



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Chima

**Respondent:** CEGEDIM E-BUSINESS LTD

**HELD AT:** Manchester (by video conference)

**ON:** 26 September 2024

**BEFORE:** Employment Judge Slater

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Ms R Levene, counsel

# JUDGMENT

1. The complaint of unfair dismissal and the complaints of protected disclosure detriments are struck out on the grounds that they have no reasonable prospect of success.
2. The application to strike out the complaints of direct and indirect race discrimination is refused.

# REASONS

## Issues for this hearing

1. At a private hearing on 20 June 2024 this public preliminary hearing was listed for the purposes of considering the respondent's application to strike out the claim or alternatively make deposit orders and to carry out general case management. The claimant subsequently made an application to amend his claim to include a complaint of constructive unfair dismissal. This was also listed to be considered at this hearing if the judge considered it appropriate. The respondent also, in its renewed application, included a costs application. This was also listed to be dealt with today.

2. I said during the morning of the hearing that I thought it unlikely I would be able to get to the application for costs in the time available. In any event, I noted that no full application had been made. I had not seen any detail of costs which the respondent said have been incurred because of the alleged unreasonable behaviour by the claimant. Time did not permit me dealing with costs and Ms Levene invited me to reserve the costs application.

3. The judge had set out a list of complaints and issues and written that the parties should write in within 14 days if this was not correct. I am not aware of either party having done so. I take from this that the claimant was content with the way his complaints were identified.

4. The respondent made a renewed application for strike out/deposit order on 26 July 2024. This also included an application for costs.

5. The claimant responded to this application by an email dated 31 July 2024 (SB1).

### **Documents for the hearing**

6. In accordance with orders made by Employment Judge Eely at the private preliminary hearing, the respondent sought to agree a bundle of documents for use at this preliminary hearing with the claimant. The claimant did not respond to the respondent's email. The bundle of documents was provided both to the claimant and to the Tribunal by email dated 13 September 2024.

7. References to the main bundle in these reasons are indicated by B[number].

8. The respondent provided the Tribunal and the claimant with a supplementary bundle by email on 24 September at 12.27. Counsel's skeleton argument was provided on the same day. The supplementary bundle contained some documents relevant to the amendment application but also some documents which could be relevant to the strike out/deposit applications. Ms Levene apologised that these had not been included in the main bundle due to an oversight. The claimant said he had not read the supplemental bundle. I consider that the claimant had had sufficient time to do so but had chosen not to do so. It may well be that the claimant finds it easier to read documents in paper form and has no printer, but he put forward no medical reason why he could not read the documents in electronic form.

9. References to the supplemental bundle are indicated by SB[number].

10. During the afternoon of this hearing, the claimant denied that he had received the main bundle. When he was informed it had been sent by email dated 13 September 2024, he claimed he had just found it in his spam folder. However, Ms Levene pointed out that, in the skeleton argument he had sent to the tribunal at 17.32 on 25 September 2024, the claimant had cut and pasted this email. The claimant gave no explanation for providing this false information to the tribunal.

**Progress of the hearing**

11. I decided to deal with the amendment application first. I refused the application for reasons which I gave orally and which will be provided in writing if requested within 14 days of this document been sent to the parties.

12. After I dealt with the amendment application, I dealt with an application from the claimant to postpone dealing with the strike out/deposit applications on the basis that the claimant said he had only received the supplementary bundle 48 hours before and had not seen it until today. The claimant had sent this written application, contained in a document with the title "claimant's skeletal [sic] argument – hearing 26/09/24" to the Tribunal at 10.59 on the morning of the hearing, during a short adjournment taken to allow me and Ms Levene to read the list of matters the claimant relied on for his alleged constructive dismissal. This 3 page document could not have been written during the short adjournment; it must have been written prior to the hearing. The claimant provided no explanation as to why it was not sent earlier.

13. I refused the application to postpone dealing with the strike out and deposit applications for reasons which I gave orally and which will be provided in writing if requested within 14 days of this document been sent to the parties. The reasons included noting that some of the supplemental bundle included documents relevant to the amendment application. Other documents which might be relevant to the other applications were either authored by the claimant or had been addressed to him. I gave an extended lunch break, from 1.25 until 2.45 to allow the claimant to refresh his memory of these documents. He told me after the break he had chosen not to do this.

14. Before we broke for the extended lunch break, I said I would be dealing with the strike out and deposit applications that afternoon. I set out a timetable allowing 30 minutes for the claimant's evidence in relation to financial means and a maximum of 30 minutes oral submissions for each party. Both parties had already provided written submissions. I heard the claimant's evidence as to financial means and Ms Levene made her submissions. We took a five minute break and then the claimant said he was not able to make submissions in 30 minutes. He said it was manifestly unfair to him as a litigant in person. He again applied to postpone the hearing. I said that nothing had changed since I gave my decision that morning so I was not changing that decision. I told the claimant that he could use the time to make submissions as to why his claim should not be struck out and deposit orders not made or he could choose not to make submissions.

