



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Jon Wharnsby

**Respondents:** (1) Fire Brigades Union  
(2) Shing Tuk David Shek  
(3) Jon Lambe  
(4) Ross McLaren

**Heard at:** East London Hearing Centre

**On:** 12 July 2024 and 16 August 2024

**Before:** Employment Judge B Beyzade

## Representation

**For the Claimant:** In person (supported by Miss Douse)  
**For the Respondents:** Mr Stuart Brittenden KC, Counsel

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is that:

- 1.1. The claimant's amendment applications dated 10 November 2023 and 22 February 2024 are dismissed on withdrawal by the claimant.
- 1.2. the claimant's complaints of (a) pregnancy or maternity discrimination pursuant to the Equality Act 2010 (b) unjustifiable discipline pursuant to sections 64 and 65 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c) the issue recorded at paragraph 10 of the List of Issues at page 25 of the claimant's Hearing Bundle relating to an alleged detriment done on the ground that the claimant did a protected act pursuant to the Equality Act 2010 (d) the claim against Ross McLaren made under case number 3205408/2022 having been withdrawn by the claimant, are dismissed under Rule 52 of the Rules contained in Schedule 1 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013*.

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- 1.3. the claimant's complaints presented under case numbers 2307994/2023 and 2303057/2024 are struck out pursuant to Rule 37(1)(a) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the ground that they have no reasonable prospect of success, except in relation to the claim brought relating to Mr Shek under case number 2303057/2024. The remainder of the claimant's complaints are listed to be heard at a Final Hearing at **London East Employment Tribunal, Import Building, 2 Clove Crescent, London, E14 2BE at 10.00am on 09, 10, 11, 12, 16, 17, 18, 19, 23, 24 and 25 September 2025.**
- 1.4. The respondents' application for a deposit order is considered under separate cover.
- 1.5. Case Management Orders are made under separate cover.

## **REASONS**

### **Introduction**

1. The claimant initially presented two claims on 19 October 2022 (case number 3205408/2022) and 27 November 2022 (case number 2304357/2022), which were consolidated by order dated 26 May 2023. The respondent resisted those claims, and they were listed for a 10-day Final Hearing at London East Employment Tribunal between 09 September 2025 and 24 September 2025.
2. Employment Judge Park made Case Management Orders dated 02 March 2023 following a Preliminary Hearing in which it was recorded that the claimant's complaints included complaints of victimisation pursuant to section 27 of the Equality Act 2010 and unjustifiable discipline contrary to sections 64 and 65 of the Trade Union and Labour Relations (Consolidation) Act 1992. The List of Issues relating to liability that require to be determined by the Tribunal in relation to those complaints were contained at paragraph 32 of those orders.
3. A Preliminary Hearing (Case Management) was listed by a Notice to parties dated 01 April 2024 to take place on 24 May 2024. Employment Judge Gordon Walker directed on 23 April 2024 that as an adjustment to accommodate the claimant's ADHD the hearing would take place in person and the listing of the Hearing be increased to three hours. Following the respondents' application and on the claimant not objecting, that hearing was postponed.
4. The claimant made applications to amend his claims dated 10 November 2023 (copy at page 116 of the Hearing Bundle) and 22 February 2024 (copy at page 122 of the Hearing Bundle).

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5. On 25 March 2024 the claimant submitted a third claim (case number 2303057/2024). It was agreed that this claim sought to reproduce the alleged detriments relied on by the claimant in relation to the first and second amendment applications.
6. By an email dated 06 June 2024 the respondent's representative made an application to strike out the claimant's new claims.
7. Thereafter on 23 June 2024 the claimant presented a fourth claim (case number 6004466/2024) making complaints of victimisation and disability discrimination.
8. A further Preliminary Hearing (Case Management) which was initially listed at 10.00am on 24 May 2024 was postponed, and it was re-listed at 10.00am on 12 July 2024.
9. By way of directions from Regional Employment Judge Burgher dated 05 July 2024, the Preliminary Hearing on 12 July 2024 was converted to a Preliminary Hearing in public for 1 day and it was directed that: "*outstanding applications for amendment, strike out will be considered then if still being pursued.*"
10. The case called before me for a Preliminary Hearing on 12 July 2024 and thereafter for a continuation hearing on 16 August 2024.
11. Prior to the Hearing ,a file of documents was provided to me consisting of 193 pages prepared by the respondents' representative, to which references were made. In addition, during the hearing I was provided with a copy of the claimant's third claim and I obtained a copy of the fourth claim from the Tribunal's electronic file. Additionally the claimant made references to some documents contained in a file that he had prepared and submitted electronically to the Tribunal.
12. The respondents' representative provided written submissions. Both parties made detailed oral submissions, which the Tribunal found informative.
13. After the first day of the Preliminary Hearing took place, on Saturday 13 July 2024 at 09.59am the claimant sent an email to the Tribunal in relation to relevant case law.
14. The respondents' representative thereafter provided a further file of documents consisting of 201 pages and the claimant supplied a supplementary file of documents 57 pages on the morning of the continuation hearing on 16 August 2024.

