



EMPLOYMENT TRIBUNALS

Claimant
Mr Kevin Legge

Respondent
Environment Agency

v

Heard at: Norwich by CVP

On: 13 June 2022

Before: Employment Judge Warren

Appearances

For the Claimant: In person

For the Respondent: Mr J Chegwiddden - Counsel

PRELIMINARY HEARING RESERVED JUDGMENT

1. The Claimant's claims of automatic unfair dismissal and detriment for having made Protected Disclosures, (whistleblowing) are dismissed upon having been withdrawn.
2. The Claimant's claims of harassment related to sex and religion or philosophical belief are dismissed upon having been withdrawn.
3. The Respondent's applications for strike out and deposit orders do not succeed.

REASONS

Background

1. I apologise to the parties for the very significant delay in this decision being conveyed to them. The tribunal is very short on typing resources and it has taken 6 weeks for my dictation to be typed. I have corrected the typing and sent the decision for promulgation within one day of having received it.

2. Mr Legge was employed by the respondent as a Manager between 10 April 2005 and 6 April 2021. After early conciliation between 9 June and 2 July 2021, he issued these proceedings on 1 August 2021.
3. The matter came before Employment Judge Wyeth for case management at a closed preliminary hearing on 3 May 2022. At that hearing, EJ Wyeth identified the claimant's claim as:
 - 3.1 Ordinary unfair dismissal;
 - 3.2 Automatic unfair dismissal for having made protected disclosures;
 - 3.3 Direct sex discrimination;
 - 3.4 Direct discrimination because of a philosophical belief, and
 - 3.5 Victimisation.
4. EJ Wyeth recorded in his hearing summary that the claimant's particulars of claim attached to his ET1 ran to 8 pages and that for the preliminary hearing, he had produced a 45-page document reporting to be his summary of the issues in the case. EJ Wyeth records that he gave Mr Legge some very sensible advice on the wisdom of being succinct and that his interests are best served by focusing on, "*quality not quantity*".
5. EJ Wyeth listed today's open preliminary hearing and gave directions for Mr Legge to prepare a document entitled, "*Schedule of Claims and Issues*" in which he was to set out further particulars of his claim, including itemisation of the protected disclosures, the protected acts and the detriments relied upon.
6. Such a document was before me today as was, within the electronic bundle provided by the respondent, a helpfully annotated version of the same setting out the respondent's position in relation to the further information provided. Sometimes the respondent acknowledges that the allegations relied upon properly fall to be determined by the Tribunal, in some instances the respondent says the allegations are not pleaded and in some instances, they say that the allegation either has no reasonable prospects of success and should be struck out, or has little reasonable prospects of success and should be the subject of a deposit order.

Issues before me today

7. Employment Judge Wyeth stipulated that the issues for determination at this preliminary hearing were:
 - 7.1 To identify the complaints and issues that fall within the ambit of the ET1;
 - 7.2 Whether any of the claimant's complaints require amendment to his claim and if so, whether leave to amend should be granted;

- 7.3 Whether any or all of the complaints should be struck out under Rule 37;
- 7.4 Whether a deposit order should be made in respect of all or any of the complaints, and
- 7.5 Any further case management which may arise.

Withdrawal of the claimant's whistleblowing and harassment complaints

- 8. Mr Legge's schedule of claims and issues contained nothing in relation to the allegations in the claim form for automatic unfair dismissal and detriment for having made protected disclosures, (whistle blowing) nor of harassment.
- 9. In a letter to the respondent's solicitors and the Employment Tribunal dated 7 June 2020, Mr Legge said "*I do appreciate the importance that time and resources is well used in the forthcoming preliminary hearing and that the claim was proportionate. You will note that for this reason in the schedule of claim and issues I sent on 22 May 2022, I removed a large number of allegations, and I also removed the whistleblowing and harassment claims.*" (page 67) and, "*I have removed the claim for whistleblowing and harassment*". (page 69). At the outset of today's hearing, I asked that Mr Legge confirm his complaints of whistleblowing and harassment were not pursued. He replied that he had decided not to pursue those claims, but had changed his mind. I parked the issue, proceeded to analyse the schedule of claims and issues with Mr Legge, (which took all day) and returned to the issue at the conclusion of the hearing.
- 10. Mr Legge was under the impression that he would be able to keep open the whistleblowing and harassment claims and just pursue his other claims for the moment. I explained to him it would not be possible and all of Mr Legge's claims that were to be pursued, would have to be dealt with at the same time in the same final hearing. I explained to him that if he wished to pursue these claims, then I would have to arrange a further open preliminary hearing at which today's exercise would have to be repeated in respect of whistleblowing and harassment. That might involve postponement of the final hearing, (listed for 24-28 October 2022 currently). I further explained to Mr Legge that he had been given very clear instructions by EJ Wyeth on what he was to do for today and that in my view, his failure to comply with those instructions in respect of his claims for whistleblowing and harassment, if they are proceeded with, and his intimation to the respondents that he was not pursuing such claims, is unreasonable conduct. I knew already from Mr Legge, (in the context of the deposit order application) that he had sufficient means to meet any costs liability. I therefore said that if these claims were pursued, I would make an order for costs against him in respect of the respondent's costs of the second open preliminary hearing, such costs to be assessed at the end of that hearing.
- 11. Mr Legge decided that he did not wish to pursue whistleblowing and harassment claims. He confirmed that he withdrew those claims,

understanding that I would issue a judgment dismissing them upon withdrawal.