15. The claimant asked for time to make written submissions and submit further documents. In support of this application, he said, for the first time during the hearing, that he had not received the main bundle. After an adjournment, the email sending the bundle to the claimant on 13 September was found and the claimant then said he had just found it in his spam folder. As noted above, Ms Levene drew my attention to the cutting and pasting by the claimant of this email in the document he had sent the previous evening. I refused the claimant's application to have more time to present more written arguments and send further documents. My reasons were as follows. The claimant had been untruthful in saying he was unaware of the main bundle until today and that he had just found it in his spam folder. He had cut and pasted the email in his written document sent at 17.32 the previous evening. The claimant put arguments in writing relating to his application the evening before the hearing. He had

the opportunity to make any particular points orally about why his claim should not be struck out in 30 minutes this afternoon. He chose not to use the time to do this. I did not consider it in the interests of justice to allow the claimant to delay dealing with this application further and cause the respondent additional costs in having to respond to further written submissions by him. I said that, in making my decision on the strike out and deposit applications, I would be taking the claimant's case at its highest on the basis of his lengthy particulars of claim, the clarification of his claim recorded at the private preliminary hearing in June 2024 and his written submission sent to the tribunal at 17.32 the evening before the hearing.

16. I notified the parties that I was reserving my decision and had a day in Chambers to decide this on 10 October 2024. I said that, if any claims proceeded to a final hearing, I would decide whether I could do case management on paper or whether to arrange a further preliminary hearing. Ms Levene had invited me to clarify certain matters related to the protected disclosures with the claimant at this hearing. I did not feel it appropriate to do it at this stage. I said that if needed, I would consider whether to do this on paper or at a further preliminary hearing to be arranged.

17. The claimant, as noted above, gave demonstrably untrue information that he had not seen the main bundle for this hearing until he found it in a spam folder this afternoon. The claimant had received the main bundle by email on 13 September 2024. He received the supplemental bundle two days before this hearing, together with respondent's counsel's skeleton argument. If he chose not to read them before this hearing, that is a matter for him. The claimant had objected to receiving things by email from the respondent. However, he told me he had no medical condition that made it difficult for him to read documents on screen. I considered the claimant acted unreasonably in objecting to receiving correspondence by email, whilst he himself continually used email and gave no good reason why he could not receive things by email as well as sending them.

### **The application to strike out the complaints**

18. The claimant's complaints, as clarified at the private preliminary hearing, were of:

- 18.1. Unfair dismissal relying on s.103A Employment Rights Act 1996 (ERA) (protected disclosure), based on an asserted actual dismissal.
- 18.2. Detrimental treatment on the grounds of making protected disclosures.
- 18.3. Direct race discrimination.
- 18.4. Indirect race discrimination.

19. The complaints as clarified at that hearing were set out in the Annex to the record of that hearing, sent to the parties on 2 July 2024. For ease of reference, I reproduce that Annex at the end of these reasons.

20. The respondent's renewed application to strike out was contained in an email dated 26 July 2024. It sought strike out of all the complaints on the grounds:

- 20.1. That the complaints had no reasonable prospect of success;

20.2. That the claim was scandalous or vexatious;

20.3. Because the manner in which the proceedings had been conducted by the claimant had been scandalous, unreasonable or vexatious; or

20.4. Because it was no longer possible to have a fair hearing in respect of the claim.

21. The application, in the alternative, sought deposit orders on the grounds that the complaints had little reasonable prospect of success.

22. Ms Levene's written submissions dealt with all these grounds, although the majority of the submissions were directed to the prospects of success. I do not seek to summarise the written submissions, which can be read if required, or the oral submissions which highlighted parts of the written submissions. I will address the main points in my conclusions.

### **The claimant's response to the application**

23. As noted above, the claimant chose not to use the time allocated to make oral submissions as to why the complaints should not be struck out. However, I considered his particulars of claim, the clarification of his claim recorded at the private preliminary hearing and the claimant's written submissions sent to the Tribunal at 17.32 the evening before this hearing.

### **Law**

24. Rule 37 of the Employment Tribunals Rules of Procedure 2013 provides:

“(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;
- (b) That the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) For non-compliance with any of these Rules or with an order of the Tribunal;
- (d) That it has not been actively pursued;
- (e) That the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).”

25. Where facts are in dispute, it would only be “very exceptionally” that a case should be struck out on the grounds of no reasonable prospect of success without the evidence being tested: **Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330 CA.**

26. An employee's case will be taken at its highest to assess the prospects of success on a strike out application: **Malik v Birmingham City Council and anor EAT 0027/19.** The Tribunal must carefully consider the claim as pleaded and as set out in relevant

supporting documentation before concluding that there is nothing of substance behind it.