**Claimant's amendment applications**

15. The respondent opposed both amendment applications.

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16. As both amendment applications were the same as the third and fourth claims presented by the claimant, the claimant was given the opportunity (between 12.16pm and 1.06pm on the first day of the hearing) to consider whether or not he insisted on the two amendment applications.
17. Following withdrawal of both applications by the claimant at this hearing, I dismissed those applications.

### **Issues before the Tribunal**

18. Following discussions with parties in relation to preliminary issues, the Tribunal recorded the following issues as falling to be investigated and determined by the Tribunal during this hearing, parties being in agreement with this:
  - (i) Whether to strike out case number 2307994/2023 on the basis that it has no reasonable prospect of success and/or order a deposit under Rule 39 on the basis that it has little reasonable prospect of success.
  - (ii) Whether to strike out case number 2303057/2024 on the basis that it has no reasonable prospect of success and/or order a deposit under Rule 39 on the basis that it has little reasonable prospect of success.

### **Summary of respondents' submissions**

#### Claim number 2307994/2023

19. The respondents' representative firstly sought to address the Tribunal in terms of why the respondents submitted that the claim presented under claim number 2307994/2023 should be struck out.
20. It is submitted on behalf of the respondents that the key point in relation to this claim is that the alleged act of victimisation is Mr Lambe's email sent on 29 August 2023 and that the Tribunal has no jurisdiction to hear the claim because of the application of judicial proceedings immunity.
21. The respondents' representative explained that Mr Lambe circulated an email to the London Regional Committee ("LRC") with the exclusive purpose of updating the LRC as to the progress of the complaint to the Certification Officer. The full text of the email appears at page 196 of the Hearing Bundle at paragraph 16. The attachments included a copy of the complaint to the certification officer; a letter from the Certification Officer to the first respondent providing notification that a complaint had been submitted; the first respondent's response/defence to the complaint; and a copy of the response received on behalf of the LRC.
22. The respondents' representative advised that the Certification Officer is a statutory office holder who has powers under sections 108A and 108B of the Trade Union and Labour Relations (Consolidation) Act 1992, and that

the Certification Officer can entertain complaints in respect of various matters such as breaches of the Rule Book in relation to membership. S108A sets out the jurisdiction of the officer and S 108B gives the Certification Officer power if they uphold a complaint to issue a declaration as well as an enforcement order. He stated that the Certification Officer is a statutory appointment appointed by the Secretary of State by the civil service and Sarah Bedwell is the current Certification Officer. The Certification Officer may hear evidence at a contested hearing, including also submissions and legal argument. The respondents' representative advised that an appeal lies from a decision of the Certification Officer to the Employment Appeal Tribunal ("EAT").

23. The respondents' representative submits that judicial proceedings immunity precludes the Tribunal from hearing a claim where the allegations are about the content of documents brought into existence for the purposes of judicial proceedings. It is pointed out that this is not limited to conduct occurring during the course of the hearing but that it also includes every step taken after commencement of proceedings, including the creation of pleadings and other documents created for the purpose of the proceedings.
24. Reliance is placed on the case of *Lincolns v Daniels* [1962] 1 QB 237 at 258, per Devlin LJ who summarised the three categories of judicial proceedings immunity. Emphasis is placed on the second category in the following terms, "*The second covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of the proceedings and starting with the writ or other document which institutes the proceedings.*"
25. The respondents' representative also cites *South London & Maudsley NHS Trust v Dathi* [2008] IRLR 350, *Parmar v East Leicester Medical Practice* [2011] IRLR 641, *Darker v Chief Constable of West Midlands Police* [2001] 1 AC 435, and *Ashton v The Martlet Group Ltd* [2019] ICR 1417 (a summary of the relevant principles can be found at paragraphs 22-26 of the respondents' representative's written representations).
26. It is submitted by the respondents' representative that in light of those authorities, the Certification Officer was exercising a judicial function, they had the power to grant declaratory relief and/or an enforcement order, and further that, it is unambiguously clear that the contents of the 29 August 2023 email and 4 of the 6 attachments to that email fall within the scope of judicial proceedings immunity. Therefore, the Tribunal does not have jurisdiction to hear the victimisation claim.
27. Further or alternatively, the respondents' representative submits that the claim should be struck out as the claimant cannot conceivably establish that he has been subjected to any actionable detriment and that the email and attachments do not name the claimant. It is further submitted that the claim lacks sufficient particulars, and the claimant has failed to furnish the respondents with the same despite a previous request in their response to the claimant's amendment application.

