EMPLOYMENT TRIBUNALS

PUBLIC PRELIMINARY HEARING BY VIDEO

Claimant: Mr R Walker

Respondent: The Chief Constable of Cleveland Constabulary

Heard: Remotely by video **On:** 19, 20, 21 and 22 April 2022

Before: Employment Judge S A Shore

REPRESENTATION:

Claimant: In Person
Respondent: Mr J Arnold, Counsel

JUDGMENT AND REASONS

The judgment of the Tribunal is that:

First Issue

1. The respondent's application for summary determination of the claimant's Allegations 26-30 inclusive was withdrawn. It is noted that the respondent reserves the right to renew the application.

Second Issue

2. The respondent acted as a police service and not as an employer when it did the acts complained of numbered as Allegations 2, 3, 4, 5, 6, 7, 13, 22, and 37. These claims are dismissed as the Tribunal does not have jurisdiction to hear them.

Third Issue

3. Allegations 1, 20 and 23 are struck out as having no reasonable prospect of success.

4. Allegations 8, 11, 12, 14, 17, 24 and 25 have little reasonable prospect of success and the clamant shall pay a deposit of £200 in resepct of each Allegation as a condition of being allowed to proceed with the claims. A separate Deposit Order will be sent to the parties.

5. The total deposit payable is £1,400.

Fourth Issue

6. Protected Act 4 is struck out as having no reasonable prospect of being found to be a protected act. Protected Acts 5 and 8 can proceed.

7. Protected Act 19 is dismissed upon withdrawal.

8. Protected Disclosure 4 is struck out as having no reasonable prospect of being found to be a protected disclosure. Protected Disclosures 18 and 31 can proceed.

9. Protected Disclosures 28, 29 and 30 are dismissed upon withdrawal.

Fifth Issue

10. The respondent's application to strike out the claimant's Allegations 26, 27, 28, 29, and 30 for lack of jurisdiction on time points is refused.

REASONS

Background and History of the Claims Before this Hearing

1. The claimant was engaged (I use that word in the knowledge that, as a police constable, the claimant was not employed by the respondent as the word is defined in section 230 of the Employment Rights Act 1996, but was an office holder) by the respondent from 18 September 1996 to 4 January 2021. He was latterly a Police Inspector. The claimant brings claims of associative direct discrimination because of the protected characteristics of race and disability, direct discrimination because of the protected characteristic of disability, victimisation and detriment short of dismissal because he made protected disclosures.

2. The claimant began early conciliation with ACAS on 30 April 2020 and received an early conciliation certificate on the same date. His ET1 was presented on 4 May 2020.

3. A private preliminary hearing by telephone (TPH) was conducted by Employment Judge Morris on 17 February 2021. In his case management order (CMO) dated 22 February 2021 [134-144], EJ Morris listed this public preliminary hearing to

determine the matters referred to at paragraphs 3, 6, 7 and 8 of the document titled "Draft List of Issues v2" [147-182] that had been prepared by Mr Arnold with comments from the claimant in the paragraphs in italics. The "Draft List of Issues v2" document contained one error that was not noticed until the second day of this hearing: the list of the claimant's allegations that the respondent asserts were actions of the respondent in its function as a police service included an allegation that the respondent had covertly recorded the claimant during its investigation into him as Allegation 8. This was not the allegation of covert recording. The allegation of covert recording was Allegation 13. Allegation 8 was an allegation that the respondent had deliberately withheld welfare provisions from the claimant between 1 November 2018 and 12 November 2019.I have set out paragraphs 3, 6, 7 and 8 of the "Draft List of Issues v2" document below (with agreed corrections):

Paragraph 3 – First Issue

3.1. Whether Allegations 26-30 (allegations of victimisation and protected disclosure detriment only) should be struck out as misconceived (and therefore having no reasonable prospect of success), having been alleged to occur in time before the alleged protected acts or protected disclosures were made?

3.2. *The claimant will argue A26 and 27 relates to PD2 and the treatment is after in time. A28 relates to PD4 and is after in time. A29 relates to PD5 and is after in time. A30 occurred right up to 2019. This question of misconceived is incorrect.*

Paragraph 6 – Second Issue

3.3. Whether the Tribunal has no jurisdiction to hear the following acts:

3.3.1. Allegation 3 (arrest);

3.3.2. Allegation 4 (pre-PACE questioning);

3.3.3. Allegation 5 (detention / biometrics);

3.3.4. Allegation 6 (search of premises);

3.3.5. Allegation 7 (seizure of property);

3.3.6. Allegation 13 (covert recording during investigation);

3.3.7. Allegation 22 (advice to lower-ranking officer re. suspicion of a crime) This allegation is relating to the Chief Constable, not a lower ranking officer; and

3.3.8. Allegation 37 (failure to mend seized property)?

3.4. *The claimant will argue that all of the above allegations were acts of discrimination and couldn't possibly be all gross incompetence by a Police force that the claimant worked for more than 24 years and knows how they operate. These allegations amounted from the claimant attempting to*

resolve issues as an employee in the cause of their employment and has no resemblance to ***Tiplady v City of Bradford Metropolitan District Council*** *[2020] IRLR 230.*

Paragraph 7 – Third Issue

3.5. Whether the following have no or little reasonable prospect of success, such that they are struck out or a deposit is ordered:

3.6. *The respondent knows that the claimant is financially challenged after being recently medically retired and now on approximately a third of their income and is not funded for legal support. The claimant is unlikely to be able to afford a deposit order and this is a deliberate tactic to force the withdrawal of the claim.*

3.6.1. Allegation 1 in relation to a complaint against the police / defamation claim;

The claimant intends to introduce documentary evidence and the witness evidence of Kath Vickers and Paul Brown to prove this allegation.

3.6.2. Allegation 2 in relation to the claimant actually taking a safe without permission and being reported by an independent third party for theft, but him alleging that senior managers formulated a plan to have him arrested;

The claimant intends to introduce documentary and witness evidence of Glen Teeley and Brian Carmichael which proves that he did not need permission to take the safe or the file as it was his own and he was taking it to the IOPC as evidence of crime, and that the respondent colluded with the PFEW to make a false allegation and neither the safe and especially the file was not the property of the PFEW in any case. Documentary evidence will prove the senior manager meeting.

3.6.3. Allegation 3 in relation to the claimant actually taking a safe without permission and being reported by an independent third party for theft, but him alleging his arrest was an act of discrimination, victimisation or protected disclosure detriment;

The claimant intends to introduce documentary and witness evidence of Glen Teeley and Brian Carmichael which proves that he did not need permission to take the safe or the file as it was his own and he was taking it to the IOPC as evidence of crime, that they had police powers in any case and that the respondent colluded with the PFEW to make a false allegation and neither the safe and especially the file which contained evidence of illegal phone tapping which occurred after the Chief Constable had sworn under oath to the Investigatory powers Tribunal that it was no longer taking place, was not the property of the PFEW in any case. The claimant will also use the laws regarding necessity test to show that there was no necessity for arrest.

3.6.4. Allegation 4 in relation to the claimant being questioned about the location of the missing safe (permissible by PACE Code C11.1), but him alleging this was done to discriminate against him, to victimise him or to subject him to detriment for making a protected disclosure;

The claimant will prove this allegation through witness evidence of each and every police officer to testify which will prove that this behaviour is unheard of and documentary evidence which proves no disciplinary action has taken place against the officers concerned and therefore remains of no concern to the respondent.

3.6.5. Allegation 5 in relation to taking biometric samples upon the claimant's arrest or detention (a standard process), but him alleging this was an act of discrimination, victimisation or protected disclosure detriment;

Allegation 5 is also regarding the claimant's detention.

Through multiple witness and documentary evidence, the claimant will prove that the arrest and all of the subsequent processes was unnecessary, unlawful and a deliberate tactic by the respondent to undermine and humiliate the claimant and above all to discredit them.

3.6.6. Allegation 6 in relation to a search of the claimant's property (when the safe's whereabouts was unknown, the claimant refused to reveal the location of the safe and when it was found at the claimant's property), but him alleging his arrest was an act of discrimination, victimisation or protected disclosure detriment;

The claimant will prove through documentary and witness evidence of Brian Carmichael, Glen Teeley and Wayne Marram that the safe's whereabouts was known and that the claimant never once refused to reveal the location in fact even revealed so when asked in the questioning which was a breach of PACE. The claimant will prove through the testimony of each and every officer that placing nuts in the bed is not the normal function of a searching police officer and that it would only be done to cause discomfort. Documentary evidence will prove that no investigation or disciplinary action was taken for this behaviour. Through witness and documentary evidence, the claimant will prove that the arrest and all of the subsequent processes was unnecessary, unlawful and a deliberate tactic by the respondent to undermine and humiliate the claimant and above all to discredit them.