27. Discrimination complaints should not be struck out on the grounds of no reasonable prospects of success except in the most obvious cases: **Anyanwu and anor v South Bank Student Union and anor 2001 ICR 391 HL**. This is because discrimination cases are particularly fact sensitive and it is a matter of public interest that they should be fully examined to make a proper determination.

## Conclusions

### No reasonable prospects of success

#### Unfair dismissal

28. The respondent argues that this complaint has no reasonable prospect of success because the complaint is based on an argument that he was actually dismissed on 2 October 2023 but it is clear from his letter of 29 September 2023 that he resigned with immediate effect on that date.

29. I do not agree with this submission. I consider that there is ambiguity in the claimant's letter of 29 September 2023 about his intentions. Although he writes (SB56) that he is unable to continue in the employment and had made his last visit to the employer's offices and the employer had made it impossible for him to continue in the employment, and also "I am done with these bunch of criminals! You will only ever see my face again in court!" (SB61), I do not consider that it is clear that he is resigning with immediate effect. An intention to resign at some point in the future is not the same as resigning. The claimant writes "if the employer refuses to negotiate and pay me a severance package to break ties amicably then an Employment Tribunal claim will be launched immediately" (SB59). This could suggest he does not yet regard his employment as having ended. This is made more explicit where he writes: "I hereby officially request the employer to place me on Garden Leave immediately without any further delay as it has become apparent that I will be leaving the employment for reasons explained above." (SB62). He requests garden leave on full pay and for the respondent to commence employment severance negotiations for a financial package for the severance within 7 days from the date of the letter, giving the name of someone he describes as his barrister, to engage with.

30. Because of this ambiguity, I do not consider the claimant has no reasonable prospect of success in arguing that he had not resigned before 2 October 2023 and, therefore, was actually dismissed by the respondent's letter of that date, which purported to accept a resignation.

31. The claimant had less than two years' service when his employment ended. His complaint of unfair dismissal is brought under s.103A ERA. He will only succeed in his unfair dismissal complaint if the Tribunal is satisfied that the reason or principal reason for his dismissal was that he had made protected disclosures.

32. For the purposes of considering this strike out application, I must take the claimant's case at its highest, assuming that disputes of fact will be resolved in his favour.

33. The respondent submits that the alleged protected disclosures relied upon by the claimant cannot amount to protected disclosures as a matter of law.

34. I deal below, under the heading of “protected disclosures” with the claimant’s prospects of success in establishing that he made protected disclosures as defined in the ERA. For the reasons I give, I conclude that the claimant has no reasonable prospect of success in his arguments.

35. If the claimant does not have a reasonable prospect of success in establishing that he made protected disclosures, it follows that the claimant’s complaint of unfair dismissal has no reasonable prospect of success. The reason or principal reason for dismissal cannot have been the making of protected disclosures if no disclosures which meet the definition of protected disclosures were made. For these reasons, I conclude that the complaint of unfair dismissal should be struck out.

*Protected disclosures*

36. The respondent submits that the alleged protected disclosures cannot, in law, amount to protected disclosures. The respondent argues that there is no reasonable prospect of success in the argument that the claimant had a reasonable belief that the disclosures were in the public interest and/or that the information tended to show one or more of the relevant failures.

37. Section 43B(1) ERA provides: “In this Part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following -...” A list of the relevant categories of wrongdoings follows. The categories identified in the list of issues as relevant were that a criminal offence had been, was being, or was likely to be committed (for PD1 and 2); that a person had failed, was failing or was likely to fail to comply with any legal obligation (PD1, 2, 3, 4, 5 and 6); and that the health and safety of any individual had been, was being or was likely to be endangered (PD 1 and 2).

38. The alleged protected disclosures are set out in the list of issues reproduced in the Annex to these reasons. To summarise, PD1 and 2 relate to the claimant’s complaints about someone having brought a dog into the office. The claimant informed Employment Judge Eeley (B84) that he was not attacked by the dog, but feared he would have been, had the dog not been removed. PD3-6 relate to the claimant’s objections to making voice recordings when analysing software.

39. PD1 was identified in the list of issues as being a verbal disclosure to Joshua Owusu-Kwei. The respondent says this was to a junior colleague and could not have been a disclosure to the claimant’s employer. Ms Levene noted that the claimant, in his written submissions, writes “It is not true that Claimant asserts that he made a protected disclosure to a colleague by the name of Joshua Owusu-Kwei. In fact, Joshua Owusu-Kwei is not even mentioned in the original particulars of claim.” Ms Levene questioned whether the claimant was withdrawing reliance on PD1. I note that the claimant did not write to correct the list of issues within the required 14 day time period or, as far as I am aware, at any time before his written submissions. The claimant has not formally withdrawn reliance on PD1. However, if the claimant is not

going to support this having been made, with his evidence, I conclude that there is no reasonable prospect of the claimant establishing, as a matter of fact, that he made disclosure PD1.