Case number 2303057/2024

28. The respondents' representative then provides submissions relating to the subsequent case, under case number 2303057/2024. He states that this relates to a claim which was presented by Mr Lambe against the union and five named individuals including the claimant, the claimant being the fifth respondent in those proceedings (in the Employment Tribunal). It is also said that the claimant's complaints in that case arise out of or respond to pleaded allegations from Mr Lambe's ET1 Claim Form.
29. The respondents' representative submits that as a result, the Tribunal has no jurisdiction to consider any complaints or detriments arising from the Employment Tribunal proceedings brought by Mr Lambe as they are covered by judicial proceedings immunity.
30. He further states that the claim is retaliatory, that the claimant is seeking to transform Mr Lambe's protected acts into acts of detriment, and that that is an abuse of the victimisation provisions within the Equality Act 2010 ("EqA"). Section 27 of the EqA is designed to protect someone from a detriment done on the ground that they did a protected act. It is averred that the claimant's case undermines the statutory protection afforded to Mr Lambe under section 27 of the EqA. This inverts the statutory protection, it exposes him to further detriment, and the respondents' representative submits that it must be contrary to parliament's intention. This cannot, it is said on behalf of the respondents, be parliament's intention otherwise you would have a constant 'ping pong' and the process would be never ending.
31. In terms of the claim insofar as it is brought in relation to the acts of Mr Shek, Mr Shek and the claimant are both employed by the London Fire Brigade, and Mr Shek submitted a race discrimination complaint to the London Fire Brigade in their capacity as his employer. This complaint was dealt with in accordance with the London Fire Brigade's employee policies and procedures. On 23 November 2023 the claimant was contacted by the employer and in November 2023 the claimant's suspension was extended and the disciplinary process was delayed. It is submitted that neither complaints were raised within the dates mentioned and the claimant's complaint obviously shows that he was acting vexatiously.
32. The respondents' representative advised that the investigation in relation to that complaint only concluded on 08 February 2024.
33. The respondents' representative submits that this was not a matter that related to the union's conduct but rather to the use of employee procedures in relation to their capacity as an employer. In the claimant's Bundle at page 67 a copy of the investigation report prepared by the employer dated 22 January 2024 is included. The investigation was carried out under the London Fire Brigade's Harassment and Complaints Procedure and Disciplinary Procedure for uniformed staff and the report was produced for a manager of the London Fire Brigade.

34. It is submitted by the respondents' representative that Mr Shek wanted to cease engagement with the process for personal wellbeing reasons. However the London Fire Brigade determined that an investigation report should be produced, considering their duty of care to both individuals and their obligations as an employer. In light of that it is submitted by the respondents' representative that there can be no circumstances in which the union is vicariously liable in respect of the claimant's claim insofar as it relates to Mr Shek's acts.
35. Even if the claim had been brought against the Fire Brigades Union and Mr Shek, it is argued on behalf of the respondents that the Tribunal still would not have jurisdiction to hear the claim. It is contended that Mr Shek was not acting within the scope of his duties as a trade union representative, rather, he was as an employee of the first respondent and he had used their disciplinary and harassment procedures. No liability can arise for the purposes of section 109(2) of the EqA. It was suggested that the logic of the claimant's argument means that the first respondent could be vicariously liable for any member who submits a complaint to their employer, that this could not be the case, and it is not something that is covered by s 109(2) (principal and agency relationship) of the EqA. Reference is made to the guidance provided by Underhill LJ in *Nailard v Unite the Union* [2019] ICR 28 at [43].
36. In any event it is also argued that in terms of section 112 of the EqA the detriment complained of namely the extension of the claimant's suspension and disciplinary process is not a detriment for which the first respondent can be liable for under section 112 (aiding contraventions) of the EqA. In order to bring such a complaint, the claimant would have to argue that the first respondent as the employer subjected him to actionable detriment. No such complaint has been made to the Tribunal and reliance is placed on the guidance in *Hallam v Avery* [2001] ICR 408 at [9] per Lord Bingham.