3.6.7. Allegation 7 in relation to seizure of property at the claimant's premises (in order to investigate the alleged crime) but him alleging his arrest was an act of discrimination, victimisation or protected disclosure detriment;

Through multiple witness and documentary evidence, the claimant will prove that the arrest and all of the subsequent processes was unnecessary, unlawful and a deliberate tactic by the respondent to undermine and humiliate the claimant and above all to discredit them.

Allegation 7 also refers to the copying, losing, examination and damaging of property belonging not only to the claimant but also to the claimant's son. The claimant will prove that these things were acts of detriment.

Using documentary evidence, the claimant will prove that the respondent retained the claimant's property for no reason.

Using documentary evidence, the claimant will prove that the respondent has claimed to have destroyed copies of the claimant's digital property when in fact they have not.

3.6.8. Allegation 8, which is spurious in light of the Respondent's pleaded case regarding the support given and/or available, and especially in view of the Claimant alleging it was deliberate failure and/or an act of discrimination, victimisation or protected disclosure detriment;

3.6.9. Through documentary evidence and the witness evidence of Glen Teeley and Dale Darby the Claimant will prove that the welfare provisions provided by the Respondent to the Claimant were not in line with Force Policies or usual practices.

3.6.10. Allegation 11 in relation to the respondent terrifying the claimant's ex-wife (or threatening her son) to make her return property to the claimant. DS Henderson was returning the children's property to the claimant's ex-wife; there was no need to terrify her into not returning the property to the claimant. This allegation is misconceived;

The claimant's son was an adult and there is absolutely no requirement nor is there any policy and procedure that would suggest returning property to an ex-partner at a different address from which it was seized. That he then terrified her and threatened the complainant's son will be proven with text messages. He terrified her to take the property and then give it back to him not to the claimant. He was trying to keep it from the claimant.

3.6.11. Allegation 12 in relation to the Police Federation spreading rumours about the claimant having stolen the petty cash from the Police Federation. This was a third-party spreading rumours and, in any event, the claimant had taken a safe from the Police Federation with the petty cash in it. He also admitted in texts and a conversation that he had 'nicked' the safe;

The claimant will prove with the witness evidence of Lee Derbyshire and Matt Lewis who are serving officers with the respondent that the respondent spread rumours to discredit the claimant and wrote a letter containing lies. The claimant will present the letter to the Tribunal. The claimant will also prove that there was no such thing as petty cash and the fact that even now in this document the respondent's reliance on this as a fact proves the point in itself.

3.6.12. Allegation 13 in relation to the covert recording. Detective Clark had intended to record the meeting, but forget to inform the claimant. Once he realised his error, he returned to the claimant's house, informed him, offered him a copy of the recording (which was declined by the claimant) and apologised. Hardly the actions of someone wishing to covertly record a meeting;

By using the copy of the recording, the claimant will prove to the tribunal that the above statement is ludicrous and with the witness testimony of other officers, likewise. The claimant will rely on documentary evidence where one of the officers has been subject to a discipline investigation after doing it again to someone else.

3.6.13. Allegation 14 in relation to the removal of the claimant as Branch Secretary of the Cleveland Branch of the Police Federation of England & Wales. The internal affairs of a third party are of no concern to the respondent.

The claimant will prove that the respondent was party to this action and also that members of the Respondent form the Cleveland Branch of the PFEW and remain subject to all of the Respondent's rules and behaviours and are all representatives of the Respondent at all times and first and foremost.

3.6.14. Allegation 17 in relation a deliberately manufactured gross misconduct investigation. The claimant had actually taken a safe without permission, as well as removed it from Police Crime Property and stored it at his home, and had been reported by an independent third party for theft. Police officers are bound by statutory standards of behaviour including 'Honesty and Integrity', 'Discreditable Conduct' and 'Confidentiality'. The respondent is statutorily bound to investigate a police officer suspected of theft. It is spurious to suggest that the investigation was deliberately manufactured;

As previously stated, the claimant did not take the safe without permission. It was his safe and his duty to take it. The claimant was taking the safe, and the file which contained evidence of illegal phone tapping which occurred after the Chief Constable had sworn under oath to the Investigatory Powers Tribunal that it was no longer taking place. The claimant will prove all of this with documentary and witness evidence.

3.6.15. Allegation 20 in relation to granting an appointment with the Force Medical Adviser. The claimant was under the care of Occupational Health already, and was free to make such a request if he thought it was necessary. The Force Medical Adviser's recommendations were only to be implemented once the claimant was fit to return to work. He was not fit enough at the material time;

Documentary evidence will show that the claimant was unable to make an appointment with the Force Medical Advisor. When they eventually

did, their recommendations were not followed by the respondent which was not the case when compared with Warren Shepherd and John Green. The respondent's claim that the Force Medical Adviser's recommendations were only to be implemented once the claimant was fit to return to work is totally incorrect.

3.6.16. Allegation 22 in relation to former Chief Constable Mike Veale. There is contemporaneous and corroborated evidence to rebut this allegation. It is also unlikely that the Chief Constable would advise the claimant to take the safe, or do so in order to discriminate against him, victimise him or subject him to detriment for making a protected disclosure;

On the contrary, the documentary evidence proves this allegation to be true. Further documentation proving Chief Constable to be an admitted liar and the respondent's own investigation of him will be relied on as proof of this allegation.

3.6.17. Allegation 23 in relation monthly or bi-monthly sick-pay meetings. The claimant appears to be alleging that the meetings, which each time extended his full sick pay beyond the normal six-month benefit, were a detriment or held to discriminate against him, victimise him or subject him to detriment for making a protected disclosure (despite the same meetings discussing other officers' applications to extend sick pay as well);

The claimant will argue that these meetings were an unnecessary burden on the claimant because the respondent was not taking any other action such as making appointments and could and should (In fact they did once) extend the meetings to a larger time frame.

3.6.18. Allegation 24 in relation to the alleged safe and file theft having been 'no crimed'. It was;

Using documentary evidence, the claimant can prove that at the time the claim was made, the theft had not yet been 'No crimed'. The Claimant has not received anything other than the words of the Respondent's representatives to prove that this occurred since.

3.6.19. Allegation 25 in relation to the destruction of biometric samples. They were; and/or

Using documentary evidence, the claimant can prove that at the time the claim was made the biometric samples had not been destroyed. The claimant has not received anything other than the words of the respondent's representatives to prove that this occurred since.

3.6.20. Allegation 37 is utterly trivial and should be struck out;

The claimant will argue that breaking his laptop was a hugely important detriment to him and that the respondent's indifference to resolving the issue was a deliberate attempt at further detriment. If it was trivial, why wouldn't the respondent simply resolve the issue immediately?

Paragraph 8 – Fourth Issue

3.7. Whether those alleged protected acts containing no reference to the Equality Act 2010 and/or those alleged protected disclosures concerning private interest matters of which it was not reasonable for the Claimant to believe they were made in the public interest should be struck out or subject to a deposit as having no or little reasonable prospect of success?

All of the Protected Acts relate to Equality Act cases except Protected Act 19 which should be withdrawn.

Fifth Issue – Time points

4. A fifth issue was added by an application by the respondent for a consideration of time points on the five most historic Allegations made by the claimant.

5. This hearing was originally listed for a four-day hearing on 12-15 July 2021. The claimant made an application for specific disclosure of documents that was heard by me in a TPH on 17 June 2021. I refused the claimant's application. The hearing that was listed to start on 12 July 2021 was postponed to 19 April 2022.

Housekeeping Matters

5. The hearing was conducted remotely by video with the agreement of the parties.

6. The claimant is unrepresented. I reminded him that the Tribunal operates on a set of Rules (I have set out the link to those Rules below). Rule 2 sets out the overriding objective of the Tribunal (its main purpose), which is to deal with cases justly and fairly. It is reproduced here:

> *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.*

7. The parties produced a bundle of 535 pages. If I refer to any documents from the bundle, I will indicate the appropriate page numbers in square brackets (e.g. [23]). At the start of the hearing, Mr Walker and Mr Arnold agreed that I had all the documents I needed to make my decision.

8. Mr Arnold conceded that the First Issue – whether some of the claimant's claims of detriment should be dismissed because the protected acts happened after the alleged detriment – should be withdrawn as it was now accepted that one of the protected acts (PA 16) happened in 2011 and preceded the detriments complained of.

9. We agreed that the matters in the second issue (which at the start of the hearing were limited to Allegations 3, 4, 5, 6, 7, 22 and 37) should be determined before we moved on to the third and fourth issue, as if I were to dismiss any of the claims for lack of jurisdiction, the acts that were alleged would fall with them. I considered it to be in furtherance of the overriding objective to deal with matters in this way.

10. I heard arguments from both sides on the second issue on the first day and retired to make my decision. I informed the parties of my decision on the evening of the first day of the hearing and delivered my reasons on the morning of the second day.

11. Mr Arnold raised the issue of the mis-numbering of the allegation related to the covert recording of the claimant on 19 November 2019 – it was Allegation 13, not 8 – and applied a reconsideration of my decision on Issue 2.