The law relevant to the issues to be decided today

Protected Act

12. At issue in today's hearing is whether some of the events to which Mr Legge refers and which he relies upon as protected acts, meet the definition of the same at s.27(2). In particular, in relation to s.27(2)(c), "*doing any other thing for the purposes of or in connection with this Act*".
13. In *Aziz v Trinity Street Taxis Limited 1988 ICR534* the claimant had secretly recorded conversations. He was expelled from the respondent organisation for doing so. The question before the Court of Appeal was whether his making of the recordings had been an act, "*by reference to*" the Race Relations Act 1976. The court held the act could properly be said to have been done "*by reference to*" the Race Relations Act if it was done by reference to the same in the broad sense, even though the claimant had not focused his mind specifically on any provision of the Act. The test under the Equality Act 2010, whether the step taken was, "*for the purposes of*" or "*in connection with*" seems to me, wider than in the earlier legislation.

List of Issues

14. A list of issues is a case management tool. The tribunal has to decide a claimant's pleaded case, but a list of issues identifies what issues of fact and law have to be determined in order to decide the outcome of the case. It should reflect the claimant's pleaded case. It enables the parties to understand what documents are relevant and what needs to be covered in witness statements and cross examination. It enables the tribunal to ensure at the hearing, that everyone stays focussed on the issues and that it makes determinations on everything that it needs to.
15. In *Parekh v London Borough of Brent [2012] EWCA Civ 1630* at para 31 Mummery LJ said this:

"A list of issues is a useful case management tool developed by the tribunal to bring some semblance of order, structure and clarity to proceedings in which the requirements of formal pleadings are minimal. The list is usually the outcome of discussions between the parties or their representatives and the Employment Judge. If the list of issues is agreed then that will, as a general rule, limit the issues at the substantive hearing to those in the list"

Pleaded case

16. The starting point in identifying a claimant's pleaded case, is his ET1.
17. Sometimes, where insufficient detail is given in the ET1, it will be necessary to ask for further information, or further and better particulars, of something

that is referred to in ET1. When that further information is provided, it becomes part of the claimant's pleaded case.

Amendments

18. If a claimant wishes to rely upon allegations which have not been mentioned in his ET1, then it will be necessary for him seek permission of the tribunal to amend his claim in order to add those allegations.
19. Whether an ET1 contains a claim has to be judged by reference to the whole document, see ONS v Ali [2004] EWCA Civ 1363.
20. When considering an application to amend, one must have regard to the guidance of Mummery J, (as he then was) in the case of Selkent Bus v Moore [1996] ICR 836. In exercising discretion, a Tribunal should take into account all the relevant circumstances and should balance the relative injustice and hardship of allowing or refusing the amendment.
21. Non-exhaustive examples of what might be relevant circumstances given by Mummery J included:
 - 21.1 The nature of the amendment, whether it is a minor error, a new fact, a new allegation or a new claim;
 - 21.2 The applicability of time limits and if the claim is out of time, whether time should be extended, and
 - 21.3 The timing and manner of the application and in particular, why an application had not been made sooner.
22. Selkent was revisited by Underhill LJ in the Court of Appeal in Abercrombie v Aga Rangemaster Ltd [2014] ICR 209 and the guidance of Mummery J approved. Commenting on the now often referred to distinction between label substitution on pleaded facts as compared to substantial alterations pleading new causes of action, Underhill LJ said that it was clear that Mummery J was not suggesting so formalistic an approach that the fact that an amendment pleading a new cause of action, weighed heavily against allowing an amendment. These are just factors likely to be relevant in striking the balance of injustice and hardship. He said that the focus should be not so much on, "formal classification" but more on the extent to which the amendment is likely to involve different lines of enquiry, "the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that it will be permitted". See paragraphs 47 and 48.
23. On the question of time limits, section 123(1) of the Equality Act 2010 requires that a claim shall be brought before the end of the period of three months beginning with the date of the act to which the complaint relates or such further period as the Tribunal thinks just and equitable. Conduct

extended over a period of time is treated as having been done at the end of that period, (section 123(3)).