## **Summary of claimant's submissions**

### Claim number 2307994/2023

37. The claimant submitted that the respondents' representative asserted that the first respondent had instructed Mr Lambe to make arrangements for referral to the Standing Orders Committee. The claimant stated that he agreed that Mr Lambe was entitled to, but he was not obliged to provide an update. He also advised that the update went beyond this and to include the attachments that were attached to his email took his actions outside the scope of protection of the judicial proceedings immunity principle. He said it was unnecessary for those documents to be provided.
38. The claimant also asserted that Mr Lambe made a complaint to the Certification Officer acting in an individual capacity.

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39. Although the respondents' representative indicated that the Certification Officer proceedings are public and their decisions were also publicly available, the claimant pointed out that this was only the case once the Hearing had taken place.
40. The claimant referred to the Civil Procedure Rules 1998, Rule 5.4C and provisions relating to supply of documents to non-parties from court records.
41. The claimant stated that Mr Lambe having distributed the relevant documents by email caused matters to move away from the judicial process. He stated that this was not a necessary step for access to justice. He said that had the documents remained within the judicial process, he could see no recourse to make this claim, and that Mr Lambe's actions were intentional and that they were designed to embarrass him.
42. The claimant said that the first protected act took place on 21 March 2022. He stated that his name was within the documents. Mr Lambe had given the impression that there were redactions made, however, the highlighted fields could easily be removed.
43. The claimant indicated that he accepted that complaints to the Certification Officer attracted judicial proceedings immunity. However, he stated that this only related to acts that are necessary in relation to the proceedings and the act of dissemination was not absolutely necessary in the circumstances. Mr Lambe was not seeking instructions from the committee, but he was sharing documents that were supposed to stay within the Certification Officer proceedings. He also added that it is implied in the email from the Certification Officer that they will be shared with the other party, but that documents should not be shared more widely.
44. He said that he believed that this was a fact sensitive matter and that it was not as clear cut as the respondents' representative suggests.
45. He referred to the respondents' representative's submission that it cannot be the judiciary's intention to allow cases such as the instant case to proceed. He cited a case called Nicholls v Corintech 2008 UKEAT.
46. The claimant had prepared a file of documents in advance of the hearing, but despite asking the claimant if he wanted me to read any specific documents in support of his points, I was not asked to read any specific documents from this file (or the Hearing Bundle) by the claimant up to this stage of the Hearing. I reminded the claimant that he should refer me to any documents that he would like me to consider.

Case number 2303057/2024

47. The claimant stated that in terms of victimisation, his understanding is that any acts made in bad faith are not protected acts. He stated that Mr Lambe's claims are spurious and the timing of them is important. He added that these are clearly retaliatory complaints made by Mr Lambe and should be



addressed as such in their entirety, and he referred to pages 12 and 13 of the claimant's Hearing Bundle.

48. The claimant described that a litany of complaints were made against him and Ms Munslowe, and that some dated back to 2017/2018. He referred to pages 86 to 105 of the claimant's Hearing Bundle in support of his contention that the Fire Brigades Union had issues in terms of victimising people who raised complaints.
49. The claimant also made submissions in relation to the claim against Mr Shek. He said that vicarious liability is an argument that should be determined at the Final Hearing. He said that in previous litigation against Mr Paul Embry there was an argument that he was acting in a personal capacity (in terms of making a statement in own time). The position was that Mr Embry was always acting in regards to his role. The claimant advised that Mr Shek and Mr Embry had the same role with the first respondent.
50. The claimant advised that he had no relationship with Mr Shek outside the Fire Brigades Union. He advised that although Mr Shek is technically employed by the first respondent, he was seconded to the Fire Brigades Union.
51. The claimant submitted that at the Final Hearing he will provide evidence to show that Mr Shek was seconded to the first respondent and that that made the first respondent vicariously liable for his actions. He stated that Mr Shek carried out no work for the London Fire Brigade and he was fully seconded to the first respondent. He stated that Mr Shek is reasonably autonomous in terms of the union, the membership, and the people he reported to. His duties were completely union based and he had no responsibilities within the London Fire Brigade.
52. The claimant stated that the two complaints he made were regarding a Fire Brigades Union meeting and a Fire Brigades Union WhatsApp Group. The claimant further stated that he will supply evidence of these matters at the Final Hearing. He referred to page 67 of the claimant's Hearing Bundle and paragraph 2.22 under the heading additional relevant information.
53. He invited me to refer to the complaints themselves and to consider their veracity (and his comments in respect thereof). He commented as follows:
  - 53.1 Allegation 1 related to the wrong year
  - 53.2 Allegation 2 he was out by 2 years 8 months 21 days
  - 53.3 Allegation 2 allegedly occurred on a WhatsApp group 7 months after he had left the WhatsApp group
54. He advised that the complainant never raised issues formally with him or the first respondent. He stated that there were a litany of mistakes and errors within those allegations that undermined their veracity, and that this