12. In respect of Allegation 13 (the covert recording), I was asked to consider whether this was an act of the respondent as a police service. Mr Walker agreed and I indicated that I would reconsider that matter as part of Issue 2.

13. In respect of Allegation 2 (the allegation that senior officers at a "Gold Group" meeting in October 2016 had formulated a plan to arrest the claimant, search his property to prevent the claimant from assisting members of Cleveland PF with claims against the respondent), I was advised that parties agreed that this should also have come within the scope of Issue 2. I indicated that I would reconsider that matter as part of Issue 2.

14. Allegation 8 (the deliberate withholding of welfare provision) would be considered only in respect of a potential strike out or deposit order. I then heard the parties' submissions on Issue 2 in respect of Allegations 2 and 13.

15. I heard submissions on the third and fourth issues on the second day of the hearing and indicated my intention to deliver my Judgment and Reasons on the third day. That was not possible because of the volume of material I had to process. We reconvened on the morning of the fourth day when I gave an oral Judgment and Reasons on the third issue. I reserved the Judgment on the fourth issue.

16. At the end of the second day, Mr Arnold had indicated an intention to apply a consideration of time points in respect of Allegations 26, 27, 28, 29 and 30, which relate to facts asserted in respect of events in April 2012 (Allegation 26), January 2103 (Allegations 27 and 28), September 2013 (Allegation 29) and September 2015 (Allegation 30).

17. The application was submitted on the afternoon of the third day of the hearing. After hearing from Mr Arnold and Mr Walker, I decided that it was in the interests of the overriding objective to proceed with the application, as we had time to hear it and Mr Walker was keen to get on with matters, rather than leave them unresolved. I indicated that the time points would be referred to as the "Fifth Issue" and that I would reserve my decision on them. I heard the parties' submissions on the fifth issue.

18. I then moved on to case manage the case to a final hearing. I have set out my case management orders in a separate document.

19. I offer my sincere apologies to both parties for the delay in producing this decision and the accompanying orders. This is due to two matters; firstly, I had a personal matter that arose after the hearing that severely limited the time I had available to complete my writing up in the time I had allocated to it. Secondly, I had an IT failure that erased my typed notes of my decision on the Third Issue. I am grateful to both parties for providing me with their notes of my decisions to ensure that they are recorded correctly in this reserved decision.

Relevant Law

20. I was mindful of the overriding objective to deal with cases justly and fairly in Rule 2 and the Tribunal's wide case management powers under Rule 29.

First Issue

21. The relevant law concerning victimisation is contained in section 27 of the Equality Act. I do not reproduce it here, as it is a matter of common sense that the protected act has to predate the detriment alleged.

22. The relevant law concerning protected disclosure detriment is contained in section 47B of the Employment Rights Act 1996. Again, it is not reproduced here as it is a matter of common sense that the protected disclosure has to pre-date the detriment.

23. Both the above points are moot because the respondent abandoned the application.

Second Issue

24. The respondent's case in respect of this aspect of the hearing is that the actions of Cleveland Police in arresting the claimant and processing him through the early stages of the criminal justice system was an exercise of its powers as a Police service, not as the claimant's employer. The authority for that proposition was the Court of Appeal decision in the case of **Tiplady v City of Bradford Metropolitan District Council** [2020] IRLR 230 ("**Tiplady**"). I have quoted extensively from that case below.

Third Issue

25. I found the expression of the law on striking out or ordering deposits in cases as set out in Mr Arnold's skeleton argument to be an accurate summary of the law, so I reproduce it here (with a few tweaks).

Strike Out

26. Rule 37(1)(a) of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 ("the Rules") gives the Tribunal a discretion to strike out all or part of a claim at any stage of the proceedings on the ground that it has no reasonable prospect of success.

27. In the case of **Ashmore v British Coal Corporation** [1990] IRLR 283, CA *per* Stuart-Smith LJ (§24):

> *"With all respect to Stephenson LJ, I do not agree that the claim can only be struck out as being an abuse of the process if it is a sham, not honest or bona fide. On the contrary, I prefer the views of the other members of the Court that it is dangerous to try and define fully the circumstances which can be regarded as an abuse of the process, though these would undoubtedly include a sham or dishonest attempt to re-litigate a matter."*

28. **Ukegheson v London Borough of Haringey** [2015] ICR 1285, EAT, *per* Langstaff P (§3):

> *"The power was formally contained in the same words in rule 18(7)(b) under what were then the 2004 Rules of Procedure (SI 2004/1861). The overview of the proper legal approach to an application to strike out emerges from Tayside Public Transport Co Ltd (trading as Travel Dundee) v Reilly [2012] IRLR 755, a decision of the Inner House of the Court of Session, which has become such familiar territory in this tribunal that it is case number 24 in the Familiar Authorities bundle. There, in para 30 of the opinion of the Inner House:*
>
> > *"Counsel are agreed that the power conferred by rule 18(7)(b) may be exercised only in rare circumstances. It has been described as draconian (Balls v Downham Market High School and College [2011] IRLR 217, para 4). In almost every case the decision in an unfair dismissal claim is fact-sensitive. Therefore where the central facts are in dispute, a claim should be struck out only in the most exceptional circumstances. Where there is a serious dispute on the crucial facts, it is not for the tribunal to conduct an impromptu trial of the facts (ED & F Man Liquid Products Ltd v Patel [2003] All ER (D) 75, Potter LJ, at para 10). There may be cases where it is instantly demonstrable that the central facts in the claim are untrue; for example, where the alleged facts are conclusively disproved by the productions (ED & F Man Liquid Products Ltd v Patel, supra; Ezsias v North Glamorgan NHS Trust [2007] ICR 1126). But in the normal case where there is a "crucial core of disputed facts," it is an error of law for the tribunal to pre-empt the determination of a full hearing by striking out (Ezsias v North Glamorgan NHS Trust, supra, Maurice Kay LJ, at para 29)."*
>
> *"Counsel before me are agreed that the approach is to take the allegations made by the claimant in his claim at their highest, on their own, unless they may be conclusively disproved in the sense meant by Tayside Public Transport Co Ltd v Reilly."*

29. As a general principle, discrimination cases should not be struck out except in the very clearest circumstances. In **Anyanwu v South Bank Students' Union** *[2001] IRLR 305, HL,* Lord Steyn stated (§ 24):

> *"For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest."*

30. That said, there is a mechanism for striking-out claims, reproduced in the 2013 rules and which survived the decision in **Anyanwu**.

31. Further, the statement in **Anyanwu** should not be taken as amounting to a fetter on the tribunals' discretion. In **Jaffrey v Department of the Environment, Transport and the Regions** *[2002] IRLR 688,EAT*, Mr. Recorder Langstaff QC stated (at para. 41):

> "*Although the power to strike out a claim is one which should be exercised sparingly, and although full regard must be paid to the words of Lord Steyn in Anyanwu v South Bank Students' Union [2001] UKHL 14, at paragraph 24, that there is a high public interest which should bias a tribunal in favour of a claim being examined on the merits or demerits of its particular facts, if a tribunal reached a tenable view that the case cannot succeed, then it had a discretion to strike out a claim under what was then Rule 13 of the employment tribunal Rules.*"

32. Per Mitting J at [19]-[21] in **Patel v Lloyds Pharmacy Ltd** UKEAT/0418/12 (§§19 and 20):

> *Neither Anyanwu nor Maurice Kay LJ's observations (in Eszias) however, require an Employment Judge to refrain from striking out a hopeless case merely because there are unresolved factual issues within it. In such a case I believe that the correct approach is that which I have adopted, namely to take the Claimant's case at its reasonable highest and then to decide whether it can succeed. There is a further possibility that discrimination cases are, by their nature, so sensitive and for the individuals concerned and society as a whole, so important, that they should be allowed to proceed simply because on the Micawber principle something might turnup...*
>
> *"In my judgment...in a case that otherwise has no reasonable prospect of success it cannot be right to allow it to proceed simply on the basis that "something might turn up." That is the position here. It is theoretically possible that in response to skilled cross-examination (the Respondent's witnesses) might fall over themselves and admit to discrimination for an inadmissible reason. If there is a proposition that such a possibility requires a case to proceed then every...discrimination case that turns to any extent upon the oral evidence, in response to cross-examination, of employer's witnesses must be allowed to proceed. I do not believe that there is such a principle."*

33. Indeed, in such a case an ET is likely to err in law by *not* striking out the complaint. Thus, in **ABN Amro Management Services and anor v Hogben** UKEAT/0266/09 the ET's refusal to strike out complaints of age discrimination was overturned. "*If a case has indeed no reasonable prospect of success it ought to be struck out:*" [16].

34. As the EAT observed in **Hak v St Christopher Fellowship** [2016] ICR 411 at [55], "*the words are 'no reasonable prospect' Some prospect may exist, but be insufficient*."