24. In Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 the Court of Appeal clarified that there was no requirement to apply the Limitation Act checklist or any other check list under the wide discretion afforded tribunals by s123(1), although it was often useful to do so. The only requirement is not to leave a significant factor out of account, (paragraph 18). Further, there is no requirement that the tribunal must be satisfied that there was a good reason for any delay; the absence of a reason or the nature of the reason are factors to take into account, (paragraph 25).
25. For what it is worth, the Limitation Act checklist as modified in the case of British Coal Corporation v Keeble [1997] IRLR 336 is as follows:
 - 25.1 One should have regard to the relative prejudice to each of the parties, (this is so in respect of any exercise of judicial discretion);
 - 25.2 One should also have regard to all of the circumstances of the case which includes:
 - 25.2.1 The length and reason for delay;
 - 25.2.2 The extent that cogency of evidence is likely to be affected;
 - 25.2.3 The cooperation of the Respondent in the provision of information requested, if relevant;
 - 25.2.4 The promptness with which the Claimant had acted once she knew of facts giving rise to the cause of action, and
 - 25.2.5 Steps taken by the Claimant to obtain advice once she knew of the possibility of taking action.
26. Underhill LJ also explains in Abercrombie that just because the amendment relates to allegations that are out of time, that does not mean we should automatically disallow it. It is still in the tribunal's discretion to amend. However, that the allegations are out of time are an important factor on the side of the scales against allowing the amendment. A wholly different new claim ought not to be allowed out of time in the absence of, "very special circumstances" but, "where it is closely connected with the claim originally pleaded ...justice does not require the same approach". (See also Underhill J as he then was, in Transport and General Workers Union v Safeway Stores UKEAT0052/07). Issues of time on an amendment can be left to the final hearing, see Galilee v Commissioner of Police of the Metropolis UKEAT/207/16 and Reuters Limited v Cole UKEAT/0258/17.

27. The apparent merits of the proposed amendment may be relevant to the exercise of discretion, see for example Olayemi v Athena medical Centre UKEAT/0613/10 and Herry v Dudley MBC UKEAT/0170/17.
28. In exercising my discretion, I must have regard to the Overriding Objective and must seek to balance the relative prejudice to the parties. Rule 2 sets out the Overriding Objective 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.

Strike Out

29. Employment Tribunals Rules of Procedure, rule 37 provides that:
- (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;*
 - ...
30. It is the reasonable prospect of success aspect of that rule which concerns us. Anyanwu v Southbank Student Union 2001 ICR 391 is in broad, general terms, authority for the proposition that discrimination cases should be heard and not struck out.
31. In Morgan v Royal Mencap Society [2016] IRLR 428 then President of the EAT, Mrs Justice Simler, reminded us that the threshold is high, (paragraph 13). She acknowledges at paragraph 14 that there are cases where, if one

takes the claimant's case at its highest, it cannot succeed on the legal basis on which it is advanced and in those circumstances, it will be appropriate to strike out. However, she says, where there are disputed facts, unless there are very strong reasons for concluding that the claimants view of the facts is unsustainable, a resolution of the conflict of facts is likely to be required.

Deposit Order

32. The Employment Tribunals' rules of procedure at Rule 39 provide as follows:

(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 that allegation or argument.

...

33. There is guidance on deposit orders from Mrs Justice Simler, (as she then was) in the case of Hemdan v Ishmail and another UKEAT/0021/16. She reviewed the legal principles to be applied and said at paragraph 10,

"There can accordingly be little doubt in our collective minds 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."

34. At paragraph 12,

"The test for ordering payment of the deposit order by a party is that the party has little reasonable prospect of success in relation to a specific allegation, argument or response, in contrast to the test for a strike out which requires a tribunal to be satisfied that there is no reasonable prospect of success. The test, therefore, is less rigorous in that sense, but nevertheless there must be a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or the defence. The fact that a tribunal is required to give reasons for reaching such a conclusion serves to emphasis the fact that there must be such a proper basis."

35. She says at paragraph 13,

"Where there is a core factual conflict it should be properly resolved at a full Merits Hearing where evidence is heard and tested."

Analysis of claimant's alleged Protected Acts

36. A prevailing theme of Mr Legge's case is that the respondent's management were pursuing a feminist agenda, seeking to appoint or promote women rather than men to management positions. Nearly all of the alleged protected acts are steps taken by Mr Legge to refuse to do the respondent's bidding by favouring women over men in recruitment or promotion. He says that to have done so would have been discrimination on the grounds of sex, contrary to the Equality Act 2010. If what he says is true, (and it is not my function today to determine whether or not it is true) then his actions are, in my view "*in the broad sense*" for the purpose of and in connection with the Equality Act 2010.
37. **Protected Act 1:** Supporting Mr Richard Porter by challenging and refusing Ms Larmour's pressure to encourage Ms Ruth Pontillo to raise a grievance against him. Mr Legge says he believed it was intended to undermine and manage Mr Porter out. The link to discrimination on Mr Legge's case is that it was part of the respondent's agenda to change the gender balance of Mr Legge's team. The respondent says that I should strike this out or in the alternative, make a deposit order. If one takes Mr Legge's case at its highest, this is capable of amounting to a protected act. I will not strike it out. I will return to the question of whether or not a deposit order should be made.
38. **Protected Act 2:** On 22 July 2019 challenging Ms Larmour and refusing to positively discriminate when Mr Legge rejected a female candidate based on merit in answer to a false accusation of discrimination from her. The respondent says that this is not pleaded. Against the backdrop of alleged pressure to discriminate, it is clearly pleaded. For example, at the end of paragraph 21 and at paragraph 23, Mr Legge referred to being treated with hostility after appointing a male candidate not a female candidate. The information provided is further and better particulars from a litigant in person.
39. Had I decided otherwise, I would have found that it is in accordance with the overriding objective to grant this litigant in person leave to amend, notwithstanding that it is out of time, the balance of prejudice being in the claimant's favour. The purpose of holding a preliminary hearing in discrimination cases where there are litigants in person is precisely this; to identify the claimant's case with clarity so that the respondent can answer it, ensuring that the litigant in person is not disadvantaged because of his or her lack of legal representation or legal knowledge. There is no great prejudice to the respondent in having allegations identified at this early stage, other than the obvious point that they will now have to answer allegations that they would not otherwise have faced. There should be no significant impact on cogency of evidence caused by the delay at this stage. The reason for the delay is that Mr Legge is not a lawyer, but a lay person who does not understand the process. He has attempted to provide clarity once he has understood the necessity. It would be excessively formal and disproportionate not to allow amendment at this early stage.