was a pattern of their behaviour. He reiterated that he did not know Mr Shek outside the trade union.

55. The claimant then made general points about strike out applications. He said that strike out was a draconian measure, and he said there was guidance and case law in terms of how the Tribunal's powers should be exercised. He advised that this power should only be used in rare circumstances. He advised that there was prima facie evidence before the Tribunal, and he stated that no evidence had been given at this Hearing.
56. However, the claimant stated that he believed that he had supplied sufficient prima facie evidence to support the fact that his claims amounted to a campaign of victimisation.
57. The claimant concluded that if he were not permitted to progress the complaints in question to the Final Hearing, the Employment Judge will not be able to make a holistic judgment in terms of the victimisation by the first respondent as highlighted in the internal report.

### **Respondent's Reply**

58. Firstly, it was pointed out on behalf of the respondents that the claimant suggested that the third category of judicial proceedings immunity applied, when this was not the case. The respondents' representative referred to paragraph 21 of their Skeleton Argument and to the fact that category three dealt with proofs of evidence. He stated that strict necessity is not part of the test for judicial proceedings immunity to apply. He points out that the respondents do not need to show that it was strictly necessary for Mr Lambe to circulate correspondence dealing with the Certification Officer complaint in order for judicial proceedings immunity to apply. This was not a gratuitous sharing of information.
59. It was emphasised that the claimant accepted that Mr Lambe was instructed by the London Regional Committee to issue proceedings in a collective capacity (all had a vested interest), and it cannot be said that it was gratuitous sharing of information.
60. In terms of the claim insofar as it related to Mr Shek, there is no dispute from the document at page 69 of the claimant's Hearing Bundle (at paragraphs 1.6 and 1.9) that the London Fire Brigade was at all material times his employer. The London Fire Brigade accepted that they remained his employer. The complaint was submitted in his capacity as an employee of the London Fire Brigade, and it was dealt with under the London Fire Brigade harassment procedure. He was wearing his employee of the London Fire Brigade hat, and accordingly, he was not in any sense wearing a union hat, and it is further submitted that, that is the basis on which the procedure was applied by the London Fire Brigade.

### **Claimant's email sent after 12 July 2024 Hearing**

61. The claimant sent an email to the Tribunal on 13 July 2024 at 09.59am in which he confirmed the citations of the cases he wishes to rely on namely *Nicholls v Corin Tech anor* [2008] UKEAT/0290/07/LA per Underhill LJ (also to *Arthur J.S. Hall & Co v Simons* [2002] referred to in that case), *Lincoln v Daniels*, *Singh v Moorelands Primary School EWCA Civ 909* per Maurice Kay, LJ. The claimant had provided a variety of links to cases from within the internet. I am precluded from clicking on external links. Whilst it is customary for parties to provide appropriate citations and copies of cases where they are able for the use of the Tribunal, I confirm that I have considered the cases cited by the claimant in his email fully. I note at this juncture that for future hearings, the claimant should liaise with the respondents' representative to seek to agree a file of any relevant case law (the respondents' representative may well be able to provide copies of any authorities he is seeking to rely on that are not publicly available).

## **The law**

62. The Tribunal considered and applied the law in respect of the strike out application:
63. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Tribunal Rules") provides:
- "37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
- (a) that it is scandalous or vexatious or has no reasonable prospect of success;  
..."
64. I also considered Rule 2 of the Tribunal Rules (overriding objective).
65. I have taken into account the guidance in *Tayside Public Transport Co Ltd v Reilly* 2012 IRLR 755, Court of Session (Inner House) in relation to the correct approach in strike out cases. The relevant test when considering a strike out on the grounds of lack of reasonable prospects is not whether the claim is likely to fail or whether it is possible that it will fail but, rather, whether the Tribunal can properly conclude, on the basis of the material available to it, that the claim has no reasonable prospect of success (*Balls v Downham Market High School & College* [2011] IRLR 217).
66. A Tribunal should be slow to strike-out a claim where one the parties is a litigant in person (*Mbuisa v Cygnet Healthcare Ltd* EAT 0119/18) given the draconian nature of the power.
67. In considering whether to strike-out, the Tribunal must take the claimant's case at its highest and assume he will make out the facts he offers to prove unless those facts are conclusively disproved or fundamentally inconsistent

with contemporaneous documents (Mechkarov v Citibank NA 2016 ICR 1121, EAT).

