



EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4103778/2022 Preliminary Hearing by Cloud Video Platform at
Edinburgh on 23 February 2023**

Employment Judge: M A Macleod

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Alegesan Chinnasamy

**Claimant
In Person**

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20 **University of Edinburgh**

**Respondent
Represented by
Ms H Coutts
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 **The Judgment of the Employment Tribunal is that the respondent's
application for strike-out of the claimant's claims is refused, at this stage.**

REASONS

35 1. In this case, the respondent made application to the Employment Tribunal
for strike-out of the claimant's claims under Rule 37 of the Employment
Tribunals Rules of Procedure 2013, on 20 December 2022.

2. A Preliminary Hearing was listed to take place on 23 February 2023. Owing to the claimant's residence in Chennai, India, the Tribunal directed that the Hearing should take place by Cloud Video Platform.
3. The Tribunal also directed that the Hearing should proceed by way of submissions only by the parties, but that if the claimant required to give evidence on any matter during the course of the Hearing, it would be necessary to adjourn the Hearing to secure the consent of the Government of India to the claimant giving evidence under oath or affirmation from India in these proceedings. As it turned out, the Hearing was able to proceed by way of submissions only.
4. The respondent provided an electronic bundle of documents for use at the Hearing, if required, and indeed, reference was made to the documents therein during the Hearing by the respondent's solicitor.
5. It is appropriate, then, to set out the terms of the application, the submissions made by both parties, a short summary of the relevant law and the Tribunal's decision, with reasons.

The Application

6. The respondent's application was made by email by their solicitor, Ms Coutts, on 20 December 2022, and was duly intimated to the claimant. The basis of the application was said to be that (1) the claims have no reasonable prospect of success, (2) the manner in which they have been conducted has been unreasonable, and (3) the claimant has failed to comply with numerous Tribunal Orders.
7. The application set out the background of the case, and referred to the Orders issued by the Tribunal to the claimant to provide further and better particulars of his claim, and his responses.
8. She pointed out that the claimant was ordered by the Tribunal to provide further and better particulars of his claim within 21 days of 23 September 2022 (69-70). Although the claimant responded to the orders, he did not do so in a format which was satisfactory to the Tribunal. At a further

Preliminary Hearing on 21 November 2022, further case management orders were issued to the claimant requiring him to answer specific questions relating to automatic unfair dismissal, by 6 December 2022.

- 5 9. Ms Coutts said that the claimant provided emails to the Tribunal and to the respondent on 8, 12 and 13 December 2022. Those responses were late, incomplete and failed to answer the questions put to the claimant. The respondent was not content for these to be accepted as further and better particulars of the claim.
- 10 10. With regard to the automatic unfair dismissal claim, she submitted that the claimant referred to a grievance which he claimed was lodged on 10 February immediately prior to his dismissal, but that the grievance was not received until after the dismissal. The remaining alleged qualifying disclosures were all made after the claimant's dismissal. The respondent continued to oppose any amendment to the claimant's claim for unfair dismissal to rely upon whistleblowing as the reason for dismissal, a
15 substantial new cause of action, not contained in nor based upon facts pled in the ET1.
- 20 11. With regard to the indirect discrimination claim, she pointed out that the claimant made reference to a number of written policies but failed to specify what aspect of the policy he was relying. The PCP remains unclear. Since the claimant maintained that the respondent's policies had a disproportionate impact upon overseas nationals, rather than those sharing the same protected characteristic as the claimant (namely, being Indian), there is no disadvantage properly pled.
- 25 12. With regard to the victimisation claim, the claimant makes reference to alleged protected acts, not all of which amount to protected acts. He also pleads a number of detriments, but some of those were detriments for which the respondent could not be held responsible, for example relating to government policy, or events prior to the alleged protected acts.
- 30 13. With regard to the harassment claim, the claimant has not, she submitted, provided any further specification in relation to this claim.

14. Ms Courts then said that the respondent was being put to considerable expense in considering the claimant's responses, given their scope, having attended two Preliminary Hearings to try to understand the claimant's claims. No progress has been made despite the efforts of the Tribunal.

15. Any financial losses suffered by the claimant appear to be minimal, and a fair dismissal process was followed. As a result, she submitted that the claimant's claims had no reasonable prospect of success. It would be consistent with the overriding objective of the Tribunal to strike out the claimant's claim in order to save expense by avoiding further unnecessary proceedings and dealing with the claim in a way which is proportionate to the complexity and importance of the issues.

Submission - Respondent

16. The Hearing before me on 23 February 2023 proceeded by CVP. The claimant appeared on his own behalf, and Ms Courts, as before, appeared for the respondent.

17. Ms Courts presented a lengthy written submission, cross-referenced to the bundle of productions. She spoke to that submission concisely, and invited the Tribunal to strike out the claimant's claims.

18. A short summary of Ms Courts' submission, which followed and expanded upon the terms of her application, is set out here.