40. Mr Legge refusing to discriminate is an act in connection with the Equality Act 2010.
41. **Protected Act 3:** On 9 and 10 September 2019, challenging discrimination by Mr Luke Farrington, Tracey Earth and Laura, (surname unknown) during an interviewing process where the wording used and the scoring adopted was biased in favour of women over men in an attempt to positively discriminate in respect of women candidates. The respondent says that this allegation is not pleaded. It is in my judgment further particulars and is therefore pleaded. Were it not, I would have allowed amendment, for reasons explained above. It is not suggested that this allegation should be struck out nor the subject of a deposit order.
42. **Protected Act 4:** Mr Legge says that on 22 October 2019 during his interim performance review, he gave feedback to Ms Larmour regarding what he describes as her lack of boundaries in recruitment and the pressure that he felt under. He says he was making it clear to her that her approach could lead to a complaint and that she could not rely upon him to collude with any kind of discrimination. The respondent's position is that this is not pleaded and should be struck out or made the subject of a deposit order. Mr Legge agrees he has not pleaded this. For reasons previously explained, because Mr Legge is a litigant in person, I will allow the amendment. If true, his alleged feedback was an act of or in connection with the Equality Act 2010. I will not strike the allegation out. I will come back to the question of a deposit order.
43. **Protected Act 5:** Mr Legge says that emails to Ms Larmour on 24 and 25 January 2020 attaching a stress plan and giving her feedback about her behaviour caused him stress which was impacting on his capacity to balance work, given his childcare commitments. The respondent says that this allegation is not pleaded and should be struck out. Mr Legge refers to paragraph 25 and 26 of his particulars of claim. He does indeed at paragraph 25 refer to writing to Ms Larmour about causes of stress, including the impact of her behaviour on him as a single parent. The allegation does seem to be pleaded. It is Mr Legge's case that he was subjected to direct discrimination by Ms Larmour; her inflexibility towards him having regard to his being a single parent (had he been a woman, he says he would have been treated more favourably by Ms Larmour). He says that Ms Larmour would have known that his complaints to her about her behaviour in relation to his status as a single parent might have led to a complaint of discrimination against her which is therefore something done in connection with the Act and is therefore, potentially, a protected act. The allegation is pleaded, I will not strike it out. I will come back to the question of a deposit order.
44. **Protected Act 6:** In January to March 2020, Mr Legge says that he challenged Ms Larmour about her preventing him from appointing somebody called Toby Crimmins to a senior advisor position when he was the best candidate, insisting that Mr Legge should readvertise. He says that she would have known he was objecting to her discriminating against Mr

Crimmins. For reasons previously explained, I accept this allegation as further particulars of a pleaded allegation. The respondent says that it should be struck out. I decline to do so; if correct, it was something done for the purposes of or in connection with the Act. I will return to the question of a deposit order.

45. **Protected Act 7:** Mr Legge says that in February 2020 in relation to a different recruitment process from that referred to in respect of protected acts, he told a Ruth Pontillo, (who had called him on behalf of Ms Larmour) to say that it would be unfair to appoint to a vacant position the lower scoring female candidate (Jane Pardo-Figueroa) instead of Toby Crimmins, who had scored higher. I accept that this is further and better particulars of a pleaded claim. If true, it is an act for the purpose of or in connection with the Act and I will not accede to the respondent's suggestion that I should strike it out. I will return to the question of a deposit order.
46. **Protected Act 8:** Mr Legge says that in an email dated 30 March 2020 to Ms Larmour, he complained about discrimination relating to her treatment of him in the context of his being a single parent father. At paragraph 30 of his particulars of claim, he refers to his role as a single parent and in March and April 2020 was not provided with support to enable him to balance childcare and home schooling. The respondent says this allegation was not pleaded but I accept that it is further particulars of a pleaded allegation. Had I decided otherwise, I would have allowed an amendment for reasons previously explained. The respondent does not suggest that this is an allegation that should be struck out or made the subject of a deposit order.
47. In respect of alleged **protected acts at 9 through to 13**, the respondent accepts that in his grievance and the annexed documents, Mr Legge raises issues of discrimination amounting to protected acts as set out in his schedule of claim and issues. The respondent does not suggest these should be struck out or made the subject of a deposit order.

Philosophical belief – open preliminary hearing?