68. The Tribunal does bear in mind that the power to strike out a claim pursuant to Rule 37 of the Tribunal Rules is a draconian power. It should, therefore, be exercised with extreme caution where no evidence is being heard or findings in fact being made. I considered carefully whether or not in respect of each aspect of the application this was a case where the prospects of success depend on the resolution of a dispute of facts or can only be assessed after hearing evidence.

69. Section 27 of the EqA provides that:

“27 Victimisation

(1)A person (A) victimises another person (B) if A subjects B to a detriment because—

(a)B does a protected act, or

(b)A believes that B has done, or may do, a protected act.

(2)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.

(3)Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4)This section applies only where the person subjected to a detriment is an individual.

...”

70. I took into account the Explanatory Notes to the EqA, in particular in relation to s 27 of the EqA which state:

“100.This section defines what conduct amounts to victimisation under the Act. It provides that victimisation takes place where one person treats another badly because he or she in good faith has done a “protected act”,

for example taken or supported any action taken for the purpose of the Act, including in relation to any alleged breach of its provisions. It also provides that victimisation takes place where one person treats another badly because he or she is suspected of having done this or of intending to do this.

101. A person is not protected from victimisation where he or she maliciously makes or supports an untrue complaint.

102. Only an individual can bring a claim for victimisation.”

71. In addition I considered the authorities referred to by parties in their submissions.

## **Discussion and Decision**

72. Having considered the documents referred to by parties and parties' representations, and having applied the relevant law, the Tribunal disposes of the issues identified at the outset of the Hearing as follows:

### Strike out application – case number 2307994/2023

73. The third claim (2307994/2023) was a claim of pregnancy or maternity discrimination and victimisation presented on 30 December 2023. The claim is brought against the Fire Brigades Union and Mr Jon Lambe.
74. In terms of pregnancy or maternity discrimination, no particulars were included within the Claim Form. The claimant did not provide any further details about this complaint in his submissions. In the circumstances I invited the claimant to confirm at the reconvened hearing on 16 August 2024 whether this claim was pursued. The claimant confirmed that the claim was withdrawn. On the respondents' application and on the claimant not objecting, I dismissed the claimant's complaint of pregnancy or maternity discrimination presented under the Equality Act 2010 pursuant to Rule 52 of the Tribunal Rules.
75. In terms of the victimisation complaint, the claimant complains that on 30 August 2023 he received an email from Mr Lambe that was sent to the claimant and a number of colleagues and Fire Brigades Union officials. It is not disputed that that email contained documents relating to proceedings that were before the Certification Officer. The claimant does not dispute that the proceedings before the Certification Officer were judicial proceedings. I noted that the proceedings involved preparation of pleadings, evidence, submissions, and further, that the Certification Officer has case management powers including strike out. In addition, the Certification Officer may issue declaratory relief and they also have enforcement powers. I am satisfied that the proceedings before the Certification Officer were of a judicial (or quasi-judicial) nature, and therefore judicial proceedings immunity was applicable.