35. Whilst the threshold for striking out an allegation on the basis of no reasonable prospect of success is a high one, as the higher courts have said on numerous occasions, the Tribunal should not be deterred from exercising its power in appropriate cases, for example: **Ahir v British Airways** [2017] EWCA Civ 1392 at paragraph 16. Appropriate cases include cases involving mere assertions of sex discrimination or harassment. In particular, in **Ahir** at paragraph 24 *per* Lord Justice Underhill:

> "*As I already said, in a case of this kind, where there is on the face of it a straightforward and well-documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so. The employment judge cannot be criticised for deciding the application to strike out on the basis of the actual case being advanced.*"

Deposit Orders

36. Deposit Orders are governed by Rule 39 of the 2013 Rules. The purpose of a deposit order is to discourage the pursuit of claims with little prospect of success, which claims are likely to waste other parties' time and resources, cause unnecessary anxiety and occupy, for limited purpose or benefit, the limited time and resource of the Tribunal that would otherwise be available to other litigants (**Hemdan v Ishmail** UKEAT/0021/16/DM.

37. When determining whether to make a deposit order an Employment Tribunal is given a broad discretion. It is not restricted to considering purely legal questions. It is entitled to have regard to the likelihood of the party being able to establish the facts essential to their case - **Wright v Nipponkoa Insurance (Europe) Ltd.** EAT/0113/14 *per* Her Honour Judge Eady QC;

38. The power to order a deposit can in principle be exercised where the tribunal had doubts about the inherent likelihood of the claim succeeding. The Tribunal must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response – **Van Rensburg v Royal Borough of Kingston-upon-Thames** EAT 0096/07 *per* Elias P;

39. **Ahir v British Airways** [2017] EWCA Civ 1392 - appropriate cases for strike-out (and thus even more so for a deposit order) include cases involving mere assertions of sex discrimination or harassment. In particular, in **Ahir** at paragraph 24 *per* Lord Justice Underhill:

> "*As I already said, in a case of this kind, where there is on the face of it a straightforward and well-documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so. The employment judge cannot be criticised for deciding the application to strike out on the basis of the actual case being advanced.*";

40. An Employment Judge determining whether a deposit shall be paid may consider evidence, written or oral, if and to the extent that it is appropriate to do so – **Spring v First Capital East Ltd.** EAT 0567/11 *per* Supperstone J;

41. The assessment of the likelihood of a party being able to establish facts essential to his or her case is a summary assessment intended to avoid cost and delay. Having regard to the purpose of a deposit order, namely to avoid the opposing party incurring cost, time and anxiety in dealing with a point on its merits that has little reasonable prospect of success, a mini-trial of the facts is to be avoided... because it defeats the object of the exercise – **Hemdan v Ishmail** UKEAT/0021/16/DM *per* Simler P.

42. In the premises, in deciding whether there are doubts about the inherent likelihood of the claimant establishing the facts essential to his claim, there is a balancing exercise to be undertaken between the documentation produced by the respondent, and the claimant being able to draw inferences.

Fourth Issue

43. The law concerning what constitutes a protected act is contained in section 27(2) of the Equality Act 2010:

> *Each of the following is a protected act—*
>
> *(a) bringing proceedings under this Act;*
>
> *(b) giving evidence or information in connection with proceedings under this Act;*
>
> *(c) doing any other thing for the purposes of or in connection with this Act;*
>
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

44. A 'protected disclosure" is defined by section 43B of the Employment Rights Act 1996:

> *Disclosures qualifying for protection.*
>
> *"(1) 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) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part " the relevant failure ", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1)."

45. The leading guidance on determining how a Tribunal should determine whether something is a protected disclosure is that of Underhill LJ in **Chesterton Global Ltd v Nurmohamed, Public Concern at Work intervening** [2017] IRLR 837, CA:

"34*... the following factors would normally be relevant (I have paraphrased them slightly):*

(a) the numbers in the group whose interests the disclosure served - see above;

(b) the nature of the interests affected and the extent to which they are affected by the wrong doing disclosed - a disclosure of wrongdoing directly affecting a very important interest is more likely to be in the public interest than a disclosure of trivial wrongdoing affecting the same number of people, and all the more so if the effect is marginal or indirect;

(c) the nature of the wrongdoing disclosed - disclosure of deliberate wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people;

(d) the identity of the alleged wrongdoer - as Mr Laddie put it in his skeleton argument, 'the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest' - though he goes on to say that this should not be taken too far.

Adopting that approach, he submitted, the tribunal's conclusion was plainly open to it. It had not based its decision entirely on the numbers of employees affected by Chestertons' alleged manipulation of the accounts. It had also taken into account the fact that the alleged manipulation was deliberate and that it involved the mis-statement of the accounts by between £2m-£3m. Disclosure of such wrongdoing, by a well-known national estate agent, was plainly capable of being regarded as in the public interest.

35*... It is in my view clear that the question whether a disclosure is in the public interest depends on the character of the interest served by it rather than simply on the numbers of people sharing that interest. That is in my view the ordinary sense of the phrase 'in the public interest'; but if there were any doubt about the matter the position is clear from the legislative history. The essence of the 'Parkins v Sodexho error' which the 2013 Act was intended to correct was that a worker could take advantage of 'whistleblower protection' where the interest involved was personal in character.*

36*... The statutory criterion of what is 'in the public interest' does not lend itself to absolute rules, still less when the decisive question is not what is in fact in the public interest but what could reasonably be believed to be. I am not prepared to rule out the possibility that the disclosure of a breach of a worker's contract of the Parkins v Sodexho kind may nevertheless be in the public interest, or reasonably be so regarded, if a sufficiently large number of other employees share the same interest. I would certainly expect employment tribunals to be cautious about reaching such a conclusion, because the broad intent behind the amendment of s.43B(1) is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers - even, as I have held, where more than one worker is involved. But I am not prepared to say never. In practice, however, the question may not often arise in that stark form. The larger the number of persons whose interests are engaged by a breach of the contract of employment, the more likely it is that there will be other features of the situation which will engage the public interest.*

37 *Against that background, in my view the correct approach is as follows. In a whistleblower case where the disclosure relates to a breach of the worker's own contract of employment (or some other matter under s.43B(1) where the interest in question is personal in character 5), there may nevertheless be features of the case that make it reasonable to regard disclosure as being in the public interest as well as in the personal interest of the worker. Mr Reade's example of doctors' hours is particularly obvious, but there may be many other kinds of case where it may reasonably be thought that such a disclosure was in the public interest. The*

question is one to be answered by the tribunal on a consideration of all the circumstances of the particular case, but Mr Laddie's fourfold classification of relevant factors which I have reproduced at paragraph 34 above may be a useful tool. As he says, the number of employees whose interests the matter disclosed affects may be relevant, but that is subject to the strong note of caution which I have sounded in the previous paragraph."

Fifth Issue

46. The claimant confirmed that all of the Allegations 26-30 inclusive concerned detriment because he made protected disclosures. The time limit for such claims is contained in section 48 of the Employment Rights Act 1996, the relevant parts of which state:

> *(3) An employment tribunal shall not consider a complaint under this section unless it is presented —*
>
> *(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*
>
> *(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*
>
> *(4) For the purposes of subsection (3) —*
>
> *(a) where an act extends over a period, the "date of the act" means the last day of that period, and*
>
> *(b) a deliberate failure to act shall be treated as done when it was decided on;*
>
> *and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.*
>
> *(4A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a).*

47. Section 123 of the Equality Act 2010 states:

> *123. Time limits*
>
> *(1) Subject to sections 140A and 140B proceedings on a complaint within section 120 may not be brought after the end of —*

(a)the period of 3 months starting with the date of the act to which the complaint relates, or

(b)such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

48. I accept Mr Arnold's submission that the leading precedent case on "continuing acts" in discrimination is contained in the Court of Appeal decision in **Hendricks v Commissioner of the Police for the Metropolis** [2003] IRLR 96 at paragraphs 48-49 & 52:

> **48**... *the burden is on* [the Claimant] *to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of 'an act extending over a period'. I regard this as a legally more precise way of characterising her case than the use of expressions such as 'institutionalised racism', 'a prevailing way of life', a 'generalised policy of discrimination', or 'climate' or 'culture' of unlawful discrimination.*
>
> **49**... [the Claimant] *may not succeed in proving that the alleged incidents actually occurred or that, if they did, they add up to more than isolated and unconnected acts of less favourable treatment by different people in different places over a long period and that there was no 'act extending over a period' for which the Commissioner can be held legally responsible as a result of what he has done, or omitted to do, in the direction and control of the Service in matters of race and sex discrimination*.

> **52** *The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of 'an act extending over a period'... the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a 'policy' could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an on-going situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed.*

49. I also accept Mr Arnold's submission that the best approach for a Tribunal considering the exercise of its discretion to extend time is to assess all the factors in the particular case. These will include the public interest in the enforcement of time limits and the undesirability in principle of investigating stale issues, **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 23.