19. She submitted that the Tribunal had no jurisdiction to hear the claimant's claim of automatic unfair dismissal as it had been submitted out of time. The Tribunal will address this point in its decision section below.

20. She also argued that this claim should be struck out as it has no reasonable prospect of success. His grievance appears to be the qualifying disclosure relied upon, but the grievance was not seen by Ms Murphy before the claimant's dismissal. The respondent had serious concerns about the claimant's performance prior to the grievance being

lodged, and he was invited to the probationary review meeting on the basis that dismissal could be the outcome of the meeting.

- 5 21. In the alternative, she submitted that the claimant had failed to comply with the orders of the Tribunal, both the Orders issued by Employment Judge Sangster on 23 September 2022 and those issued by the sitting Judge on 22 November 2022.
22. Finally, on this claim, Ms Coutts argued that the claimant had conducted the proceedings in an unreasonable manner, by failing to address the questions put to him by the Employment Tribunal.
- 10 23. Again, Ms Coutts submitted that the claim of discrimination on the grounds of race should be struck out on the basis that it had no reasonable prospect of success.
24. The claimant failed to answer the clear and concise questions issued by Employment Judge Sangster on 28 September 2022, though did provide
15 a 14 page response. He was then asked to reformat his response, and provided a further 7 page response, but did not set out that response by reference to the Orders.
25. He was required to provide further specification by the sitting Judge on 21 November, by 6 December. He provided specification of his claim of race
20 discrimination on 13 December. Although he appeared to be relying upon his dismissal as an act of race discrimination, Ms Coutts argued that he had failed to answer the questions put to him by the Tribunal, and that it is not clear why he regards his dismissal as an act of direct race discrimination. The remaining acts of alleged race discrimination all relate
25 to incidents which the claimant claimed occurred after his dismissal.
26. His claim of direct discrimination on the grounds of race should therefore be struck out on the grounds that it has no reasonable prospect of success. He has failed to specify why he argues that the dismissal amounted to direct race discrimination, despite being afforded multiple
30 opportunities to do so.

27. In the alternative, the claimant has failed to comply with Orders of the Tribunal, and has conducted the proceedings unreasonably.

28. Ms Coutts also made the same submissions in relation to the claims of indirect discrimination on the grounds of race and of victimisation on the grounds of race. In addition, she sought strike out of the claimant's claim of harassment on the grounds of race, for the same reason.

Submissions - Claimant

29. The claimant responded to the respondent's submissions orally before me. Again, a short summary of his submissions follows.

30. He asked the Tribunal to consider the dates in this case, and to find that he had presented his claim to the Employment Tribunal within the statutory time limits, including the ACAS Early Conciliation process.

31. He went on to say that every time the Tribunal had asked him for information, he had responded in time, unless there was a reason for the delays. He pointed out that living in India the time difference requires to be taken into account.

32. With regard to the grievance email, he maintained that there is clear evidence that the respondent received that email at 10am, prior to the dismissal meeting. He said that she probably did not read it before the dismissal meeting but cannot say that she did not receive it before then. He also pointed out that he lost access to the respondent's email portal.

33. The respondent breached multiple probationary review policies. The claimant's line manager said that he had raised performance issues prior to the meeting, but this was misleading. He found that Sarah Matthew had found the claimant to have been aggressive, but the claimant submitted that this could be easily dismissed. There was no indication in the meeting he had that that was the case.

34. The claimant submitted that the respondent was trying to navigate a way to victimise him. It was all very clear. They said that he was being confrontational, but the claimant argued that people with vested interests can make up reasons. He maintained that he had substantiated line manager falsification. Susan McNeil was directly involved in his case, and based on her views the dismissal was carried out.
35. On 2 occasions, he said, he had submitted a discrimination survey. The Institute is a small institute, and he was a single employee. He repeated that it was "all very clear".
36. The claimant sought to make reference to a different case in which a claimant (by the name of Putter) had raised an Employment Tribunal claim against the respondent. Ms McNeil was involved in that case, and was found to have breached some Tribunal Orders. Ms Coutts, the respondent's solicitor, had come in defence of her actions.
37. The claimant said that he is a foreign national, selected for the post purely due to his merits. Nobody else could be found for the post within the UK. Everything went "pear-shaped" within 2 months. His line manager raised concerns based on falsified information. He argued that the respondent will struggle with the evidence on the basis that there have been clear breaches of University policies and evidence of discrimination.
38. Citing performance as a reason for dismissal is discrimination when there are no credible performance issues.
39. He said that he provided simple information to the Tribunal, as much as he could. It was not easy to provide a chronology.
40. With regard to his victimisation claim, he said that some of this was not included. To say that he was being confrontational is wrong - it can readily be seen from the meetings that he was not, having recordings of those meetings available.
41. The claimant went on to say that he could have added more information to the detail he provided in November 2022, and that it would have been

easy for the respondent to seek further clarification. In fact, they did not but simply sought, after 2 months, to apply for strike-out of his claim. Every part of the information was carefully drafted and set out by date and event mentioned. He suggested that Ms Coutts had not followed the process herself.