48. The Employment Tribunal has understood that Mr Legge's claim of discrimination on the grounds of religion or philosophical belief is that he says those about whose actions he complains are feminists, which he says, is a philosophical belief he does not hold. He says that he has been discriminated because he does not hold that philosophical belief. He says that he was treated less favourably than he would have been had he been a feminist.
49. Mr Chegwidden suggested on behalf of the respondent that this ought to be the subject of an open preliminary hearing. He says the respondent's witnesses will give evidence to the effect they do not hold such a philosophical belief.
50. I declined to order an open preliminary hearing. In my view, it would not be in accordance with the overriding objective to do so. Most of the allegations are duplicated as either allegations of detriment because of philosophical

belief or because of gender. The witnesses would still be required to attend. An open preliminary hearing would therefore entail those witnesses attending Court to give evidence twice; even if the decision went in favour of the respondent, no hearing time at the final main hearing would be saved.

Comparators

51. We agreed that;
 - 51.1 The hypothetical comparator in respect of the sex discrimination claim would be a female manager in the same position as Mr Legge, a single parent, primary carer with one child aged 10.
 - 51.2 The hypothetical comparator in respect of the discrimination claim relating to religion or philosophical belief would be a manager in the same position as Mr Legge, (gender neutral) who is not a feminist.
52. Mr Legge confirmed he has no actual comparator in respect of his sex discrimination claim.
53. In respect of his religion and philosophical belief discrimination claim, Mr Legge relies upon Mr Luke Farrington, who is a feminist, as an actual comparator.

Analysis of Mr Legge's allegations of detriment/less favourable treatment

54. **Allegation 1:** Mr Legge makes three allegations of incidents where he says Ms Larmour was seeking to manage him out. His case is that had he been a woman, she would not have treated him this way and had he been a feminist, she would not have treated him this way.
55. Mr Chegwidenn says Ms Larmour appointed a man to a similar position to that of Mr Legge, (Mr Legge agrees) and therefore the premise of these three allegations is not credible and they should be the subject of a deposit order. Mr Legge says that the person referred to is Mr Farrington, who was a feminist. These are matters to be explored in evidence, there is no concrete tangible basis on which I could say at this stage that he has little prospects of success. I will not make a deposit order.
56. Mr Chegwidenn said that allegation 1c, that Ms Larmour had allocated Mr Legge work that was deliberately vague and meaningless, was not pleaded. Mr Legge said that it was alluded to in an email referred to at paragraph 25 of his particulars of claim. I find that this allegation amounts to further particulars of the pleaded case and had I found otherwise, I would have granted leave to amend for reasons previously explained.
57. **Allegation 2:** The respondent has no objection in principle to Mr Legge relying upon the four allegations made in support of his contention that Ms Larmour sought to manage him out and ostracise him in order to meet gender targets and victimise him.

58. However, Mr Chegwidden did suggest allegation 2c, the reference to the imposition of an improvement plan, was not pleaded. Mr Legge agreed that it was not pleaded. He says it was referred to in his grievance and was indirectly referred to in his particulars of claim in terms of his references to false accusations and overloading of work. For reasons previously explained and in light of Mr Legge's status as a litigant in person, I allow him leave to amend his claim so as to incorporate this allegation. Any issues of time can be resolved at the final hearing.
59. **Allegation 3:** The respondent says that allegation 3a relating to Ms Larmour creating obstacles to flexible working so that Mr Legge could home school his son is not pleaded. Mr Legge refers in paragraph 22 of his particulars of claim, to his needs as a single parent being dismissed. I accept that this allegation amounts to further particulars of his pleaded claim. Had I decided otherwise, I would have allowed the amendment for reasons previously explained.
60. The respondent has no objections to Mr Legge relying upon allegations 3b, f, g and h.
61. Allegation 3c is that Mr Legge says Ms Larmour told him he should let his son watch TV so that he can deliver his work, rather than provide home schooling. Mr Chegwidden says there is no evidence of less favourable treatment and he says the same point applies to allegation 3d, which is Mr Legge's complaint of Ms Larmour telling him to get parenting advice from his colleagues. It is suggested this allegation should be struck out or made the subject of a deposit order. Mr Legge says these comments by Ms Larmour were made with threat because she was not happy with him seeking the flexible working offered and she was treating him as if he was doing something wrong. He says that had he been a woman she would not have made those remarks. These are issues that have to be decided after hearing evidence. The claimant's case is to be taken at its highest for the purposes of the strike out application. I will not strike out these two allegations, nor applying the less rigorous test, will I make them the subject of a deposit order.
62. **Allegation 4:** The respondent accepts these allegations 4a-f are pleaded but submits that they should be the subject of a deposit order. Mr Chegwidden refers to Mr Legge's grievance, which is at page 184 of the bundle. He says the only reference to discrimination therein, is where he says, "*My complaint relates to bullying and discrimination on the grounds of gender...*". There is no reference, they say, to philosophical belief, to feminism. Mr Legge says that there are references to feminism in his annexes. In particular, he says in a meeting it is noted he had said they were told that they should all be feminist, the respondent knew he was not a feminist and that a lot of the allegations he was raising were about men which he would not have raised if he was a feminist. These are matters to be explored in evidence and I cannot, on the basis on what I have been told and shown, form a view on prospects of success. I decline to make a deposit order.