50. I considered the Judgment of Ellenbogen J in the EAT case of **E v X, L and Z** UKEAT/0079/20.

First Issue – Findings

51. The application was withdrawn, so I make no findings.

Second Issue - Findings

52. All findings were made on the balance of probabilities. If a matter was in dispute, I will set out the reasons why I decided in favour of one of the parties. If there was no dispute over a matter, I will either record that with the finding or make no comment as to the reason that a particular finding was made. I have only dealt with matters that I found relevant to the issues I have had to determine. No application was made by either side to adjourn this hearing in order to complete disclosure or obtain more documents, so I have dealt with the case on the basis of the documents and evidence produced to the Tribunal. I make the following findings.

53. I find that it was agreed that police officers are not employees, but are office holders, but are deemed to be employees for the purposes of protected disclosure detriment and discrimination cases in the Employment Tribunal.

54. It was agreed that police officers have the power to arrest, detain, enter, search, seize and retain property, and investigate crime. Those powers are mostly authorised and governed by the Police and Criminal Evidence Act 1984 (PACE). Some of the powers of police officers originate from the common law (a body of law built up over many years from the decisions of the Courts).

55. It was agreed that each regional Police service has its own Police Federation (PF), which is the representative body of police officers for that region. The regional PFs are autonomous, but have an arms-length relationship with the Police Federation of England and Wales (PFEW).

56. The claimant was Secretary of the PF in Cleveland from May 2018. He came to believe that a former Chief Constable of Cleveland had headed a strategy that unlawfully targeted officers from the BAME community within the Police service. He also came to believe that the Treasurer of the Cleveland PF had committed acts of financial irregularity with the Cleveland PF's funds. It is not my task in this hearing to make any findings of fact about whether the claimant's suspicions were well-founded or not.

57. The circumstances giving rise to the claims covered by Issue 2 arise from events that were connected to the claimant's role as Secretary of Cleveland PF. I am making no findings of fact about what the claimant and respondent did.

58. It was agreed that the claimant removed a safe and a black file of documents from the Cleveland PF offices on or around 29 October 2018. He was arrested on 1 November 2018. All the matters listed in paragraphs 3.2 and 3.3 above arise from the search of the claimant's property and his arrest.

59. The claimant agreed that he had been suspended as Secretary of Cleveland PF by an email from Alex Duncan, National Secretary of PFEW at approximately 19:09pm on 29 October 2018. He also agreed that he then removed the safe and file from the Cleveland PF offices.

60. The claimant carefully took me through his argument as to why he regards his actions as lawful. It is agreed that the outcome of the Police investigation into his actions resulted in no charge being laid against him.

61. I was taken through the documents relating to the arrest and ancillary matters by Mr Arnold (I have cut and pasted his summary from his skeleton argument):

    61.1. At *[212]* is the e-mail dated 29 October 2018 of Alex Duncan, National Secretary of the Police Federation of England & Wales, suspending the Claimant with immediate effect from the Police Federation;

    61.2. At *[214]* is the witness statement of Mr. Duncan dated 31 October 2018 regarding his testimony regarding the circumstances of the Claimant's taking of the safe, and Mr. Duncan reporting the suspected theft of the safe and a black file;

    61.3. 16.3 At *[221]* is the Operational Order surrounding the arrest of the Claimant;

    61.4. 16.4 At *[226]* is the witness statement testimony of the arresting officer, Detective Constable Simon Clark;

    61.5. 16.5 At *[229-231]* are various texts from the Claimant acknowledging that he had stolen the safe;

    61.6. At *[233-242]* is the Custody Record;

    61.7. At *[244]* is the PACE DNA Form; and

    61.8. At *[245-253]* are the witness statement testimonies of the officers who searched the Claimant's premises (and located the safe *[248]*).

62. Mr Walker disputed that he had admitting stealing the safe and file in a text message exchange with a friend/colleague. I accept that he had only told her what the Police had alleged he had done, rather than made an admission of theft in that exchange, but there are other exchanges where the claimant gives the clear impression that he has "nicked" (his words) the safe and file.

63. I am not so naïve as to reject the possibility that there was a conspiracy amongst senior officers at Cleveland Police out of hand. However, my consideration of this matter is centrered on the legal interpretation of the respondent's actions.

64. It is the respondent's case that it acted entirely in the exercise of its powers as a Police service in relation to the alleged theft of the safe and file. It is submitted that the respondent's position is derived from the case of **Tiplady**.

65. I find that the claimant had no authority arising from his role as Secretary of Cleveland PF to remove the safe and file after he had been suspended from that role on 29 October 2018.

66. He continued to have the powers of a police officer granted to him by PACE and the common law.

67. I find that the documents demonstrate that the necessary procedural steps required by PACE to arrest and investigate the claimant were taken by Cleveland Police.

68. I then turn to the obiter comments made by Underhill J in **Tiplady**. That case concerned a claimant, who was employed as a Senior Planning Officer by Bradford MBC. She had ongoing dealings with Bradford MBC about matters affecting a property owned by her and her husband. She believed that the way that Bradford MBC handled her concerns were examples of detriment because she had made protected disclosures. The ET at first instance and the EAT on appeal found that the MBC had not acted in the "employment field" in respect of the claimant, but had acted in exercise of its planning powers as a local authority.

69. The matter came before the Court of Appeal, for whom Underhill J gave the only judgement. The headnote of the Judgment stated:

> *"(1) None of the detriment claims were dismissed exclusively (or indeed even mainly) on the basis of the employment field point. Even if the ET's self-direction on that question was wrong it would make no difference to the outcome because the other bases on which they were dismissed were not, and could not be, challenged. The tribunal's conclusions that the claimant had not suffered the detriments alleged, or, if she had, that they were not on the ground of a protected disclosure, were entirely self-contained, and there was no basis on which they could be affected by the view taken by it on the employment field point."*

70. At paragraph 2, Underhill J added:

> *"It will be apparent that neither episode had, as such, anything to do with the employment relationship between Mrs Tiplady and the Council: they concerned the exercise of the Council's powers as a local authority."*

71. The fact that the Judgment in **Tiplady** is obiter (outside the remit of the matters that the Court had to decide) means that it is not binding on this Tribunal. However, I find the arguments set out by Underhill J (and HH Judge Eady QC, as she then was, in the EAT) to be compelling as principles of law.

72. **Tiplady** was a case about protected disclosures, but paragraph 23 of Underhill J's Judgment extended the principles of the "employment field" to discrimination cases:

> *"The structure of the 2010 Act is essentially the same. It too is divided into different Parts dealing with discrimination in different kinds of relationship (though the term 'field' is no longer used), with the employment tribunal having jurisdiction in cases concerning 'Work' (which is the heading of Pt 5) and the County Court having jurisdiction in cases concerning 'Services and Public Functions' (Pt 3), 'Premises' (Pt 4), 'Education' (Pt 6) etc. The equivalent to s 6 (2) of the 1975 Act and its various pre-2010 cognates is s 39 (2), which reads:*
>
> *'An employer (A) must not discriminate against an employee of A's (B)–*
>
> *(a) as to B's terms of employment;*
>
> *(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
>
> *(c) by dismissing B;*
>
> *(d) by subjecting B to any other detriment.'*
>
> *It will be seen that, although the structure is rather different, the substance is the same as in the predecessor legislation, including the reference at (d) to 'any other detriment'.*

73. Underhill J also made reference to the cases of **Woodward v Abbey National plc** [2006] EWCA Civ 822 (§29) and **London Borough of Waltham Forest v Martin** [2011] UKEAT 0069/11 (§32), which concerned the scope of whistleblowing and discrimination legislation and the acquisition of additional rights over other members of the public if an individual who has a complaint also happens to be an employee.