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42. He alleged that it was the respondent who had delayed the process. He totally denied that he was failing to comply with the Tribunal Orders. He gave specific answers to each question with well-justified information. By contrast the respondent has given very little detail apart from the ET3 presented.

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43. He pointed out that as a non-lawyer it was difficult for him to complete the online grievance form. He criticised the format relied upon by the University.

44. He said that he was unaware of what a PCP was until he was informed of it by the Tribunal. He believes that the respondent's probationary policies are the PCP. He could not accept that it was right to say that a breach of a statutory right would be acceptable, but the University appeal outcome did say that.

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45. He strongly objected to the application for strike-out. He spoke about NDAs and gagging orders. He said he worked loyally for the respondent, and that there is no credible argument or evidence which his line manager could use in relation to competence or performance. The claimant argued that he should be allowed to take this case further.

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The Relevant Law

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46. Rule 37(1) of the Employment Tribunals Rules of Procedure 2013 provides:

"At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds-

...(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;...

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out). ”

47. Rule 37(2) provides:

“A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing. ”

48. In this case, the parties were in agreement that the Tribunal may deal with the matter in writing without the requirement for a hearing.

49. In **Blockbuster Entertainment Ltd v James 2006 IRLR 630 CA**, the Court of Appeal found that for a Tribunal to strike out a claim based on unreasonable conduct, it has to be satisfied that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; and in either case, striking out must be a proportionate response.

50. The court went on to say (paragraph 21): “The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike-out power exists. The answer has to take into account the fact - if it is a fact - that the tribunal is ready to try the claims; or - as the case may be - that there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exist. ”

51. Sedley LJ, in **Bennett v Southwark LBC [2002] ICR 881**, considered the question of proportionality in the context of that appeal: *“But proportionality must be borne carefully in mind in deciding these applications, for it is not every instance of misuse of the judicial process, albeit it properly falls within the descriptions scandalous, frivolous or vexatious, which will be sufficient to justify the premature termination of a claim or of the defence to it. Here, as elsewhere, firm case management may well afford a better solution....”*
52. The case of **Faron Fariba v Pfizer Limited & Others UKEAT/0605/10/CEA** was a case in which the EAT found that an Employment Judge was entitled to strike out claims by a claimant who had demonstrated by her disregard for Tribunal orders and the allegations made in correspondence against the respondent, their solicitors and the Tribunal that she was incapable of bringing her complaints to a fair and orderly trial.
53. In reviewing the claimant’s conduct, Mr Justice Underhill noted: *“Dr Fariba said at this hearing that the Tribunal was being distracted from dealing with her employment claim. I entirely agree with that statement, but in my judgment it is Dr Fariba who has not been focussing upon the specific legal claims that she wishes to have the Tribunal determine, but has consistently sought to divert attention from them by raising peripheral issues and making extensive and excessive allegations. ”*
54. At a later stage in the judgment, Mr Justice Underhill said: *“This is not... a case of the (not uncommon) kind where a litigant in person fails to meet deadlines and/or behaves unreasonably or offensively but is nevertheless doing his or misguided best to comply with the directions set by the tribunal in order to get to trial. Instead, the scatter of allegations of misconduct, the applications for a stay, the pursuit of other proceedings, the threats of resort to criminal or regulatory sanctions, clearly indicated that the Appellant’s focus was entirely elsewhere and that if the case remained live she would, if I may use my own language, continue to*

thrash around indefinitely. That is why, and the sense in which, the Judge concluded that a fair trial was impossible. ”

Discussion and Decision

55. The respondent makes an application for strike-out of the claimant's claims on the basis that the claims lack reasonable prospect of success, that the claimant has conducted the proceedings unreasonably and that he has failed to comply with numerous Tribunal Orders.
56. It is important to consider the different parts of the claimant's case separately, in the context of the applications, before reviewing the Tribunal's conclusions and determining whether the claims or any part of them should be struck out.
57. However, prior to addressing these points, it is important to note that at the start of her submissions, Ms Coutts raised a number of points about the responses provided by the claimant to the Tribunal and the timing of those responses, on the basis that they were outwith the statutory deadline for such claims and should therefore not be considered as the Tribunal lacked jurisdiction to hear them.
58. The difficulty with this submission is two-fold: firstly, there was no notice given to the claimant that this Hearing would address the question of time bar; and secondly, if there had been, the Hearing could not have proceeded, on the basis that the Tribunal would have required the claimant to give evidence specifically on the question of time-bar. The claimant could not have given evidence at this Hearing, on the basis that permission has not yet been obtained from the state of India for parties or witnesses to give evidence remotely from India to a Hearing in Scotland.
59. Accordingly, the Tribunal has not taken a view on any time-bar issues which may arise from the claimant's responses to the Tribunal's Orders. The decision which follows proceeds on the basis that the claims are as set out in the claim form and the additional information provided by the claimant. That does not mean that the Tribunal accepts those responses,

at least to the extent that they introduce or expand upon the claims already made, but that the decision is made on the application presented and based on the full information provided by the claimant.