40. I conclude that there is no reasonable prospect of the claimant satisfying the Tribunal that he had a reasonable belief that any of the disclosures were in the public interest. I agree with the respondent's submissions that the disclosures concern a private matter. In the case of PD1 (if it was established as a matter of fact to have been made) and PD2 this is the claimant's personal experience of dogs generally and in relation to a dog having attended the workplace (SB10). In the case of PD3-6, this is the claimant's unwillingness, displeasure and concern at the prospect of making voice recordings of tests at work. This alone is sufficient to conclude that the claimant has no reasonable prospect of success in his assertions that he made protected disclosures. I do not, therefore, consider it necessary to deal in detail with the arguments about whether the claimant would have a reasonable prospect of success in establishing that he had a reasonable belief that his disclosures tended to show one or more of the relevant wrongdoings. However, I give an indication of what I would have concluded in relation to these arguments.

41. For the reasons given above, the claimant has no reasonable prospect of success in establishing disclosure PD1 was made as a matter of fact so it is not necessary to try to assess whether the claimant had a reasonable belief that this alleged oral disclosure tended to show any relevant wrongdoing.

42. PD2 is the disclosure at SB9-10. I do not consider the claimant has any reasonable prospect of success in establishing that he had a reasonable belief that this tended to show a criminal offence had been, was being or was likely to be committed. The claimant refers to his shock and panic when the dog was present "in an environment that I presumed to be safe for me". He does not refer to the safety of anyone else. I cannot conclude that there is no reasonable prospect of the claimant establishing that he had a reasonable belief that the information he disclosed about the dog being present tended to show a breach of the legal obligation to provide a safe workplace for him or that his health and safety was likely to be endangered (even if by his reaction to the presence of a dog, whether or not the dog, in reality, was likely to attack him). However, because of the public interest point explained previously, the claimant has no reasonable prospect of success in establishing that PD2 was a protected disclosure.

43. The list of issues records the claimant's explanation, in relation to PD3-6, that these disclosures tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation because an employer is required to be honest and forthright and inform an applicant of the full requirements of the role and because there is a legal obligation not to deliberately mislead or lie to him.

44. The claimant's particulars of claim, at paragraph 5 (B17) quote from clause 3.2 of his employment contract, which includes that "Your role will include any duties that we may assign to you consistent with your job title and/or job description, and any other duties that we reasonably ask you to undertake from time to time."

45. In the light of this clause, it is difficult to see how the claimant could succeed in an argument that he reasonably believed the respondent was in breach of a legal



obligation by asking him to use his voice for tests. I conclude that the claimant has no reasonable prospect of success in this argument.

46. For all these reasons, I conclude that the claimant has no reasonable prospect of success in an argument that he made protected disclosures in relation to the matters set out as PD1-6 in the list of issues.

#### Protected disclosure detriment complaints

47. Because I have concluded that the claimant has no reasonable prospect of success in an argument that he made protected disclosures, it necessarily follows that he has no reasonable prospect of success in his complaints of detrimental treatment on the grounds of making protected disclosures. I strike out these complaints as having no reasonable prospect of success.

48. The respondent made additional submissions about many of the alleged detriments not being able to amount to detriments as a matter of law. It is not necessary for me to address these arguments under the heading of protected disclosure detriment complaints, since I have struck out the complaints on other grounds. I will, however, address detriment arguments when considering the prospects of success in the complaints of race discrimination since the same alleged detriments are relied on for direct race discrimination as for protected disclosure detriments.

#### Direct race discrimination

49. The claimant identifies himself as a Black Nigerian African man. He relies on 23 alleged acts of direct race discrimination. These are all the same matters that were also pleaded as detrimental treatment on the grounds of making protected disclosures.

50. The respondent submits that some, but not all, of the treatment relied on by the claimant cannot amount to detriments as a matter of law. I consider it difficult to understand how the claimant could reasonably regard certain of the treatment as putting him at a disadvantage. However, I do not consider I can conclude, on the basis of the limited information before me, that there is no reasonable prospect of the claimant succeeding in establishing that he suffered detriment by reason of the acts or omissions relied upon.

51. The respondent also submits that the claimant has failed to set out a prima facie case, advancing no facts or evidential basis upon which the respondent has treated him less favourably because of his race.

52. The claimant relies on a hypothetical comparator for all the complaints. None of the complaints are about matters which overtly have a relationship to race. The claimant has not, as yet, identified any facts from which the Tribunal could conclude that the treatment alleged was less favourable treatment because of race. However, as is well recognised, there is rarely direct evidence of discrimination. Legal authorities caution Tribunals about striking out discrimination complaints when full evidence would need to be heard to determine whether the complaints have merit. Evidence in support of a complaint of discrimination may come not only from the claimant but will often come from the evidence of the respondent, in documents and witness evidence.