74. At paragraph 40 of **Tiplady,** Underhill J states:

> *"Accordingly, I believe that if this had been a discrimination claim based on, say, her sex, Mrs Tiplady could not have proceeded in the ET in respect of the detriments in question, because they did not arise in the field of 'Work' (to use the terminology of Pt 5 of the 2010 Act) but in a different field (namely 'Services and Public Functions', which are covered by Pt 3). The question then is whether the same restriction applies to a claim under the whistleblower provisions."*

75. At paragraphs 42 and 43, it is stated that:

> *"However, I have in the end concluded that the approach of the ET and of Judge Eady was correct. As Ward LJ observed in Woodward, despite the*

differences in their particular structure and language, the whistleblower legislation and the discrimination legislation are fundamentally of the same character: see para [29] above. Likewise, at para [26] of my judgment in Royal Mail Ltd v Jhuti [2017] EWCA Civ 1632, [2018] IRLR 251, [2018] ICR 9822, while I referred to Mummery LJ's warning in Kuzel, I also observed that the frequently used phrase 'whistleblower discrimination' was not inapt, since the concept underlying s 47B was the same as that of the discrimination legislation; and I said that, that being so, it made sense to interpret identical language in the two statutes, where it occurred, in the same way ([2018] IRLR 251, p 255; [2018] ICR 982, p 991B). Similarly, in Timis v Osipov I observed, at para [69] of my judgment ([2019] IRLR 52, p 61; [2019] ICR 655, p 677E), that even though it was not possible entirely to assimilate the statutory schemes of protection for whistleblowers and other workers with protected characteristics –

> *'... the two situations are nevertheless essentially similar and, other things being equal, one would expect Parliament to have intended to follow the same substantive approach in each'.*

Adopting that approach, in my view Parliament must be taken to have intended, when using the terminology of detriment in the discrimination legislation and in Pt V of the 1996 Act, that it should have the same scope in both.3 The point is reinforced by the fact that, as Judge Eady pointed out, the title to Pt V refers to detriment 'in employment', though I would not regard that by itself as determinative. It is also not quite the whole picture to say that s 47B, unlike s 6 of the Sex Discrimination Act 1975 and its cognates, does not have any reference to 'dismissal' or other specific detriments which can only be suffered as an employee. Sub-s (2) contains an anti-overlap provision which excludes from the scope of the section a detriment which 'amounts to dismissal (within the meaning of Pt X)'. The effect of that provision is considered in detail at paras [58]–[78] of my judgment in Timis v Osipov ([2019] IRLR 52, pp 61–63; [2019] ICR 655, pp 673–680), but the point for present purposes is that the draftsman recognised that dismissal was a species of detriment: it was only for reasons of legislative history that they were covered by different Parts of the Act."

76. I appreciate that Underhill J commented that it had been sensible of the ET to have given Mrs Tiplady the benefit of the doubt in resepct of two of the detriments in respect of which she had made claims. However, in the circumstances of this case, I find that in respect of all the detriments claimed by the claimant, Cleveland Police was acting as a Police service, not his employer. It acted on a complaint and went through the PACE steps that it was required to take.

77. Any remedy for the claimant in resepct of discrimination would have been under Part 3 of the 2010 Act. To allow a claim to proceed under Part 5 would have given the claimant (and any other Police officer) a right to object to their arrest, search etc. that is not available to persons who are not Police officers. I find that this could not have been the intention of Parliament. Allegations 2, 3, 4, 5, 6, 7, 13, 22 and 37 are dismissed.

Third Issue – Findings

78. The questions of strike-outs and deposit orders were particularly difficult to determine in this case because of the nature and circumstances of Mr Walker's claim: essentially, he is alleging that every act that he is complaining of is connected to every other act because they are all part of an unlawful conspiracy between a very large number of individuals within Cleveland Police, the PFEW and Cleveland PF that had, as its primary purpose, a desire to keep secret a number of unlawful acts. The acts that the conspiracy wished to keep secret were related to a series of allegedly unlawful acts against disabled and BAME Police officers and members of Cleveland PF who sought to uncover the unlawful acts. The claimant was one of the members of Cleveland PF.

79. He says that, as he got closer to uncovering the conspiracy, the conspirators committed the acts alleged. The actions of the conspirators ended with his retirement from Cleveland Police through ill-health in January 2021. I was mindful of the fact that I had heard no evidence on the claims under consideration and the guidance of the case law set out above.

Allegation 1

80. This is an allegation that the respondent manufactured a complaint against the police ("CAP") and a private defamation claim against him. It is undisputed that the claimant sent an email dated 1 January 2016 to approximately 150 serving officers of the respondent [196-197]. The email began "Dear Mark". The claimant confirmed that "Mark" was Mark Richardson, who was the Secretary of Cleveland PF at the time. The email stated:

> *"My information is that you have been conspiring against Paul Brown for some time and that there may even be a recording of you doing so with Grant Thorburn as well as evidence of Federation leaks directly to PSD."*

81. Grant Thorburn, who was a former Police officer with Cleveland Police who joined Cleveland PF on retirement, made a complaint to Cleveland Police [198-206] about the allegation made in the claimant's email.

82. Mr Thorburn instructed solicitors, who sent the claimant a letter before action dated 18 February 2016 alleging that the claimant had defamed their client [207-211].

83. I find that this allegation has no reasonable prospect of success and is struck out. I make that finding because:

    83.1. The email sent by the claimant was, at best, unwise. I find it indisputable that the email accuses Mr Thorburn of a serious criminal offence;

    83.2. Even if the claimant is correct to say that he ignored the letter before action and no proceedings were ever issued, the allegation of defamation was made through solicitors and the complaint was made to Cleveland Police. I find that it is highly likely that both the letter before action and complaint were made by Mr Thorburn of his own motion, rather than at the bidding of the respondent; and

83.3. I cannot see that there would have been any benefit to the respondent to encourage Mr Thorburn to make the complaint. The claimant's allegation is mere assertion.

Allegation 2

84. Allegation 2 was struck out in my consideration of the Second Issue (the respondent acting as a police service).

Allegation 3

74. Allegation 3 was struck out in my consideration of the Second Issue.

Allegation 4

75. Allegation 4 was struck out in my consideration of the Second Issue.

Allegation 5

76. Allegation 5 was struck out in my consideration of the Second Issue.

Allegation 6

77. Allegation 6 was struck out in my consideration of the Second Issue.

Allegation 7

78. Allegation 7 was struck out in my consideration of the Second Issue.

Allegation 8

79. This is an allegation that the respondent deliberately withheld welfare provisions from him as acts of victimisation and/or detriment because he made protected disclosures.

80. Taking the claimant's claims at their highest:

80.1. He accepted that his contractual entitlement to sick pay was to 6 months' full pay followed by 6 months' half pay. Both could be extended in exceptional circumstances. The claimant accepted that his full sick pay was extended on a number of occasions;

80.2. He agreed that he participated in the respondent's Psychological Wellbeing Programme;

80.3. He accepted that a wide range of welfare benefits were available to him; but

80.4. He alleges that when he was released from custody on 1 November 2018, he had no means to contact anyone for support because all his telecommunications devices had been taken from him;

80.5. The respondent's HR department had attempted to refer the claimant to OH, but the respondent's Directorate of Standards and Ethics (DSE) would not supply the information OH would require; and

80.6. He was not referred to OH until October 2019 (claimant's case) or 1 July 2019 (respondent's case).

81. Mr Arnold's submission that the claimant has to:

81.1. Show that the respondent withheld welfare provisions;

81.2. Show that the provisions were withheld deliberately; and

81.3. Show that the provisions were withheld because the claimant did protected acts and/or made protected disclosures.

82. I find that this claim has little reasonable prospect of success because of the evidential hurdles that the claimant will have to clear. However, the matter will be determined on the evidence, so it would not be just and equitable to strike the claim out.

Allegation 11

81. This is an allegation that the respondent, through DS Henderson, returned an iPad and three mobile phones, which had been seized from the claimant's home when the Cleveland Police searched his property, to the claimant's ex-wife. The claimant alleges that the iPad was owned by his son and that the phones were the claimant's own property.

82. His complaints are that:

82.1. The items were returned to the claimant's ex-wife to cause distress to the claimant;

82.2. DS Henderson's conduct "terrified" the claimant's ex-wife in a way calculated to cause the claimant distress;

82.3. DS Henderson's conduct "terrified" the claimant's daughter; and

82.4. Property belonging to the claimant was returned to his ex-wife in order to cause him distress.

83. I find that this claim has no reasonable prospect of success and is struck out. I make that decision because:

83.1. The record of the claimant's criminal interview with the Police shows that he indicated that the iPad was his son's and that the phones were his daughter's;

83.2. The claimant accepted that he did not correct the impression he had given the Police about the ownership of the phones and iPad before they were returned;

83.3. He said in the hearing that his son probably regarded the iPad to be his own property; so

83.4. It was not unreasonable to return the items to the home of the children's mother, notwithstanding that the claimant's daughter usually lived with him (but was staying with her mother when the items were returned) and the claimant's son was an adult at the time of the return.

Allegation 12

84. This allegation related to the spreading of rumours about the claimant by members of Cleveland Police. The strike out/deposit application was limited to the allegation that the respondent's officers spread rumours about the claimant stealing petty cash from the Cleveland PF that had been in the safe that he removed.

85. I find that this allegation has little reasonable prospect of success. I make that finding because:

85.1. The claimant accepted that he removed the safe, albeit that he asserts that he had the right to do so;

85.2. The claimant accepts that he had told colleagues what he had done;

85.3. I saw evidence of his text messages to colleagues;

85.4. The allegation boils down to one officer spreading rumours; so

85.5. I cannot see that the claim has more than little prospect of success.

Allegation 13

86. This allegation related to the alleged covert recording of the claimant made by a Detective Constable on 18 November 2108. On reconsideration, I find that the allegation was one of conduct by the respondent in its function as a police service and have struck it out above.