76. The respondents' representative emphasised the second category of judicial proceedings immunity applicable to this case, per Devlin LJ's Judgment in the Lincoln v Daniels case: "The second covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of the proceedings and starting with the writ or other document which institutes the proceedings." There is no authority before me to support the claimant's contention that judicial proceedings immunity was applicable only to acts that are necessary (or absolutely necessary) in relation to the proceedings.
77. I find that the email sent by Mr Lambe on 29 August 2023 was covered by judicial proceedings immunity. That email enclosed a number of documents relating to proceedings before the Certification Officer. The proceedings are public proceedings in terms of their nature. I am satisfied that providing an update to relevant individuals relating to those proceedings falls within the scope of the immunity.
78. I am satisfied that this is not a claim that depends on hearing disputed evidence and that I am able to determine this application on the basis of the information before me at this Hearing.
79. In the circumstances and on the information before me, any contention by the claimant in terms of that judicial proceedings immunity is not applicable has no reasonable prospect of success.
80. The claimant's claim insofar as it relates to the email from Mr Lambe dated 29 August 2023 stands struck out on grounds that it has no reasonable prospect of success.
81. The claimant also refers to Mr Lambe's use of the first respondent's resources to access his home address for his personal use in litigation and this being contrary to GDPR and the Data Protection Act 2018 ("DPA 2018"). The Tribunal has no power to hear complaints relating to alleged breaches of the GDPR and the DPA 2018. The claimant may wish to seek legal advice in respect of the appropriate forum in which to progress this aspect of his complaint (if so advised and if appropriate).
82. The claimant refers to receiving notice of ACAS Early Conciliation on 08 November 2023 at his home address. The claimant also refers to a conversation with the ACAS Conciliation Officer on 09 or 10 November 2023 and an attempt to place pressure on the claimant to withdraw his claim. I have noted in this regard the provisions of section 18(7) of the Employment Tribunals Act 1996 which states, "Anything communicated to a conciliation officer in connection with the performance of his functions under any of sections 18A to 18C shall not be admissible in evidence in any proceedings before an employment tribunal, except with the consent of the person who communicated it to that officer." As the claimant did not indicate that he has obtained the consent of the person who communicated the alleged information to the ACAS Conciliation Officer (and there is no

information before the Tribunal to suggest that consent has been obtained), the conversation on 09 or 10 November 2023 is not admissible in evidence in any proceedings before the Employment Tribunal.

83. As the claimant will be unable to rely on the alleged conversation in evidence (nor is the claimant able to progress his complaints relating to the DPA 2018 and the GDPR), the claimant's complaints insofar as they relate to ACAS Early Conciliation and the GDPR and DPA 2018 are struck out on the basis that they have no reasonable prospect of success.
84. Further or alternatively, I further noted that the nature of the alleged conversation with the ACAS Conciliation Officer was without prejudice and taking the claimant's case at its highest, I do not find that the unambiguous impropriety exception applied in the circumstances.
85. Accordingly, I strike out the claimant's third claim (case number 2307994/2023) in its entirety on grounds that it has no reasonable prospects of success in terms of Rule 37(1)(a) of the Tribunal Rules.

Strike out application – fourth claim

86. The claimant presented his fourth claim (case number 2303057/2024), a claim of victimisation on 25 March 2024. The claim is made against the Fire Brigades Union only. Particulars of Claim are provided within a 10-page document attached to the ET1 Form.
87. The first part of the claim relates to allegations of victimisation by Mr Lambe. It is alleged that Mr Lambe made false, vexatious and spurious complaints to the Fire Brigades Union about the claimant, and that he repeated these by email a number of times and that allegations were made at an interview on 02 November 2022.
88. Mr Lambe has brought complaints against a number of respondents including the claimant in the Employment Tribunal. The claimant is named as the fifth respondent in those proceedings lodged under case number 2307992/2023. The claimant's pleaded case appears to be strikingly similar to the particulars provided within Mr Lambe's Employment Tribunal claim (which form part of the foundation of the claimant's claim).
89. I conclude having considered all the circumstances that any complaint of detriment arising from the Employment Tribunal proceedings brought by Mr Lambe (and any matters relating thereto) within the claimant's pleadings in his fourth claim are covered by judicial proceedings immunity and they are accordingly struck out pursuant to Rule 37(1)(a) of the Tribunal Rules on grounds that they have no reasonable prospect of success. Employment Tribunal cases clearly form part of the absolute privilege which covers proceedings in or before a Court or Employment Tribunal. The principle extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence. The applicability of the principle in these circumstances are

for sound public policy reasons. The claimant is open to pursue any points in response to Mr Lambe's Employment Tribunal claim as part of his defence in that claim (if so advised).