63. **Allegation 5:** The respondent accepts that alleged detriments 5a-j are pleaded and will properly fall to the Tribunal to determine. There is no suggestion of strike out or deposit order.

Unfair Dismissal

64. The respondent does not suggest that Mr Legge's complaint of unfair dismissal should be the subject of a deposit order.

Deposit Order

65. As I have just noted, the respondent does not pursue an application for a deposit order in respect of the claim for unfair dismissal.
66. It is a central plank to Mr Legge's discrimination case that the respondent was pursuing a policy of positive discrimination in favour of women (which he describes as a feminist agenda) which he was resisting. The Tribunal's view on that will be key to the credibility in respect of most of the protected acts and the alleged detriments. I cannot properly form a view on that without having heard the evidence. I can see no proper basis for forming any view on prospects of success one way or the other, before the evidence is heard. I recognise that there may be an instinctive reaction to the premise on which Mr Legge's case is founded, that it is improbable. However, such a view is prejudicial without having any proper basis and is not in my view, a reason to make a deposit order. That said, I would not wish Mr Legge to take any comfort from the fact that I do not make a deposit order.

The Issues

67. By reference to Mr Legge's schedule of claims and issues, having regard to our discussions during the preliminary hearing and my analysis set out above, I identify the issues in this case as set out below. The parties will note the orders at the end of this hearing summary contain the usual provision inviting the parties to write to the Tribunal if they think that the list of issues is wrong in any important way. I reiterate in particular to Mr Legge, that the list of issues is a bullet point summary, a checklist.

Direct discrimination on the ground of philosophical belief

68. Is feminism capable of amounting to a philosophical belief in accordance with section 10(2) of the Equality Act 2010?
69. If so, has the respondent subjected Mr Legge the following treatment?:
- 69.1 Was Ms Larmour undermining, belittling and humiliating Mr Legge in front of Catherine Forster on 6 June 2019.
- 69.2 Ms Larmour creating a role that duplicated the role of Mr Legge and appointing Mr Farrington to that role.

- 69.3 Ms Larmour allocating to Mr Legge work that was deliberately vague and meaningless.
- 69.4 Ms Larmour giving Mr Legge an unfair performance rating without reasonable explanation on 22 October 2019.
- 69.5 Ms Larmour telling Mr Legge to look for assignments in other teams on 18 February 2020.
- 69.6 Ms Larmour imposing an improvement plan on Mr Legge and using it to threaten him with dismissal on 24 January 2020.
- 69.7 Ms Larmour bombarding Mr Legge with unfair, false and retrospective criticism for example in a letter of 25 March 2020 and an email of 8 April 2020.
- 69.8 Investigators Lesley Worswick and Adam Lines selective use of witnesses, avoiding key witnesses.
- 69.9 The investigators adopting evasive, biased and selective gathering and reporting of evidence.
- 69.10 The investigators avoidance of and failing to investigate, allegations of discrimination.
- 69.11 Hearing manager Doug Wilson giving false and baseless reasons not to uphold Mr Legge's grievance.
- 69.12 Investigators delaying investigation of Mr Legge's grievance until after his dismissal.
- 69.13 Lucy Hunt, Mr Farrington and Neil Davies failing to protect Mr Legge from bullying and discrimination after raising his grievance.
- 69.14 Ms Larmour and Mr Farrington giving false statements to fabricate performance issues and Ms Hunt overriding the investigating managers recommendations by hiring a private investigator.
- 69.15 Allowing a conflict of interests between those investigating disciplinary charges and the decision makers.
- 69.16 Ms Larmour fabricating performance issues and an "*adverse – affect*" improvement plan of 24 February 2020, the letter of 25 March 2020 and the email of 8 April 2020.
- 69.17 Ms Larmour, "gaslighting" and lying about conversations in order to conceal her fabrication by reference to correspondence dated 3 March 2020, 25 March 2020, 17 March 2020, 11 March 2020 and 3 April 2020.
- 69.18 Ms Larmour threatening legal action disciplinary and dismissal when Mr Legge declined to take 3 months paid special leave.

- 69.19 Ms Hunt, Ms Larmour and Mr Farrington lying and concealing important facts when giving evidence in respect of the disciplinary proceedings.
 - 69.20 Ms Larmour and Mr Farrington excluding Mr Legge from the annual "*declaration of interest*" communication and the respondent's using that as evidence against him.
 - 69.21 The respondent's Ms Hunt, Ms Larmour, Mr Farrington, Mr Back, Ms Lawton and Mr Rawlinson exploiting measures in relation to Covid-19 as evidence against him.
 - 69.22 Failure to provide a neutral investigation in respect of the disciplinary proceedings.
 - 69.23 Dismissing Mr Legge without a genuine belief in his guilt or reasonable grounds for so believing.
70. If so, was that treatment less favourable treatment? In other words, did the respondent treat Mr Legge as alleged less favourably than it has treated or would have treated his comparators Mr Luke Farrington or a hypothetical comparator, (see above) in not materially different circumstances?
71. If so, was this because of Mr Legge's lack of a philosophical belief in feminism?