87. In the alternative, had I not struck it out, I would have found that the allegation had little prospect of success. I would have made that finding because:

87.1. The DC was investigating the claimant;

87.2. It was admitted that the recording was made;

87.3. Immediately after the recording was made, the DC went back to the claimant and advised him what he had done, apologised and offered the claimant a copy of the recording; so

87.4. I find that the evidential task of demonstrating that the act of the DC was an act of discrimination, victimisation or detriment is substantial.

Allegation 14

88. This is the allegation that the claimant was removed from his role as Branch Secretary of the Cleveland PF. I find that this allegation has little reasonable prospect of success because:

88.1. The Cleveland PF is independent of the respondent, although it is closely related because of the work it does and the fact that serving and former officers hold positions within it;

88.2. The claimant admitted that he had removed a safe from the office, albeit that he asserts that he had the right to do so; and

88.3. To succeed, the claimant needs to establish a conspiracy or, at least a common purpose between the national PF and the respondent to remove the claimant as an act of discrimination, victimisation or detriment.

Allegation 17

89. This is the allegation that on 25 June 2019, the claimant was informed by the respondent that an investigation into an allegation of gross misconduct against him was to continue, despite the respondent's acknowledgment that no criminal charges were to be brought against the claimant. I find that this allegation has little reasonable prospect of success because:

89.1. The standard of proof in criminal cases is 'beyond reasonable doubt". The standard of proof in disciplinary investigations (an Employment Tribunals) is the "balance of probabilities. It is therefore possible for someone to be acquitted at a criminal trial, but found to have committed the same act in a disciplinary hearing or Employment Tribunal; and

89.2. I find that it will be difficult for the claimant to maintain that a disciplinary investigation should not have continued given his admission that he had taken the safe.

Allegation 20

90. This is the allegation that the respondent deliberately failed to grant the claimant an appointment with the Force Medical Examiner. I find the allegation to have no reasonable prospect of success and it is struck out. I make that finding because:

90.1. The documentary evidence does not support the claimant's assertions.

Allegation 22

83. Allegation 22 was struck out in my consideration of the Second Issue.

Allegation 23

84. Allegation 23 was the allegation that the respondent subjected the claimant to monthly or bi-monthly regulation 28 meetings to determine where his sick pay should continue at the full rate. I find that this allegation has no reasonable prospect of success and it is struck out. I make that finding because:

    84.1. The claimant's contractual right to sick pay at the full rate of pay or at a half rate of pay was contractual and applied to all officers;

    84.2. It was agreed that the claimant remained on full pay, so the act of discrimination, victimisation or detriment was the requirement for the claimant to have regular meetings to assess his ongoing entitlement. I find that there is no reasonable prospect of those meetings being found to be illegal acts as alleged.

Allegation 24

85. This is the allegation that the respondent has deliberately failed to confirm to the claimant that the criminal investigation file into his alleged theft of the safe has not been marked as "No Crime". I find that this allegation has little reasonable prospect of success. I make that finding because:

    85.1. There is a conflict of interest between the parties. The respondent asserts that the claimant was advised that the matter was to be "no crimed" on 1 April 2020, which was a date before the claimant filed his ET1. The claimant disputes this and says he has not been so informed, despite the production of the 1 April 2020 email from the respondent to the claimant [334]. However, the email only goes as far as to say that "In regards the no crime – The OIC will request that this is no crimed." It will be for the claimant to show that the alleged offence was no crimed.

Allegation 25

86. This was the claim that the respondent failed to destroy photograph, fingerprints and biometric samples from the claimant taken in its investigation into the alleged theft of the safe. I find that this allegation has no reasonable prospect of success and is struck out. I make that finding because:

    86.1. The email of 1 April 2020 [334] stated that "Once the custody record has been finalised all bio-metrics will be destroyed." The claimant has no evidence that suggests that this has not happened.

Allegation 37

87. Allegation 37 was struck out in my consideration of the Second Issue.

Summary

88. I struck out the following Allegations that had not already been struck out in my consideration of the Second Issue:

    88.1. Allegation 1;

    88.2. Allegation 20; and

    88.3. Allegation 23.

89. I make deposit orders in the sum of £200 in respect of each of the following Allegations:

    89.1. Allegation 8;

    89.2. Allegation 11;

    89.3. Allegation 12;

    89.4. Allegation 14;

    89.5. Allegation 17;

    89.6. Allegation 24; and

    89.7. Allegation 25.

90. There are seven Allegations that are the subject of a deposit order of £200 each, so the total sum of deposit order as listed above amounts to £1,400. I will set out the terms of the deposit order in a separate document

Fourth Issue - Findings

91. According to the document "Draft List of Issues v2" [147-182], with which the claimant raised no objection, he had produced a list of 19 Protected Acts (numbered PD1 to PD19 in the document) upon which he based his claims of victimisation contrary to section 27 of the Equality Act 2010.

92. The Draft List of Issues v2 also listed 31 Protected Disclosures (numbered PD1 to PD31 in the document) as the basis of his claims of detriment because he had made protected disclosures. There was some overlap between the Protected Acts and Protected Disclosures:

    92.1. Protected Acts 1-13 and Protected Disclosures 1-13 were the same set of facts;

    92.2. Protected Disclosures 14 to 25 were unique and were protected disclosures only; and

    92.3. Protected Acts 14-19 and Protected Disclosures 26-31 were the same set of facts.

93. I went through the definition of "protected act" in section 27(2) of the Equality Act 2010 with Mr Walker.

Protected Acts

94. Mr Arnold submitted that my consideration of the fourth issue was in two parts. The first part was a consideration of Protected Acts 4, 5 and 8 [160-161]. These were:

> *"**Protected Act 4.** On Tuesday 23rd October 2018, the Claimant referred an allegation of false accounting against PC Richard Murray; referring to the COT 3 payment to Pauline Bradley who had recorded impropriety towards Paul Brown; by e-mail and verbally over the telephone to DI John Bonner of the Respondent's Department of Standards and Ethics. (Goc29,41);*
>
> ***Protected Act 5.** On Thursday 25th October 2018, the Claimant verbally and to a degree physically, disclosed the contents of the file containing apparent illegal phone interceptions by the respondent relating to Steve Matthews and Paul Brown and e-mails between Brown and his legal representative to PC Glen Teeley. Without showing any detail or elaborating, the Claimant then disclosed the existence of the file to PS Dale Darby; and*
>
> ***Protected Act 8.** At 11.48am on Friday 26th October 2018, the Claimant sent an email to the respondent's then Chief Constable Mike Veal detailing some of what was discussed in person."*

95. Mr Arnold's skeleton argument (paragraph 141) submitted that Protected Acts 4, 5 and 8 had no reference to the Equality Act 2010 and should be struck out as having no reasonable prospect of success, or that a deposit order should be made.

96. I am grateful to Mr Walker trying to narrow the issues to be determined under this heading by confirming that Protected Act 19 (which was presented as a whistleblowing detriment claim should be withdrawn (see paragraph 3.7 above).

97. The claimant's case on Protected Act 4 was a little convoluted. It related to a former employee of Cleveland PF, Pauline Bradley, who had entered into an agreement with CPF on the termination of her employment. The claimant says that he believes that PC Richard Murray committed a crime by describing the payment to Ms Bradley as "holiday pay", when it was, in fact, a payment to her to cover up illegal her disclosure of illegal acts against BAME police officers by telephone and email to DI John Bonner of the respondent. The offence was said to be one of false accounting. The claimant says that he did the protected act on 23 October 2018 by an email from him to DI Bonner [347-348].

98. I find that the email refers to events that happened in 2015. I also find that the email does not make an allegation (which does not have to be express) that the respondent (through the actions of its officers) had contravened the Equality Act 2010 (section 27(2)(d)). The claimant only mentions the actions of PC Murray. His alleged protected act was describing the monies paid to Ms Bradley as "holiday pay" when it was not. I find that the act alleged that the claimant relies on as a protected act does not meet the definitions of brining proceedings under the Equality Act (section 27(2)(a)), giving evidence or information in connection with proceedings

under the Equality Act 2010 (section 27(2)(b)) or doing any other thing for the purposes of or in connection with the Equality Act 2010 (section 27(2)(c).

99. Protected Act 4 is struck out.

100. The claimant's case on Protected Act 5 is that he disclosed the contents of a file containing apparent illegal phone interceptions by the respondent relating to Steve Matthews and Paul Brown (both of whom were officers of the respondent police service who had brought discrimination claims against the respondent) and e-mails between Brown and his legal representative to PC Glen Teeley.

101. Mr Arnold conceded that this was not challenged as a protected act. I find that if it is shown to have happened, then it would be a protected act.

102. The claimant's case on Protected Act 8 is that, at 11.48am on Friday 26th October 2018, he sent an email to the respondent's then Chief Constable Mike Veal [351-352] concerning the unlawful surveillance of BAME officers.