I do not, therefore, consider that I can conclude, on the basis of the limited information available, that the discrimination complaints have no reasonable prospect of success. I do conclude, however, that the direct race discrimination complaints have little reasonable prospects of success and, for those reasons, I am making the complaints the subject of a separate deposit order.

#### Indirect race discrimination

53. The respondent asserts that the respondent did not have the practices relied upon for these complaints. The respondent also submits that there is no reasonable prospect of the claimant proving actual group disadvantage and, therefore, this complaint has no reasonable prospect of success.

54. It appears to me that there may be difficulties in the claimant's argument that there was a PCP of allowing employees to bring dogs into the office/workplace. A PCP requires some element of repetition and it is not clear that the evidence will show that the incident which concerned the claimant was other than a one off. However, I consider the evidence needs to be heard on this matter and I cannot conclude, on the basis of the information currently available, that the claimant has no reasonable prospect of success in establishing that there was such a PCP.

55. In relation to the other PCP, this is framed as the practice of asking or requiring employees in the claimant's job role to do a voiceover recording on their test videos. It appears, on the basis of what I have seen, that there was, at the least, a request to do this. I cannot conclude there is no reasonable prospect of success in establishing that this PCP was applied.

56. In relation to group disadvantage, the claimant has not explained what he will rely on to prove such disadvantage and it does not appear to me to be a matter where judicial knowledge is likely to be applied in the claimant's favour. I do not consider, however, that I can conclude there is no reasonable prospect of success in the argument, because it is possible that the claimant may produce some evidence not yet referred to. I do not, therefore, strike out the complaints of indirect race discrimination on the grounds of having no reasonable prospects of success. I do, however, consider that the complaints have little reasonable prospect of success and for those reasons, I am making the complaints the subject of a separate deposit order.

#### **Claim is scandalous or vexatious**

57. In support of this argument, the respondent points to a number of other complaints the claimant has brought in the Manchester Employment Tribunal in 2023 and 2024 and his poor record in those complaints. They also refer to the lack of merit in the complaints in this case.

58. The claimant has not been declared a vexatious litigant. The fact that he has brought other complaints against other respondents with lack of success does not mean that he could not have a valid complaint against the respondent.

59. The claimant was demonstrated to have told the Tribunal untrue information about not receiving the main hearing bundle, as described previously. This is not sufficient,

of itself, however, to lead to a conclusion that the claim itself is scandalous or vexatious.

60. The merits argument is properly dealt with under the heading of no reasonable prospects of success.

61. I do not feel able to conclude, on the basis of the material available, that the parts of the claim which I have not struck out on the grounds of no reasonable prospect of success are scandalous or vexatious so I do not strike them out on those grounds.

**Scandalous, unreasonable or vexatious conduct of the proceedings and it is no longer possible to have a fair hearing**

62. I deal with these two bases for strike out together since the arguments are essentially the same.

63. The respondent points to rude and obstructive conduct by the claimant throughout proceedings. It argues that this has made a fair trial impossible. Ms Levene identified the key point, in her submissions, as being the claimant saying he has blocked the respondent's solicitor's email address. She notes, however, that the respondent has resumed email communications with the claimant after he continued to email the respondent himself.

64. I do consider the claimant has been rude and obstructive. The respondent's written application gives examples of the rude tone of correspondence to the respondent's solicitor.

65. The claimant has made much of his status as a litigant in person, despite his familiarity with litigation in the employment tribunal and other jurisdictions (referring, during evidence on his financial means, to a costs order made against him in proceedings he has brought against the Chief Constable of Lancashire Constabulary, which does not appear to be an Employment Tribunal case), seeking more time to deal with various matters, when, I have decided, he had had adequate time already to prepare. However, it appears to me he has played tactical games, sending his written submissions the day before the hearing, but after office hours, and sending his application to postpone the hearing dealing with the strike out application, after the hearing had started, although it must have been prepared before.

66. The claimant put forward no good reason for not being able to receive email communications. He gave no good reason for not having read the supplemental bundle of documents sent to him 48 hours before the hearing. Having two children of school age is not a sufficient reason not to be able to prepare for a hearing. The claimant says he is not working at the moment. It appears to me that the claimant is being deliberately obstructive, and not complying with his duty to assist the Tribunal to further the overriding objective and to cooperate with the respondent and with the Tribunal.

67. Despite this, as Ms Levene notes in her submissions, in ordinary circumstances, neither a claim nor a response should be struck out on the basis of a party's conduct, unless a fair trial is no longer possible. Although the claimant has been obstructive about receiving email correspondence and has said he has not received documents

when it has been demonstrated that he has, I do not consider his conduct has reached such a stage that a fair trial is no longer possible. I do not, therefore, strike out his remaining complaints on this basis. This should be taken as a warning by the claimant, however, that, if he continues to be deliberately obstructive in progressing the case, the Tribunal might take the view, at a future date, that his behaviour had made a fair trial impossible and strike out any remaining complaints on that basis.