Automatic unfair dismissal

5 60. Ms Coutts' first submission was that the claimant's claims have no reasonable prospect of success in this case.

61. The claimant's claim of automatic unfair dismissal is based on the disclosure of information in his grievance, immediately prior to his dismissal, together with a number of other documents, namely, his appeal
10 against dismissal, his probation review meeting notes with additional information and supporting documents presented to the investigation team and appeal committee members at the University, as well as the interview with the investigation officer where he had informed HN (his line manager) of wrongdoings, though without using the word "whistleblowing"
15 (127). The respondent's position is that the other disclosures alleged took place after the decision to dismiss him, and therefore could not form part of the reason for his dismissal.

62. They also say that the dismissing officer did not see the grievance prior to making the decision to dismiss the claimant. The claimant accepts that
20 this is probably true, but insists that the grievance was presented prior to the dismissal decision.

63. In my judgment, the claimant's grievance, if it is relied upon as the basis for the protected disclosures made by the claimant, was received by the respondent prior to the decision to dismiss him. The respondent's position
25 is that the dismissing officer did not see it before making the decision. If that is true, then the claimant's grievance cannot form part of the decision-making process.

64. However, the crucial issue here is whether this is correct. The respondent has stated that this is the position but no evidence has been led on this
30 matter, and while the claimant accepts that it is probably true that the

dismissing officer did not read the grievance before reaching a decision, he does not admit this to be the case (on the basis, presumably, that he simply cannot know). The issue cannot be resolved without hearing the witness under oath or affirmation.

5 65. It does appear that the other disclosures alleged by the claimant (A)(ii)-(v) were not conveyed to the respondent until after the decision to dismiss. The dates are set out on 128 and 129 of the bundle of productions. Other than the disclosure of the grievance, the other disclosures are all said to have taken place after the dismissal of the claimant.

10 66. I deal with the question of strike-out below.

Indirect Discrimination

67. The claimant provided a timeline (131ff) in response to the Tribunal's Order under this heading.

15 68. He then set out, in answer to the question "What was the relevant provision, criterion or practice (POP) applied by the respondent?" a list of 3 documents:

(i) Interim Guidance for Managing Probation sent on 8 February 2022;

(ii) Summary of conditions of employment for grades 6 to 10 sent on 30 November 2021; and

20 (iii) Contract of employment sent on 30 November and 9 December 2022.

69. The group to which the PCP was applied, he said, was "Employees on probation in grades 6 to 10", and the protected characteristic relied upon was "Race & nationality".

25 70. He went on, when asked to identify the particular disadvantage to people of the same protected characteristic as his, to say that the documents which he referred to were not discriminatory per se, but disproportionately affected "overseas nationals with protected characteristics (nationality)" (134).

- 5 71. He appeared to suggest, then, that due to his need to secure certain assurances from his line manager, he was more reliant or dependent on him for the renewal of his employment contract and sponsorship to work in the UK; and that any formal complaint against his line manager would bring adverse repercussions in various forms, including additional workload, unjustified insults, falsifications, references for future jobs, career loss and family consequences. He went on to describe it as “modern slavery”.
- 10 72. Reviewing the claimant’s complaints under this heading, there are two main criticisms raised by the respondent
- 15 73. Firstly, the respondent maintains that the protected characteristic relied upon by the claimant, of race, as an Indian citizen, is different to the protected characteristic of the group which is substantially disadvantaged by the PCP, that is, overseas nationals. The respondent submitted that his claim is bound to fail as it implies that not only does any PCP relied upon place the claimant at a particular disadvantage, but also disadvantages those who do not share the protected characteristic relied upon. As I understand it, the respondent’s argument is that the claimant is relying upon his Indian race and nationality in this case, but pointing to a disadvantage which applies to “overseas nationals”, a much wider group which includes many nationalities which do not share the same protected characteristic as he has.
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- 25 74. Secondly, the respondent argues that, in any event, the responses to the Tribunal’s Order fails to address the points therein and therefore his claim remains unclear and insufficiently specified.
- 30 75. The claimant, while an intelligent and highly qualified person in his field, is an unqualified and unrepresented claimant. It is important to take account of this in determining the Tribunal’s response to this application. The formulation of a PCP is a complex legal matter, and while there is a limit to the latitude which can be granted to any party in proceedings such as these, the Tribunal requires to place parties, so far as possible, on an

equal footing, in line with the overriding objective of the Tribunals Rules of Procedure.