90. Further or alternatively, construing the provisions of section 27 of the EqA and having reviewed the Explanatory Notes (which I bear in mind do not form part of the EqA and they have not been endorsed by either House, they are said to provide a summary and background to the legislation), it is clear to me that section 27 of the EqA is designed to protect an individual from any detriment because they have done a protected act. It is not suggested that the claimant has supported any action taken for the purposes of the EqA in relation to Mr Lambe's alleged protected acts. It would be contrary to the express provisions of section 27 of the EqA and to parliament's intention to allow the claimant an opportunity to undermine protections afforded to Mr Lambe by the said statutory provision.
91. Additionally, I accept the argument that it cannot amount to a detriment in circumstances in which the claimant admitted the facts underlying the complaint made by Mr Lambe and admitted the charge of violating his "dignity and respect". In the circumstances, I acknowledge the position in the case of Parmar (cited at paragraph 49 of the respondents' written representations) that a true statement cannot constitute a detriment pursuant to section 27 of the EqA.
92. I was referred to the reprimand issued to the claimant on 30 November 2022 for acting in breach of Rule B3(3) in failing to "treat others with dignity and respect..." and to the terms of the claimant's written apology to Mr Lambe stating "I have today accepted a justified reprimand from FBU for criticism of spelling and grammar. I'd like to offer a genuine and heartfelt apology for any offence caused ... I should have been more considerate. I hope you can accept my apology." The respondents' representative submitted that for the claimant to repetitively characterise Mr Lambe's complaint (which he admitted) as "false, vexatious and spurious" is surprising, and devoid of substance in light of the contemporaneous documents which cannot conceivably be contested.
93. It is explained that Mr Lambe has dyslexia. He submitted a complaint that he and another colleague had been subjected to disability discrimination by the claimant in respect of his condition.
94. I further note that the respondents' representative argues that the underlying merits of the claim have no reasonable prospect of success at paragraphs 44 – 48 of their written representations. I accept that based on the available information before me, for the reasons stated at paragraphs 44-48 of the same, the claim has no reasonable prospect of success.
95. For those reasons, I have decided to strike out all complaints against Mr Lambe in respect of the claimant's fourth claim (case number 2303057/2024). Taking the claimant's claim at its highest, I conclude that



the claimant's claim relating to Mr Lambe's acts and/or omissions have no reasonable prospect of success.

96. I now deal with the fourth claim (case number 2303057/2024) insofar as it relates to Mr Shek.
97. It appears that Mr Shek made a complaint to the claimant's employer (the London Fire Brigade) regarding allegations of racism on 18 December 2018. The claimant's pleaded case is that Mr Shek had made a vexatious, spurious and manifestly frivolous) complaint to the claimant's employer regarding false allegations of racism at a meeting of the Fire Brigades Union and allegations of posting a racist video on a Fire Brigade Union WhatsApp Group by the claimant in December 2022. The complaints were made to the London Fire Brigade at some point prior to 23 November 2023 (on which date the claimant was informed about the complaints).
98. The claimant states at paragraph 17.3 of his pleading that "This complaint led to C's employer extending a suspension and delaying a disciplinary process, causing stress, anxiety and continued loss of earnings."
99. The claimant explains that the complaint was later withdrawn, that the claimant continued to be investigated by his employer, and that the case was later found to be meritless following an external investigation.
100. It is difficult to decipher how or why the allegations made in relation to Mr Shek are connected to the first respondent from reviewing the claimant's pleaded case.
101. The first respondent's position is that Mr Shek was acting entirely within his capacity as an employee of the London Fire Brigade in making the complaint and that any actions taken in response to the complaint were on the basis that the London Fire Brigade were acting as the claimant's employer (and indeed Mr Shek's employer) in response to the complaint. The policies and procedures that were followed were internal procedures applicable to employees of the London Fire Brigade.
102. However, I took into account the claimant's submissions that at the Final Hearing he would provide evidence that Mr Shek was seconded to the first respondent and that he carried out no work for the London Fire Brigade (and he carried out work solely in relation to the first respondent). The claimant said that the two complaints that Mr Shek had made were regarding a complaint relating to a Fire Brigades Union meeting and a Fire Brigades Union WhatsApp Group message, and that the claimant will supply evidence of these matters at the Final Hearing.
103. As I am required to take the claimant's case at its highest, I am unable to find on the limited information before me that the claimant's claim against Mr Shek has no reasonable prospects of success in terms of Rule 37(1)(a) of the Tribunal Rules. I therefore decline to strike out the fourth claim (case number 2303057/2024) insofar as it relates to Mr Shek.

Conclusion

104. The respondents' application to strike out the claimant's complaints under case numbers 2303057/2024 succeeds, save that I decline to strike out the claim made relating to Mr Shek in terms of case number 2303057/2024.
105. The claimant's amendment applications dated 10 November 2023 and 22 February 2024 were withdrawn by the claimant.
106. The claimant indicated the relevant parts of their claim which they wished to withdraw (and those complaints were dismissed on withdrawal there being no objection to the same), which I have reflected in the Judgment.

**Next steps – Case Management Orders**

107. Case Management Orders and the outcome of the respondents' deposit order application will be issued to parties under separate cover.

**Employment Judge B Beyzade  
Dated: 14 November 2024**