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Employment Judge Slater

Date: 10 October 2024

RESERVED JUDGMENT & REASONS  
SENT TO THE PARTIES ON

21 October 2024

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

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**Annex**  
**Complaints and Issues**  
(reproduced from the record of the private preliminary hearing held on 20 June 2024)

**1. Unfair dismissal**

Dismissal

- 1.1 Can the claimant prove that there was a dismissal? The claimant says that there was an express dismissal by the respondent by virtue of the letter sent by the respondent to the claimant on 2 October 2023, which purported to accept the claimant's 'resignation.'
- 1.2 Was the reason or principal reason for dismissal that the claimant made a protected disclosure? If so, the claimant will be regarded as unfairly dismissed.

**2. Remedy for unfair dismissal**

- 2.1 Does the claimant wish to be reinstated to their previous employment?
- 2.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 2.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 2.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 2.5 What should the terms of the re-engagement order be?
- 2.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
- 2.6.1 What financial losses has the dismissal caused the claimant?
- 2.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 2.6.3 If not, for what period of loss should the claimant be compensated?

- 2.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
  - 2.6.5 If so, should the claimant's compensation be reduced? By how much?
  - 2.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
  - 2.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
  - 2.6.8 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
  - 2.6.9 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
  - 2.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
  - 2.6.11 Does the statutory cap of fifty-two weeks' pay or [£105,707] apply?
- 2.7 What basic award is payable to the claimant, if any?
- 2.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

### 3. Protected disclosures

- 3.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

- 3.1.1 What did the claimant say or write? When? To whom? The claimant says he made disclosures on these occasions:

**PD1** On or about 25 August 2023, verbally to Joshua Owusu-Kwei, that:

- (i) the claimant had previously been attacked by a dog;
- (ii) the claimant avoids dogs;
- (iii) people in Nigeria eat dogs;
- (iv) the claimant was startled by the dog attack (on that day);
- (v) the claimant would like to make a complaint to Chris Lowe about the dog being in the workplace;
- (vi) the claimant would hate to be employed by an employer who allows dogs in the office.

**PD2** On 4 September 2023, in a written complaint sent to Lauren Lister at the respondent, the claimant repeated and elaborated on the points he expressed verbally in PD1. He also referred to another earlier incident involving his neighbour's dog being used to attack him and indicated that the presence of a dog in the workplace is not a joke for him.

**PD3** On 4 September 2023 in a written complaint sent to the respondent the claimant set out concerns about making voice recordings of his tests. He noted that:

- (i) his voice is his property and he did not want it to be used;
- (ii) a recording with a voice recording was not a conventional way of doing the testing;
- (iii) he was not comfortable relinquishing control of a recording of his voice;
- (iv) he had been misled during the employment recruitment process. Nobody had mentioned the need to make voice recordings;
- (v) producing such voice recordings may subject the claimant to ridicule in the workplace because of his accent (related to his nationality).

**PD4** The contents of PD3 were repeated and elaborated on in written communications from the claimant to the respondent dated 6 and 7 September 2023.

**PD5** As set out in paragraph 26 of the Particulars of Claim, during a face to face meeting the claimant informed Mr McGuinn, in accordance with paragraph 17.1 of the employment contract, he was not comfortable in providing voiceover recordings when analysing software, and the fact that this had not been mentioned to him prior to accepting the employment and he did not consider this a reasonable request in line with contract of employment.

**PD6** On 14 June 2023 the claimant repeated his objection to recording voiceovers on videos, particularly in relation to JIRA number 8752. He repeated this verbally and then recorded his objection on JIRA 8752. This record forms part of the disclosure.

3.1.2 Did he disclose information?

3.1.3 Did he believe the disclosure of information was made in the public interest?

3.1.3.1 The claimant maintains that the disclosures regarding the dog were in the public interest because employers need to respect cultural differences and make the workplace safe for all. If employers turn a blind eye to this it is in the public interest to make the disclosure.

3.1.3.2 The claimant maintains that it is in the public interest to ensure that an employee or applicant is not lied to or misled within the employment process. The claimant maintains the respondent was deceiving the public within the employment process and then dismissing them when new staff members refuse or reject unconventional ways of working.

3.1.4 Was that belief reasonable?

3.1.5 Did he believe it tended to show that:

3.1.5.1 a criminal offence had been, was being or was likely to be committed [PD1 and 2 criminal liability for a dog attack];

3.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation [PD1 and 2 regarding dog: obligation to provide a safe workplace] [PD3, 4, 5 and 6 because an employer is required to be honest and forthright and inform an applicant of the full requirements of the role, there is legal obligation not to deliberately mislead or lie to him] [PD1 and 2 relevant discrimination provisions in Equality Act 2010];

3.1.5.3 the health or safety of any individual had been, was being or was likely to be endangered [PD 1 and 2 risk to health and safety through presence of dog];

3.1.6 Was that belief reasonable?

3.2 If the claimant made a qualifying disclosure, was it a protected disclosure because it was made to the claimant's employer?