5 76. In my judgment, the claimant's reference to the substantial disadvantage applying to overseas professionals, rather than those specifically sharing his nationality or race, does widen the field referred to beyond his complaint, and rather confuses matters. However, the claimant has clearly identified himself as being of Indian race and nationality, which is the foundation of his claim of race discrimination, and accordingly, it is my view that the claim of indirect discrimination should be interpreted
10 according to that initial statement. As a result, I consider that the claimant's complaint here is that the PCPs (to which I shall return) placed him as an Indian person by race and nationality at a substantial disadvantage when compared with British people. The difficulty about that is that he does not plead that - he identifies the disadvantage as applying
15 to overseas nationals in general, rather than specifically to those who share his protected characteristic - and perhaps more fundamentally, that he complains that the category of people to whom the disadvantage applies is so broad that it covers many who do not share his protected characteristic.

20 77. As a result, as currently formulated, the claimant's claim is difficult to follow and very unclear, in this regard.

78. So far as the claimant's PCPs are concerned, he has referred to 3 documents which were sent to him. It is, in my view, reasonable to proceed on the basis that the claimant's assertion is that the interim
25 guidance for managing probation, the summary of conditions of employment for grades 6 to 10 and his contract of employment were PCPs which were applied by the respondent.

79. It is possible to understand that the interim guidance was not just applied to him but to all employees on probation in grades 6 to 10 with the
30 respondent; it is also possible to see that the terms of the conditions of employment for grades 6 to 10 were applied to people within that group;

but it is not possible to see how the claimant's contract of employment itself was applied to that group, when it is plainly designated as his own contract. The claimant does not say that his contract of employment was identical to that of others within the group he identifies, and in those circumstances it seems to me that it cannot be said to amount to a PCP which was applied to that group, but only his own personal contract of employment.

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80. The claimant went on to note that the PCPs were not discriminatory, of themselves, and that they had provisions for fairness to all employees providing that the guidance was followed. He then said that "it disproportionately affects overseas nationals with protected characteristics (nationality)". This is vague and unclear. A claim for indirect discrimination must identify a substantial disadvantage disproportionately affecting the group to which he belongs. "Overseas nationals with protected characteristics (nationality)" is a category to which many people who do not share his protected characteristic belong.

81. Further, it is necessary to consider the disadvantage which he is claiming.

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82. The first disadvantage he referred to was a personal one, rather than one relating to a particular group, namely that he was dependent upon his line manager for the renewal of his employment contract and sponsorship to work in the UK. He names his line manager (HN) rather than identifying that dependence on "a" line manager creates the disadvantage. It appears to me that his concern is that because he has lost trust in HN in particular, he has suffered a disadvantage. That is a personal complaint relating to the treatment accorded to him by HN, rather than an identifiable disadvantage to the group to which he belongs.

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83. The second disadvantage asserts that any complaint against HN would have an adverse outcome, in the form of repercussions and other actions taken against him. This is a personal complaint about his own treatment by HN, rather than a consequence of the application of any PCP, so far as it can be read. Essentially, the claimant is complaining that HN has

treated him less favourably than he would treat others who do not share his protected characteristic.

5 84. In relation to both of these points, it seems to me that the claimant is not in fact presenting a claim of indirect discrimination, but a claim more akin to direct discrimination. While it is appreciated that indirect discrimination is a complex area of the law, which may be difficult for those not legally qualified to understand, the Tribunal requires to consider whether, if the claimant's claims were proved in fact, the legal findings which he is seeking would follow. In my judgment, a finding of indirect discrimination could not follow even if he were to prove his allegations against HN in a full hearing.

85. Accordingly, it is my judgment that the claimant's claim of indirect discrimination on the grounds of race is insufficiently well defined to have any reasonable prospect of success.

15 86. I should clarify at this stage that I do not consider that the claimant has been guilty of failing to comply with the Tribunal's Orders. It is quite obvious that the claimant has endeavoured to set out his answers to each of the Orders as fully as he can, and has done so with good intentions. There is no suggestion here that the claimant has disregarded the Tribunal's Orders or treated the Tribunal with disrespect. It is perhaps more accurate to say that he has entered a very complex legal field without legal training and has been unable to present an indirect discrimination claim in a clear and specific way such as to give the respondent fair notice of that claim.

25 87. I deal below with the question of strike-out in relation to this claim.

Victimisation

88. The respondent submits that the claimant seeks to rely upon protected acts, not all of which can be so defined; and that he lists a number of detriments, for some of which the respondent cannot be held responsible.