103. I find that the email only made reference to "Operation Mahn", which the email states to be an enquiry led by officers from West Midlands Police. As Mr Arnold did not seek to challenge Mr Walker's description of Operation Mahn, I find that the email of 25 October was a thing that thing done for the purposes of or in connection with the Equality Act 2010 (section 27(2)(c).

Protected Disclosures

104. The respondent's application was that Protected Disclosure 4 (which is also Protected Act 4), 18, 28 (which is also PA 16), 29 (which is also PA 17), 30 (which is also PA 18), and 31 (which is also PA 19) were not made in the public interest. They were private interest matters and it was not reasonable for the claimant to believe that they were made in the public interest.

105. I am grateful to Mr Walker trying to narrow the issues to be determined under this heading by confirming Protected Disclosures 28, 29 and 30 were withdrawn.

106. I was therefore left with the task of determining whether the following disputed Protected Disclosures contended for by the claimant should be allowed to stand:

> *"**Protected Disclosure 4.** On Tuesday 23rd October 2018, the Claimant referred an allegation of false accounting against PC Richard Murray; referring to the COT 3 payment to Pauline Bradley who had recorded impropriety towards Paul Brown; by e-mail and verbally over the telephone to DI John Bonner of the Respondent's Department of Standards and Ethics. (Goc29,41);*
>
> ***Protected Disclosure 18:** On 25th July 2017, the Claimant disclosed to Supt. Dave Sutherland by telephone that PC Wendy Sutcliffe was subject to domestic related coercive and controlling behaviour by PC Ben Sutcliffe and that evening Ben Sutcliffe had attended her home whilst on duty and screamed and made demands of the Complainant by telephone before causing criminal damage to the home of Wendy Sutcliffe. Very shortly afterwards the Complainant then made the same disclosure to the duty*

Inspector Jim O'Connor by telephone. The next morning the Claimant made the same disclosure to the duty Inspector Brian Hallas by telephone.

In September 2017 the Claimant made the same disclosure to Chief Inspector Paul Haytack and showed him text messages sent to them by Wendy Sutcliffe and her adult daughter Chloe. No other person was present.

In September 2017 the Claimant made the same disclosure to Supt. Tariq Ali. No other person was present.

In November 2017 the Claimant made the same disclosure to Chief Inspector Chris Barker and showed him text messages sent by Wendy Sutcliffe, her friends and her adult daughter Chloe. No other person was present.

In January 2018, The Claimant made the same disclosure to AC/I John Bonner verbally and showed him text messages sent by Wendy Sutcliffe, her friends and her adult Daughter Chloe. No other person was present.

On 27th July 2018, the claimant made the same disclosure to C/I Warren Shepherd verbally. No other person was present.

In around September 2018, the Claimant made a disclosure of a similar nature with allegations of similar behaviour towards women by Ben Sutcliffe to AC/I Bonner by e-mail.

***Protected Disclosure 31**. Anthony Simpson was disabled by mental health issues. On 23rd July 2018, Pc Simpson was served discipline papers by DC Karl Hunt. A short time later in the presence of Glen Teeley and another officer who the Claimant does not know, the Claimant informed Hunt's supervisor DS Phil Henderson that the investigation into Simpson was biased and unfair, and was lacking, citing that key witnesses had not been spoken to CCTV evidence had been manipulated and that his disability had been overlooked. On 27th July, the Complainant made the same disclosure to Supt. Warren Shepheard verbally and with no other person present. In August 2020 the Claimant made the same disclosure to the Respondent's then Chief Constable Mike Veal, verbally and with Glen Teeley present.*

107. I find that Protected Disclosure 4 is not capable of being a protected disclosure. I make that finding because:

    107.1. The claimant's email dated 23 October 2018 to DI Bonner [347-348] is vague as to what is being alleged;

    107.2. I find that no information is disclosed;

    107.3. I find that there is no information that tends to show that one of the fie matters in section 43B (1) (a)-(e) has happened;

    107.4. I find that the claimant could not have had a reasonable belief in what he was alleging, as it was based entirely on supposition that he had developed from anecdotal recollections; but

107.5. I find that had everything else had been in place, such a disclosure would have been in the public interest because it would have related to a function of a police force.

108. Protected Disclosure 4 is struck out.

109. I find that Protected Disclosure 18 is a protected disclosure as defined in section 43B of the Employment Rights Act 1996. I make that finding because:

109.1. The disclosures were of specific information relating to alleged criminal acts by a serving officer;

109.2. They were made to the claimant's employer;

109.3. They were in the public interest because the alleged criminal behaviour was carried out by a serving police officer; and

109.4. The claimant had reasonable belief in what he was disclosing.

110. I find that Protected Disclosure 31 is a protected disclosure. I make that finding because:

110.1. The disclosure was of specific information relating to an allegedly corrupt investigation that led to a miscarriage of justice;

110.2. They were made to the claimant's employer;

110.3. They were in the public interest because the alleged miscarriage of justice was committed by a police service; and

110.4. The claimant had reasonable belief in what he was disclosing.

Fifth Issue – Findings

111. These are the claims that the respondent says are out of time and should be struck out as such. The respondent's application referred me to paragraphs 7 to 10 of the Draft List of Issues v2 [398], which states that complaint that occurred before 31 January 2020 is potentially outside the primary time limits set out in section 123 of the Equality Act 2010 (discrimination and victimisation claims) and section48 of the Employment Rights Act 1996 (detriment because of protected disclosure claims).

112. In respect of the discrimination and victimisation claims, the matter is wider than the simple application of time limits, as the provisions of section 123(3)(a), which provides that "conduct extending over a period is to be treated as done at the end of the period."

113. I also have to consider section 123(1)(b), which allows a Tribunal to extend time by such period as it finds just and equitable.

114. The test in section 48 of the Employment Rights Act 1996, however, is that time only starts to run at the end of a series of similar acts or failures, of which the last is within the primary time period (section 48(3)(a)). Time can also be extended by an act that

extends over a period, whereby the last day of the period is within the primary limitation period.

115. I applied the test in the case of **Hendricks** (see above) on the question of 'continuing' acts. I applied the test in the case of **Adedeji** (see above) on the question of the Tribunal's discretion to extend time.

116. The respondent's application related to 5 claims:

    116.1. Allegation 26, which is said to have occurred in April 2012 [418];

    116.2. Allegation 27, which is said to have occurred in January 2013 [418];

    116.3. Allegation 28, which is said to have occurred in January 2013 [418];

    116.4. Allegation 29, which is said to have occurred in September 2013 [418]; and

    116.5. Allegation 30, which is said to have occurred in September 2015 [419].

117. Having heard the submissions of Mr Arnold and Mr Walker, I find that the decision of Ellenbogen J in the EAT case of **E v X, L and Z** UKEAT/0079/20 is relevant in determining the question of whether there had been acts extending over a period for limitation purposes at paragraphs 47 and 50. In paragraph 50, a list of key principles was distilled, of which points 4 to 9 inclusive are the most relevant to this case:

    4. *It is important that the issues for determination by the tribunal at a preliminary hearing have been identified with clarity. That will include identification of whether the tribunal is being asked: (1) to consider whether a particular allegation or complaint should be struck out, because no prima facie case can be demonstrated, or (2) substantively to determine the limitation issue: Caterham;*

    5. *When faced with a strike-out application arising from a time point, the test which a tribunal must apply is whether the claimant has established a prima facie case, in which connection it may be advisable for oral evidence to be called. It will be a finding of fact for the tribunal as to whether one act leads to another, in any particular case: Lyfar;*

    6. *An alternative framing of the test to be applied on a strike-out application is whether the claimant has established a reasonably arguable basis for the contention that the various acts are so linked as to be continuing acts, or to constitute an on-going state of affairs: Aziz; Sridhar;*
    7. *The fact that different individuals may have been involved in the various acts of which complaint is made is a relevant, but not conclusive, factor: Aziz;*

    8. *In an appropriate case, a strike-out application in respect of some part of a claim can been approached, assuming, for that purpose, the facts to be as pleaded by the claimant. In that event, no evidence will be required — the*

matter will be decided on the claimant's pleading: Caterham (as qualified at paragraph 47 above);

9. *A tribunal hearing a strike-out application should view the claimant's case, at its highest, critically, including by considering whether any aspect of that case is innately implausible for any reason: Robinson and paragraph 47 above;*

118. This is an extremely complex case with a very detailed and interwoven set of facts. I find that the claimant's case at its highest outlines a longstanding and widespread conspiracy between senior officers at Cleveland Police. I heard no evidence on the case and following the guidance of **Hendricks**, **Adedeji** and **E v X, L and Y**, I find that it would not be just and equitable to strike out the claimant's claims on time points without having heard the evidence in full as tested by cross-examination.

119. The respondent's application is refused.

Employment Judge S A Shore

Date 30 May 2022