Direct discrimination on the grounds of sex

72. Mr Legge relies on the same allegations set out above as in the alternative, amounting to detriments because of his sex. In addition, he relies upon the following further allegations of detriment. Did the respondent treat Mr Legge as follows?:
- 72.1 Ms Larmour creating obstacles for him having flexible working arrangements so that he could home school his son.
 - 72.2 Ms Larmour overloading him with work whilst he was home schooling his son, bombarding him with retrospective unconstructive criticism and false allegations used to threaten him with legal and disciplinary action. Mr Legge refers to communications on 24 and 26 February, 3, 10, 11, 17 and 25 March and 3, 8 and 9 April 2020.
 - 72.3 Ms Larmour telling him on 9 March 2020, that his son should watch television so that he can do his work, rather than home schooling.
 - 72.4 Ms Larmour telling him to get parenting advice from his colleagues on 19, 25 and 30 March 2020.
 - 72.5 Ms Larmour putting him on the spot in meetings when he returned from childcare days on 30 March and 9 April 2020.

- 72.6 Ms Larmour refusing his request for support and flexible working during school closures and threatening him with disciplinary action if he did not accept 3 months paid special leave on 3, 6 and 9 April 2020.
- 72.7 Ms Larmour excluding him from leadership team communications in the period of 3 months special leave and removing him from the WhatsApp group on 15 April 2020.
- 72.8 Mr Farrington deliberately setting meetings at times that would clash with his childcare responsibilities, in September to December 2020 and for the department Christmas social in December 2020.
73. If so, was that treatment less favourable treatment? In other words, did the respondent treat Mr Legge as alleged less favourably than it treated or would have treated a hypothetical comparator, (see above) in not materially different circumstances?
74. If so, was this because of his sex?

Victimisation contrary to s.27 of the Equality Act 2010

75. Did Mr Legge do the following and if so did they amount to a protected act or acts?:
- 75.1 Supporting Richard Porter by challenging and refusing Ms Larmour's pressure to encourage Ruth Pontillo to raise a grievance in June/July 2019.
- 75.2 Challenging Ms Larmour, resisting pressure from her to positively discriminate after she had accused him of discrimination in rejecting a candidate on 22 July 2019.
- 75.3 On 9 and 10 September 2019 challenging discrimination in a selection process by Mr Farrington, Tracey Earth and Laura, (surname unknown).
- 75.4 On 22 October 2019 during his interim performance review, in feedback to Ms Larmour about recruitment and the pressure under which he was being placed, taking away his autonomy to recruit the best candidates on merit.
- 75.5 Emails to Ms Larmour on 24 and 25 January 2020 attaching a stress plan and giving feedback about the impact of her behaviour towards him.
- 75.6 January to March 2020 challenging Ms Larmour about her preventing him from appointing Mr Toby Crimmins to the senior advisor post.

- 75.7 Stating to Ruth Pontillo that it would be unfair to appoint a lower scoring candidate in the selection process, (Jane Pardo-Figuroa ahead of Mr Toby Crimmins) in March 2020.
 - 75.8 On 13 March 2020 emailing Ms Larmour to complain about discrimination in relation to his role as a single parent father.
 - 75.9 In raising his grievance dated 11 May 2020.
 - 75.10 In annex 2 to his grievance of 7 July 2020.
 - 75.11 In annex 3 to his grievance dated 25 August 2020.
 - 75.12 In annex 4 to his grievance dated 28 September 2020.
 - 75.13 In annex 5 to his grievance dated 19 October 2020.
76. If so, Mr Legge relies upon all of the above-mentioned alleged detriments except the first three, (paragraphs 61.1, 61.2 and 61.3) as having been inflicted upon him because he did a protected act and/or because the respondent believed that he had done or might do. The question for the Tribunal will be whether such detriments were inflicted upon him and if so, was that because of any of the protected acts?

Unfair dismissal

77. What was the principal reason for dismissal and was it a potentially fair reason in accordance with s.98(1)(2) of the Employment Rights Act 1996? The respondent says that it was the potentially fair reason of conduct. Specifically:
- 77.1 He operated an external business and had failed to declare an interest;
 - 77.2 Breach of the respondent's code of conduct by working as a counsellor during working hours, which was having an adverse effect on his duties;
 - 77.3 He had committed fraud by claiming a full-time salary while taking time off during the working day to provide counselling sessions, and/or
 - 77.4 He had been dishonest, giving a fictitious reason, (a burst pipe) to justify annual leave at short notice.
78. If so, was the dismissal fair or unfair in accordance with s.98(4) and in particular, did the respondent in all respects act within the so called "band of reasonable responses"? This will entail the Tribunal asking itself:
- 78.1 Whether the respondent held a genuine belief that Mr Legge was guilty of the alleged misconduct and if so, whether that belief was

reasonably held based upon reasonable grounds after conducting a reasonable investigation.

- 78.2 If so, the Tribunal will then ask whether the decision to dismiss fell within the range of reasonable responses that a reasonable employer might have to those circumstances, and
- 78.3 Whether a fair procedure was followed.

