Judge to make a decision as to whether or not the redactions are fair.

Conclusion: I will address this separately from my decision on the strike out application

Direct Disability Discrimination (paragraph 22(a), (b) and (c) of the further particulars)

61. This refers to the introduction of a policy which did not exist before the claimant went off sick. It is the claimant's case this policy is stricter. He relies on causation by the fact that there had not been a policy before and the procedure before had not included this requirement. The claimant says it is difficult for him to comply and that it was introduced deliberately to that end.

Conclusion: This is a matter of fact in dispute between the parties that must be decided at the Employment Tribunal.

62. The claimant also objected to the attendees as they were the protagonists in the poor treatment of himself. He requested a different panel for the hearing, but this was refused.

Conclusion: Some difficulty arises in arguing this point as it is not clear how the claimant will establish that the fact the protagonists were on the panel was because of his disability, rather than that they were the appropriate people because they were trustees. However it would be premature to strike this out. The claimant should provide further particulars.

63. The claimant states that a request had been made for online training that was refused, again a matter that should be subject to cross examination.

Paragraph 22(c) – encouraging other members of staff to think that he could not do the job

64. This is referred to in his grounds of claim at paragraphs 184-186 (pages 51-52 and paragraph 223 on page 60). This is also referred to in the further and better particulars at paragraph 22(c). It is a matter which should be subject to evidence. The claimant will give oral evidence to the Tribunal on whether or not they believe him, including following the cross examination of the respondents' witnesses.

Conclusion: While this claim may be difficult to establish without supportive witnesses, it should be tested in the Tribunal. I am satisfied this claim has been raised.

Comparators

65. The further and better particulars identify hypothetical comparators at paragraphs 24 and 25. It is not a matter that is suitable for a strike out.

Conclusion: I agree that this is not a suitable matter for strike out, in addition a claimant can establish a discrimination claim through inferences which may address

the reason why without comparators or may inform the tribunal's view of the comparators.

Section 15 Equality Act 2010

66. The claimant has provided the relevant information in the further and better particulars (paragraphs 26 and 27). He has identified the less favourable treatment. He has set out the "something". Again it is a matter of evidence that he has set out the bare bones of a section 15 claim.

Indirect Discrimination (paragraphs 28-31 (pages 136-137))

67. The claimant has complied with the information requested by the Judge at the case management and there is sufficient information for the respondents to know what the claim is about.

Grievance

The respondents say that they had no knowledge of the grievance. The claimant says he has clearly pleaded this at *paragraphs 166, 214, 216_of the further particulars*. The claimant referred to a reference by Karen Moffatt where she said there were grievances raised by the claimant which needed to be investigated but no formal grievances were raised.

68. The claimant says that he did raise a formal grievance and again it is a dispute that needs testing in evidence.

Conclusion

This is a matter which needs testing in evidence

Detriments

69. The respondent challenges the detriments on login details dealt with at paragraph 201/207 and 214 (page 58) of the grounds of claim (page 56). Again the claimant says if the respondents deny this it is a matter of dispute that should go to the Tribunal.

Conclusion

This is a matter which should be tested in evidence

Limited Notice

70. The claimant says he has pleaded this - it is set out at paragraph 53 of the grounds of claim and paragraph 74. Again, the claimant says it could and should be resolved by oral evidence.

Conclusion: It is a matter which needs testing by evidence.

Harassment

71. The claimant submits that Harassment is a matter of oral evidence at a hearing. It cannot simply be described by the respondent as an assertion without any documentary proof and say that it should be struck out.

Conclusion: This has to be a matter of evidence therefore it is not appropriate to strike out or issue a deposit order

Discrimination arising from disability (section 15 Equality Act 2010)

72. Paragraph 26 of the further particulars sets out the “something” arising from the claimant's disability. This is the answer to the question that the claimant was asked to provide and goes on to explain the disadvantage the claimant was put at by this. This is simply a conflict of evidence which needs to be resolved at Tribunal.

Conclusion: I agree with the above if the respondent needs further particulars it should serve a request

Reasonable Adjustments

73. It may be that the reasonable adjustments claims should (in full or in part) be framed as a victimisation claim. The claimant can do this following this hearing, but he has set out the bones of a reasonable adjustments claim. He adopts the PCPs from his indirect claim.

Conclusions: These are insufficiently pleaded even after the further particulars have been provided and as I commented appear to be victimisation claims. The claimant has 21 days to provide particulars from the date of promulgation of this judgment

74. This is set out at paragraph 28 of the further particulars.

75. Paragraphs 29-31 answer the remainder of the questions requested by the Judge at the preliminary hearing case management.

76. Paragraph 14 of the grounds of claim does address this claim, where it says:

“During this time the claimant was never rendered any appropriate support or suitable alternative arrangements. No reasonable adjustments were made despite multiple attempts by the claimant to engage with the staff at the Institute. Instead the respondents deliberately frustrated the claimant's attempt to return to work by changing the return to work procedures for the claimant to require him to attend a return to work meeting with members of the group against whom he had filed the bullying and harassment complaints which had not been investigated but had rather been dismissed out of hand.”

77. Paragraph 29 of the grounds of resistance says that the first respondent has a policy in which it holds meetings of disciplinary hearings in the absence of those who do not attend. This policy placed the claimant at a substantial disadvantage compared with those who do not have his disability. The claimant had explained to the respondent that he was hoping to be well enough to return to work and asked the respondents to leave him alone and stop repeatedly asking him to attend meetings. The claimant explained that this would give him time to make a sufficient recovery.

The claimant contends that this was a reasonable adjustment he was requesting which the respondent failed to make.

78. The claimant submits whilst the respondents dispute these matters, this is a matter which requires being tested at Tribunal.

Conclusion: I agree with the respondent that there is a contradiction between the claimant saying he was fit to return to work but refusing to attend a return to work interview or the disciplinary hearing. For example, what was the substantial disadvantage in being required to attend a back to work interview? if the claimant says he was not well enough then how was he fit enough to return to work; if the claimant says it was because the 'protagonists' were involved how is this related to his disability. If the claimant says these requirements were introduced because he had raised a discrimination complaint then they are victimisation complaints, if he says it was because of his protected disclosures it is a PID detriment claim. I cannot say these claims have no reasonable prospect of success, but I find they do fall within the criteria of little prospect of success due to the contradiction. Accordingly, I will issue a deposit order but at present I require evidence of the claimant's means.

Further Orders

79. The claimant to provide details of his means by 28 November 2022.

80. The claimant to provide further particulars as identified above by

81. The claim to be listed for a further preliminary hearing case management closed to consider further case management closed including preparation for and listing of a hearing to consider whether the claimant is a disabled person within the meaning of the Equality Act 2010.

82. The Employment Judge will seek to arrange for the claimant's unredacted medical records to be considered in chambers by another judge

Employment Judge Feeney
Date: 21 November 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON 22 November 2022

FOR THE TRIBUNAL OFFICE

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