



# EMPLOYMENT TRIBUNALS

**Claimants:** C Leadbetter  
C Van Deurs Goss

**Respondent:** Lancashire Constabulary

**Heard at:** Manchester ET                      **On:** 27 September 2023

**Before:** Employment Judge Malik (sitting alone)

## **Representatives**

For the claimants: Mr Randall (Solicitor)

For the respondent: Ms Brook-Ward (Counsel)

# JUDGMENT AT PRELIMINARY HEARING

1. The claimants' claims relating to any detriments after 22 February 2022 have no reasonable prospect of success and these post resignation detriments are struck out.
2. The respondent's application to strike out the remainder of the claimants' claims is dismissed.

# REASONS

## **Background**

1. This judgment has been produced following a preliminary hearing on 27 September 2023. The hearing was listed to deal with an amendment application by the claimants and a strike out and deposit order application by the respondent. The amendment application and deposit order application are dealt with in the case management order of the 26 March 2024.
2. The submissions by both parties took the duration of the day. The decision

on the strike out application was reserved with a chambers day listed for 16 October 2023.

3. I apologise for the delay in issuing this order which is due to a combination of other judicial business and unexpected judicial absence.

### **Factual background**

4. This case was part of a multiple case where the lead claimant was Mr Sanders. When the claim began it included nine other claimants. Since then some of the claimants have withdrawn their claims and have failed to engage in these proceedings. The lead claimant's case was separated and Mrs C Leadbetter and Mrs C Van Deurs Goss are the claimants subject to this judgment.
5. Their claims relate to the claimants' disclosures of information made about Sergeant Craig Evans and detriments they allege they suffered as a result of these disclosures.
6. By a case management order dated 17 July 2023, EJ Ross clarified the detriments relied upon by each claimant and this triggered the request for an amendment application to be made to determine whether the claimants should be permitted to proceed with the claims in these formats. Accordingly a preliminary hearing was listed on 27 September 2023 to determine the amendment applications. The hearing also dealt with respondent's application dated 19 May 2023 for deposit orders and strike out on the basis that the respondent argued that the claims had no reasonable prospect of success.

### **Legal framework**

7. The power to strike out arises under rule 37 of the Employment Tribunals Rules of Procedure 2013. Rule 37 provides as follows:

**“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...”**

8. As far as “no reasonable prospect of success” is concerned, a helpful summary of the proper legal approach to an application to strike-out is found in paragraph 30 of **Tayside Public Transport Co Ltd v Reilly** [2012] CSIH 46, a decision of the Inner House of the Court of Session. That case confirms that the power to strike out is draconian and may only be exercised in rare circumstances and should not result in an impromptu trial of the facts.
9. The case of **Mechkarov v Citibank NA** [2016] ICR 1121 the EAT (Mitting J) summarised the following approach in discrimination cases:

**“On the basis of those authorities, the approach that should be taken in a strike out application in a discrimination case is as follows: (1) only in the clearest case should a discrimination claim 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 ordinarily 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; and (5) a Tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts. “**

10. In **Ahir v British Airways plc [2017] EWCA Civ 1392**, Underhill LJ warned against of reaching a conclusion where the full evidence had not been heard or explored and confirmed that the hurdle for striking out was a high one.
11. Section 109(1) of the Equality Act 2010 sets out the position in relation to vicarious liability and confirms that ,” **Anything done by a person (A) in the course of A’s employment must be treated as also done by the employer”**.

## **Submissions**

### ***Respondent***

12. The respondent submitted under Rule 37(1) that the claims should be struck out in their entirety, or in the alternative parts of the claim on the basis that they have no reasonable prospects of success.
13. The arguments advanced were that there does not appear to be any pleaded correlation between the protected disclosure and the detriments.
14. Further, the respondent stated that Sergeant Evans was dismissed from the force on 22 February 2022 and therefore the respondent would not be vicariously liable for any detriment in relation to him after his employment had ceased.

### ***Claimant***

15. The claimants argued that there is a conflation of the provision of evidence and pleadings which should only state simple basic facts. I was referred to the case of **Mr Daniel Cox v Adecco & Others UKEAT/0339/19**, as an authority to show that a tribunal cannot decide whether a claim has reasonable prospect of success if it does not know what the case is.
16. I was reminded that there was no evidence in front of the Tribunal challenging the Claimant’s position and I should not stray into the realms of a mini trial. The claimants reminded me that taking their case at its highest that this is not a case that should be struck out.

17. The claimants' representative did not address the Tribunal, either in written or oral submissions, on the issue of detriments postdating 22 February 2022; being the date on which Sergeant Evans was dismissed.

## **Decision**

18. I consider that the respondent is not vicariously liable for the actions of Sergeant Evans following his dismissal on 22 February 2022. Section 109(1) of the Equality Act 2010 is quite clear that the employer is liable for the actions of a person in the course of their employment. It follows that once a person has left employment that their employer is not liable.

19. The respondent is therefore not liable for the detriments postdating 22 February 2022. I am persuaded by the respondents therefore that these detriments have no reasonable prospect of success and they are struck out.

20. Having heard from both parties on the prospects of success of the remaining detriments, I am not satisfied that I have been provided with strong or cogent evidence to satisfy myself that these claims have no reasonable prospect of success.

21. As is clear from the case law, discrimination cases are fact sensitive. If, as is the case here, the issues turn on the facts of the case then the Tribunal cannot be satisfied there is no reasonable prospect of success.

22. Where there is a dispute on the facts then it is advisable to leave those matters to a final hearing and not conduct a mini trial at a preliminary hearing.

23. Accordingly, the respondent failed to satisfy me that these matters have no reasonable prospect of success and their application to strike out the remainder of the claimants' claims is dismissed.

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Employment Judge Malik

2 April 2024

JUDGMENT SENT TO THE PARTIES ON

8 April 2024

FOR EMPLOYMENT TRIBUNALS

**Case Numbers: 2401658/2022  
2401661/2022**

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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