89. The claimant maintained that there were a number of protected acts (138ff) on which he sought to rely:

5 A) He completed the Usher Institute equality diversity and inclusion survey for BMEG staff highlighting workplace racial discrimination on 24 and 28 January;

B) He submitted a formal grievance on 10 February 2022 complaining of harassment, falsification and misrepresentation of information before the probation review;

io C) He informed Sara Murphy on 10 February 2022 in the probation review of harassment, falsification and misrepresentation of information, by HN;

D) He informed Sara Murphy on 10 February 2022, after his dismissal, that he had presented a formal grievance to HR prior to the probation review;

15 E) He was sent a formal letter confirming his dismissal on 15 February 2022 by Sara Murphy;

F) He presented additional information on 25 and 28 February 2022;

20 G) On 8 March 2022, he presented an appeal against his dismissal based on wilfully misrepresented, falsified and baseless allegations on performance and conduct, breach of employment contract, breach of "academic and research" and breach of the respondent's probation review policy;

H) He completed a declaration form (apparently relating to timesheets for particular projects);

25 I) On 28 March 2022, he presented an "investigation officer summary of HN project work completed before and after joining the university against the globally acknowledged reference standard (comparator)";

J) On 31 March and 4 April 2022, he informed the investigation officer about wrongdoing by HN, including harassment and insulting conduct;

K) On 31 March 2022, he requested clarification from Professor Andrew baker as to whether he was on garden leave and if he could travel outwith the UK;

L) On 7 June 2022, he was provided with the outcome of his appeal against dismissal which was falsified and contained misrepresentations of information;

M) In November 2022, HN published a systematic review without his name on the authorship.

90. In none of the claimant's allegations does he suggest that any of the allegations were related to his race, nor is it made clear how each of the proposed protected acts met the definition within section 27 of the Equality Act 2010, namely:

(a) bringing proceedings under the 2010 Act;

(b) giving evidence or information in connection with proceedings under the Act;

(c) doing any other thing for the purposes of or in connection with the Act;

(d) making an allegation, whether or not express, that the person or persons he alleges victimised him had contravened the Act.

91. There is confusion in the drafting of this claim, in that several of the protected acts are in fact assertions of detriments following the making of protected acts, rather than assertions of protected acts themselves.

92. A) and B) appear to be assertions that the claimant presented to the respondent, in an anonymous survey and in his grievance, complaints about the actions of the respondent. These are, potentially, protected acts, depending on the content of the submissions.

93. C) and D) are simply statements of fact, that he told Ms Murphy about the allegations he was making about HN, and about his grievance. Of themselves, these do not appear to me to amount to protected acts.
94. E) is not an act which he did; it was the respondent who sent him the dismissal letter.
95. F) is entirely unclear on its terms. It is not said what the additional information was, or what it related to, or how it could be said to be a protected act.
96. G) and H) are acts of the claimant, and therefore potentially protected acts, though there is no reference expressly made to any allegation that someone had contravened the 2010 Act.
97. I) appears to be a reference to work submitted by the claimant following investigation into the actions of HN. That seems to amount to criticism of HN in his academic work and standing, rather than any suggestion of discriminatory acts on his part.
98. J) does make reference to allegations of wrongdoing by HN, including insulting and harassing behaviour, though again with no express reference to discrimination.
99. K) refers to a request for clarification rather than an allegation of wrongdoing made by the claimant. He is critical of the response, but he does not suggest anything on which it can be said to be a protected act.
100. L) and M) are acts of the respondent, not of the claimant, and therefore cannot be said to amount to protected acts.
101. A), B), G), H) and J) therefore may amount to protected acts under section 27 of the 2010 Act, but the others, in my view, do not and cannot. The absence of any reference to discrimination may not be a barrier to proceeding with these claims but in my judgment further specification is required in order to clarify that matter.

102. So far as the detriments which the claimant alleges are concerned, he set these out at 142:

A) HN published the systematic review without the claimant's name as co-author;

5 B) There were economic and other consequences of the claimant's dismissal;

C) HN "lured me" to take the position in the 1st Zoom meeting (no date given but understood to be part of the recruitment process prior to his employment commencing);

10 D) The career gap has given prospective employers an indication that he had done something wrong, and therefore the claimant asserts that he is "paying the price" for lies and falsifications of HR and HN;

E) The investigation officer and appeal committee failed to review the documents he presented to the investigation;

15 F) HN exploited the claimant and made a "tidy profit" at his cost;

G) The claimant has not received an employer reference which has caused him disadvantage;

H) HN has ruined his career with lies and falsification of information;

20 I) He has had to change his professional approach for career progress in India;

J) There is no mutual recognition of degrees in Medicine and Dentistry between India and the UK, and India and Australia, which has a crippling effect on him;

25 K) He was forced to leave the UK on the falsehood that a new employment visa would be sponsored.

103. It is very difficult to follow the claimant's line of thinking here. What he was asked to do was to set out allegations about the detriments which he

says were visited upon him by the respondent after he did the protected acts. He does not connect the protected acts to any of these paragraphs, and there is no coherent thread in his pleadings here. For example, asserting that he was lured into the job by HN cannot amount to a detriment arising from doing a protected act, since it took place before he was appointed and before any protected act could have been done.