Remedy

- 79. If Mr Legge was unfairly dismissed, the remedy is compensation for financial loss:
 - 79.1 If the dismissal was procedurally unfair, what adjustment, if any, should be made to any compensatory award to reflect the possibility that Mr Legge would still have been dismissed had a fair and reasonable procedure been followed anyway?
 - 79.2 Would it be just and equitable to reduce the amount of any of Mr Legge's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ERA section 122(2); and if so to what extent?
 - 79.3 Did Mr Legge, by blameworthy or culpable actions, cause or contribute to his dismissal to any extent; and if so, by what proportion, if at all, would it be just and equitable to reduce the amount of any compensatory award, pursuant to ERA section 123(6)?
- 80. If the complaints of discrimination succeed, in addition to the question of compensation for financial loss, there will be the issue of what award should be made in respect of injury to feelings.

Case Management Orders

- 81. Because I was constrained to give a reserved decision, I explained to the parties that I would make such case management orders as seem to me appropriate. They are at liberty to write to the Tribunal and make representations as to any proposed variations to these case management orders, provided they do so within 14 days of this hearing summary and Judgment being sent to them.
- 82. This case is listed for final hearing over five days from **24-28 October 2022** in Cambridge. Mr Chegwiddden expressed his concerns that five days may not be sufficient. I share his concerns. However, a postponement and relisting is likely to result in the case being heard in mid-2024. Therefore, I direct that the listing shall be retained on the basis that the Tribunal will provide a reserved decision. I would hope that it will be possible for all evidence to be taken and closing submissions heard before the conclusion

of the fifth day. The parties should prepare the case for hearing on that basis. Two further days have been allocated to the case on **24 and 25 November 2022** so that the Tribunal can reconvene in chambers, (that means the parties do not attend) in order to reach its reserved decision, (it was not possible to list the decision days any sooner).

83. In the meantime, I make the case management orders set out below.

ORDERS

Made under the Employment Tribunals Rules of Procedure 2013

THE ISSUES

1. The parties must inform each other and the Tribunal in writing **within 14 days of the date this is sent to them**, providing full details, if what is set out in the Case Management Summary section above about the case and the issues that arise is inaccurate and/or incomplete in any important way.

AMENDED GROUNDS OF RESISTANCE

2. The Respondent has leave by no later than **29 July 2022** to file and serve amended grounds of resistance, if so advised, in so far as that is necessary arising out of the clarification of the issues set out in this hearing summary.

DISCLOSURE OF DOCUMENTS

3. On or before **29 July 2022** each party shall send to the other a copy of the documents in their possession or control relevant to the issues in this case, whether they assist their case or not.

BUNDLE OF DOCUMENTS

4. By **19 August 2022** the parties must agree which documents are going to be used at the final hearing. The respondent must paginate and index the documents, put them into one or more files ("bundle"), and provide the claimant with a 'hard' and an electronic copy of the bundle **by the same date**. The bundle should only include documents relevant to any disputed issue in the case and should only include the following documents:
 - 4.1. The Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put right at the start of the bundle, in chronological order, with all the other documents after them;

- 4.2. Documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.
5. In preparing the bundle the following rules must be observed:
 - 5.1. Unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
 - 5.2. The documents in the bundle must follow a logical sequence which should normally be simple chronological order.
6. The Respondent should bring 4 additional copies of the bundle to the final hearing.
7. Where an electronic bundle is provided in PDF format:
 - 7.1. The case number(s) should be clearly identifiable.
 - 7.2. Pages in a PDF bundle must be numbered so that they correspond to the automated PDF numbering system.
 - 7.3. Any additional or late submitted documents should be numbered sequentially at the end of the PDF file and not inserted between other pages.
 - 7.4. The parties may choose to send the bundle index or table of contents as a separate PDF file.
 - 7.5. Where possible documents should appear the right way up in portrait mode.
 - 7.6. Images of text must have been subjected to Optical Character Recognition.

WITNESS STATEMENTS

8. On or before **16 September 2022** the parties shall exchange written witness statements (including one from a party who intends to give evidence). The witness statement should set out all of the evidence of the relevant facts, set out in chronological order, which that witness intends to put before the Tribunal. The Claimant's statement should contain evidence relevant to the remedy claimed, including financial claims and losses. Such statements should consist of facts only and should not consist of argument, hypothesis or supposition.

A failure to comply with this order may result in a witness not being permitted to give evidence because it has not been disclosed in a witness statement; or in an adjournment of the hearing and an appropriate order for costs caused by such adjournment.

9. The statement should be typed if possible and should be set out in short, numbered paragraphs. If reference is made to a document, it should include the relevant page number in the agreed bundle.
10. Each party shall bring 4 copies of any such statement of each of their own witnesses to the hearing.

CHRONOLOGY AND CAST LIST

11. An agreed, if possible, neutral chronology and cast list shall be prepared by the Respondent's representative's and filed with the Tribunal on the morning of the first day of the final main hearing.

Public access to employment tribunal decisions

The parties should note that all judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

President's guidance

The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at: www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/

Other matters

(a) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(b) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(c) You may apply under rule 29 for this Order to be varied, suspended or set aside.

Employment Judge Warren

Date: 3 August 2022

Sent to the parties on: 11 August 2022

N Gotecha
For the Tribunal Office