#### 4. **Detriment (Employment Rights Act 1996 section 48)**

4.1 What are the facts in relation to the following alleged acts or deliberate failures to act by the respondent?

**D1** The respondent sent a letter on 7 September 2023 which communicated the following matters which were adverse to the claimant:

(a) Garden leave was not appropriate.



- (b) Lying that the claimant complained about mental health concerns specifically due to his seating location in the office which was not true.
- (c) Mental health sickness had to be discussed with HR (the claimant having received no contact from the respondent in this regard).
- (d) The claimant's desk could be moved to a different area within the office room so that he could work.
- (e) Tried to force the claimant to work from home.
- (f) Attempted to damage the claimant's career and chances of passing probation by trying to compel the claimant to work under Chris Lowe, the Delivery Director of the Respondent who has no formal education and has never performed any software engineering or software testing in his own career, so lacks the requisite experience to mentor the claimant in his role.
- (g) Blaming the claimant for the respondents' dog attack on the claimant by suggesting that the reason for the dog attack was due to the claimant's failure to inform the respondent at the job interview stage that he harboured a fear of dogs.
- (h) Attempting to act as if dogs were a normal part of a professional work environment.
- (i) Putting the claimant to shame and disrepute by interviewing the claimant's colleagues in the Testing Analysis department when the claimant made clear that his complaints had nothing to do with his immediate staff colleagues and that his complaints can be fully investigated without interrogating his colleagues.
- (j) Refusing to accept that relations between the parties had completely broken down.
- (k) Attempting to force the claimant back to work immediately after the claimant's complaints were upheld without putting necessary safeguards in place.
- (l) Refusing to offer an apology to the claimant over the dog attack incident for which the claimant's grievance was upheld.
- (m) Failing to offer any kind of therapy sessions to the claimant to help combat claimant's anxiety and fear of dogs before requesting a return to the office.
- (n) Recommending third party mediation take place between claimant and his line manager but trying to bully the claimant back into the office before the said mediation takes place which was the respondent's own mediation request (refer to the last paragraph in the respondent's letter dated 25/9/23 and titled – "outcome of grievance.")
- (o) Failing to properly consider the claimant's grievance at "allegation 3- the micro management by David" in their letter dated 25/9/23, in effect belittling the claimant and his complaints.
- (p) Failing to uphold the claimant's grievance at allegation 1 of the letter dated 25/9/23 even though the respondents did agree within their outcome to Allegation 4 that the claimant was not

informed of this vital role requirement before the employment agreement was signed.

- (q) Attaching no importance to the claimant's allegation at 1.
- (r) Failing to number the pages of their letter dated 25/9/23 which runs 8 pages long.
- (s) Unreasonably refusing to uphold Allegation 4 of the Grievances.
- (t) An overall failure and or refusal to properly investigate the grievances raised by the claimant and or provide outcomes that could be considered reasonable to an independent observer.
- (u) Making a malicious and callous claim that the claimant resigned in the respondent's letter dated 2/10/23.
- (v) Creating a suffocating, anxious and fearful work environment for the claimant with regards to the dog in the office.
- (w) Making it impossible for the claimant to return to work and then trying to blame the claimant for a fear to return to an office where he had been attacked by a dog.

4.2 Did the claimant reasonably see that act or deliberate failure to act as subjecting him to a detriment?

4.3 If so, was it done on the ground that he made a protected disclosure?

## 5. Remedy for Detriment

5.1 What financial losses has the detrimental treatment caused the claimant?

5.2 Has the claimant taken reasonable steps to replace any lost earnings, for example by looking for another job?

5.3 If not, for what period of loss should the claimant be compensated?

5.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

5.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

5.6 Is it just and equitable to award the claimant other compensation?

5.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.8 Did the respondent or the claimant unreasonably fail to comply with it?

- 5.9 If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 5.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so, would it be just and equitable to reduce the claimant's compensation? By what proportion?
- 5.11 Was any protected disclosure made in good faith?
- 5.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

**6. Direct race discrimination (Equality Act 2010 section 13)**

- 6.1 The claimant is a Black Nigerian African man.
- 6.2 What are the facts in relation to the following allegations:
- 6.2.1 The respondent sent the claimant a letter on 7 September 2023 stating that:
- (a) Garden leave was not appropriate.
  - (b) Lying that the claimant complained about mental health concerns specifically due to his seating location in the office which was not true.
  - (c) Mental health sickness had to be discussed with HR (the claimant having received no contact from the respondent in this regard).
  - (d) The claimant's desk could be moved to a different area within the office room so that he could work.
  - (e) Tried to force the claimant to work from home.
  - (f) Attempted to damage the claimant's career and chances of passing probation by trying to compel the claimant to work under Chris Lowe, the Delivery Director of the Respondent who has no formal education and has never performed any software engineering or software testing in his own career, so lacks the requisite experience to mentor the claimant in his role.
  - (g) Blaming the claimant for the respondents' dog attack on the claimant by suggesting that the reason for the dog attack was due to the claimant's failure to inform the respondent at the job interview stage that he harboured a fear of dogs.
  - (h) Attempting to act as if dogs were a normal part of a professional work environment.
  - (i) Putting the claimant to shame and disrepute by interviewing the claimant's colleagues in the Testing Analysis department when the claimant made clear that his complaints had nothing to do with his immediate staff colleagues and that his complaints can be fully investigated without interrogating his colleagues.