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104. It is apparent that the claimant is very angry with HN and the respondent, and has sought to set out at great length all the criticisms of both which occur to him. This is not a helpful way of pleading his case, and he
10 required to address the particular points which he wants the Tribunal to find have arisen as detriments because he did the protected act or acts he is relying upon.

15
105. I assess paragraphs A), B), E) and G) as potentially identifying detriments which the claimant is asserting may have arisen from the protected acts. The others are either repetition of points made elsewhere or simply emotive criticisms of the effect of the respondent's actions upon his career. A detriment is an act or omission, not an effect, and therefore it is necessary for the claimant to be as precise as possible in setting out what he believes were the detriments which the respondent visited upon him
20 after he did a protected act or protected acts.

Harassment

106. The claimant sent an email to the Tribunal on 13 December 2022, in which he said he was attaching a "direct discrimination" document, and that one more document of harassment would be completed soon.

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107. No such document has been provided by the claimant.

Direct Discrimination

108. In her submissions, Ms Coutts addressed the claimant's complaint of direct discrimination on the grounds of race, which was specified in his email of 13 December 2022 (145).

109. Essentially, the claimant set out a number of events which followed his presentation of his grievance under the heading of direct discrimination. The respondent argued that all of the events relied upon in this claim took place after the claimant's dismissal and therefore cannot have any reasonable prospect of success.
- 5
110. However, the claimant appears to rely upon the process leading to the dismissal as being an act or acts of direct discrimination, when he states that "There was no investigation, no fair reasons or fair procedure being followed in the dismissal." He went on to state that this amounted to direct discrimination in terms of section 13(1) of the 2010 Act.
- 10
111. The events which followed dismissal are not pled as acts of victimisation in this context, but as acts of direct discrimination, but given that his employment had ended, it is not clear how such a claim could be pursued.
- 15
112. So far as his criticisms of the process leading to dismissal are concerned, he does not specify why he considers that these alleged failures took place on the grounds of his race, and the basis upon which he alleges that he was, or would have been, treated less favourably than another person, real or hypothetical, not sharing his protected characteristic.
- 20
113. It is extremely unhelpful that the claimant persists in relying upon "race and nationality" as being the protected characteristics in this case. Race and nationality are, of themselves, important definitions, but the claimant has himself confirmed that he is of Indian nationality (in the Preliminary Hearing before the sitting Employment Judge), and therefore his references to race and nationality must be read in that light. Further, as identified above, it is of little value to have the claimant's assertions made about overseas nationals, since they are too vague and inspecific in this context.
- 25
114. Having addressed each of these claims in turn (and not forgetting the original claims and the claimant's first attempts at specifying them), I require to consider whether or not, in general, the claimant's conduct of
- 30

these proceedings has been unreasonable, or whether he has failed to comply with the Tribunal's Orders.

115. On balance, I do not consider that the claimant's conduct in these proceedings has been helpful, or constructive, in moving the proceedings forward. However, I am not persuaded that his conduct is such as to attract the criticism that it has become unreasonable. The claimant has conducted himself with courtesy, and has tried to answer the questions which have been put to him. That he has had difficulty in understanding the legal provisions surrounding his different claims is clear; but he has chosen to represent himself in legal proceedings, and must bear the consequences of his lack of understanding. It is possible for an unrepresented claimant to seek advice or even to consult the internet to obtain guidance in answering legal questions. As Ms Coutts points out, the claimant is plainly a person of considerable intelligence and academic ability, and it is difficult to avoid the conclusion that he is motivated to raise as many criticisms against his former line manager and employers as he can, rather than address what are, in the end, very specific questions put by the Tribunal.

116. An unrepresented claimant may expect a degree of latitude from the Tribunal, but that latitude is not without limit, and there comes a point when the Tribunal may consider that the failure to specify a claim amounts to unreasonable conduct.

117. However, as I have indicated, I have not reached that conclusion as yet in this case. It appears to me that the claimant has been trying to answer the Orders which have been presented to him, and that any difficulties which he has encountered have arisen from his limited understanding of the legal concepts involved.

Strike-out

118. It is necessary, then, to determine whether or not the claimant's claim, or any part of it, should be struck out at this stage on the grounds set out in the respondent's application.

119. I have not concluded, as indicated above, that the claimant has conducted these proceedings unreasonably, nor that he has failed to comply with the Orders of the Tribunal.

5 120. I am not convinced that the claimant has conducted these proceedings in a manner which is helpful or constructive, however, nor that he has fully answered the questions put to him. It is not my view that this conduct amounts to unreasonable conduct, particularly in light of the complexity of the claims made and the fact that he is an unqualified and unrepresented litigant.

10 121. The major issue for me to address is whether the weaknesses in the claimant's claims are such that they have no reasonable prospect of success.

15 122. I digress slightly at this stage to point out that although Ms Coutts did say, in response to my question in this Hearing, that she would wish to apply for a deposit order as an alternative to strike-out, no such application is in fact before the Tribunal, and therefore I am not prepared to grant or even consider it.