- (j) Refusing to accept that relations between the parties had completely broken down.
- (k) Attempting to force the claimant back to work immediately after the claimant's complaints were upheld without putting necessary safeguards in place.
- (l) Refusing to offer an apology to the claimant over the dog attack incident for which the claimant's grievance was upheld.
- (m) Failing to offer any kind of therapy sessions to the claimant to help combat claimant's anxiety and fear of dogs before requesting a return to the office.
- (n) Recommending third party mediation take place between claimant and his line manager but trying to bully the claimant back into the office before the said mediation takes place which was the respondent's own mediation request (refer to the last paragraph in the respondent's letter dated 25/9/23 and titled – "outcome of grievance.")
- (o) Failing to properly consider the claimant's grievance at "allegation 3- the micro management by David" in their letter dated 25/9/23, in effect belittling the claimant and his complaints.
- (p) Failing to uphold the claimant's grievance at allegation 1 of the letter dated 25/9/23 even though the respondents did agree within their outcome to Allegation 4 that the claimant was not informed of this vital role requirement before the employment agreement was signed.
- (q) Attaching no importance to the claimant's allegation at 1.
- (r) Failing to number the pages of their letter dated 25/9/23 which runs 8 pages long.
- (s) Unreasonably refusing to uphold Allegation 4 of the Grievances.
- (t) An overall failure and or refusal to properly investigate the grievances raised by the claimant and or provide outcomes that could be considered reasonable to an independent observer.
- (u) Making a malicious and callous claim that the claimant resigned in the respondent's letter dated 2/10/23.
- (v) Creating a suffocating, anxious and fearful work environment for the claimant with regards to the dog in the office.
- (w) Making it impossible for the claimant to return to work and then trying to blame the claimant for a fear to return to an office where he had been attacked by a dog.

7.2.2 The respondent sent the claimant further letters on 18 September and 27 September 2023 essentially repeating the contents of the 7 September letter and providing further details.

- 6.3 Did the claimant reasonably see the treatment as a detriment? The claimant complains about the substance of the respondent's acts and decisions (as described above) *and* the letters which communicated them to him in September 2023.
- 6.4 If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race/nationality was or would have been treated? The claimant relies on a hypothetical comparison.
- 6.5 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race/nationality?
- 6.6 If so, has the respondent shown that there was no less favourable treatment because of race/nationality?

## 7. Indirect discrimination (Equality Act 2010 section 19)

- 7.1 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP(s):
- 7.1.1 The practice of asking or requiring employees in the claimant's job role to do a voiceover recording on their test videos?
  - 7.1.2 The practice of allowing employees to bring dogs into the office/workplace?
- 7.2 Did the respondent apply any of those the PCPs to the claimant?
- 7.3 Did the respondent apply any such PCP to persons with whom the claimant does not share race or nationality or would it have done so?
- 7.4 Did the PCP put persons of Black Nigerian African characteristics at a particular disadvantage when compared with persons who do not share that characteristic in that:
- 7.4.1 In relation to the first PCP, the person's anxiety levels would increase and/or they would be at increased risk of ridicule in the workplace due to their accent?
  - 7.4.2 In relation to the second PCP, the person would suffer increased fear and anxiety and would anticipate an attack by a dog (given the differing cultural views and experiences of dogs outside the UK context, where they are primarily viewed as pets)?
- 7.5 Did the PCP put the claimant at that disadvantage?

7.6 Was the PCP a proportionate means of achieving a legitimate aim?  
The respondent says that its aims were:

7.6.1 To be confirmed

7.7 The Tribunal will decide in particular:

7.7.1 was the PCP an appropriate and reasonably necessary way to achieve those aims;

7.7.2 could something less discriminatory have been done instead;

7.7.3 how should the needs of the claimant and the respondent be balanced?

## 8. **Remedy for discrimination or victimisation**

8.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

8.2 What financial losses has the discrimination caused the claimant?

8.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

8.4 If not, for what period of loss should the claimant be compensated?

8.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

8.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

8.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

8.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

8.9 Did the respondent or the claimant unreasonably fail to comply with it by [*specify breach*]?

8.10 If so, is it just and equitable to increase or decrease any award payable to the claimant?

8.11 By what proportion, up to 25%?

8.12 Should interest be awarded? How much?