20 123. It seems to me that the claimant has sought to identify a number of claims before this Tribunal. He has done so in a somewhat piecemeal manner, sending in a number of responses to the Orders issued to him. There remain some significant concerns about the clarity of his claims, however, and at this stage I am not prepared to proceed to a Hearing on the Merits.

25 124. After considerable deliberation, it is my judgment that the respondent's application for strike-out should not be granted. I do not consider that the claims made by the claimant are wholly without merit, though, as will be seen, I am of the view that further specification is required, and that specification will demand that the claims are narrowed rather than expanded.

30 125. Strike-out is the most draconian sanction to impose upon a party in Tribunal proceedings. I am not persuaded that the claimant's case is so

hopeless that it is not possible for part or all of it to be understood. However, I am not prepared to allow the claimant to proceed on the basis of broad swathes of allegations which are not clearly defined, or to have a further opportunity to introduce new allegations.

5 126. I am also conscious that the respondent has stated that parts of the claim may be time-barred or may require an application to amend to be granted in order to include them within the claim.

127. Accordingly, I am prepared to allow the claimant's claim to proceed at this point, but only on the following basis.

10 128. The claimant will be permitted to present his case based on those allegations which can properly be understood from the claim as currently presented, subject to any time-bar or amendment arguments which may be made by the respondent.

129. Those claims are as follows:

15 **Automatic Unfair Dismissal**

1. That the claimant alleges that he made a protected disclosure to the respondent in the form of his grievance dated 10 February 2022;

2. That he alleges that he was dismissed on the grounds that he had made that protected disclosure;

20 3. That none of the other disclosures alleged by him were made before he was dismissed, and accordingly cannot form part of his claim.

Indirect Discrimination on the Grounds of Race

25 1. That the PCPs relied upon are that the respondent applied to him and others on probation in grades 6 to 10

a. Their policy on Interim Guidance for Managing Probation sent on 8 February 2022;

b. Summary of conditions of employment for grades 6 to 10 sent on 30 November 2021.

2. That he has not properly specified the basis upon which the PCP placed people of his particular protected characteristic (that is, of Indian race and nationality) at a substantial disadvantage when compared with others not sharing that protected characteristic, and must do so;

3. That he has not properly specified what substantial disadvantage he was thereby subjected to by the respondent on the grounds of race and nationality, and that he must do so.

Victimisation

1. The claimant relies upon the following as protected acts:

a. He completed the Usher Institute equality diversity and inclusion survey for BMEG staff highlighting workplace racial discrimination on 24 and 28 January;

b. He submitted a formal grievance on 10 February 2022 complaining of harassment, falsification and misrepresentation of information before the probation review;

c. On 8 March 2022, he presented an appeal against his dismissal based on wilfully misrepresented, falsified and baseless allegations on performance and conduct, breach of employment contract, breach of "academic and research" and breach of the respondent's probation review policy;

d. He completed a declaration form (apparently relating to timesheets for particular projects);

e. On 31 March and 4 April 2022, he informed the investigation officer about wrongdoing by HN, including harassment and insulting conduct.

2. The claimant has not fully specified the basis upon which he argues that these are protected acts under section 27 of the 2010 Act, and must do so.

3. The claimant relies upon the following as detriments arising from those protected acts:

a. HN published the systematic review without the claimant's name as co-author;

b. There were economic and other consequences of the claimant's dismissal;

c. The investigation officer and appeal committee failed to review the documents he presented to the investigation;

d. The claimant has not received an employer reference which has caused him disadvantage;

4. The claimant has not clearly identified the basis upon which he maintains that he was subjected to these detriments because he had done the protected acts he claims, and must do so.

Harassment

1. The claimant has failed to specify the basis upon which he claims that he was subjected to harassment on the grounds of race. If he wishes to pursue such a claim, he must identify where it appears in his original claim, and what grounds he wishes to rely upon.

Direct Discrimination

1. The claimant has identified the investigation and process leading to his dismissal, and the decision to dismiss him, as acts of direct discrimination.

2. The claimant has failed to specify the precise basis upon which he seeks to argue that the respondent treated him less favourably

than it did or would treat others not sharing the same protected characteristic as his; and has not identified a comparator, whether actual or hypothetical. He must do so.

5 130. Having set out my conclusions as above, it is my judgment that the respondent's application to strike out the claimant's claims is refused, at this stage.

10 131. The Tribunal will issue to the claimant a further Order requiring him to (a) accept that the claims set out above are accurately framed, and if not, why he maintains that they are not, with specific reference to the document he relies upon; and (b) provide further specification within a defined period of time, with which he must comply in order to move this case to the next stage of the process.

15 **Employment Judge: M Macleod**
Date of Judgment: 03 March 2023
Entered in register: 06 March 2023
and copied to parties

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