



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4103605/2022 Preliminary Hearing Held at Edinburgh on 26 April  
2023

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Employment Judge: M A Macleod

Mr C G de Oliveira

Claimant  
Not Present and  
Not Represented

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The City of Edinburgh Council

First Respondent  
Represented by  
Ms K Sutherland  
Solicitor

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Katy Miller

Second Respondent  
Represented by  
Ms K Sutherland  
Solicitor

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Pat Brack

Third Respondent  
Represented by  
Ms K Sutherland  
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The Judgment of the Employment Tribunal is that the claimant's claims should be struck out in their entirety under Rules 37(1)(a) and (b) of the Employment Tribunals Rules of Procedure 2013.

## REASONS

1. This case has a lengthy and complex history, and is one of a number of claims presented to the Tribunal by the claimant against the first respondent.
2. A Preliminary Hearing was listed to take place on 26 and 27 April 2023 in the Employment Tribunal, Edinburgh, in order to determine a number of preliminary issues set out in the Notice of Hearing.
3. The claimant did not attend, nor was he represented. The respondents were represented by Ms Sutherland, solicitor.
4. It is important to set out some of the relevant background, the circumstances of this Hearing, the issues before this Hearing, summarising the respondent's submissions and then the Tribunal's decision and reasons therefor.

### Background

5. The Notice of Hearing in respect of this Preliminary Hearing was issued to the parties on 29 December 2022.
6. On 27 March 2023, the claimant submitted an application for postponement of this Hearing, on the basis that he was medically unfit to attend, that he had other commitments in relation to appeals before the Employment Appeal Tribunal and that he was planning to travel to Brazil between May to August 2023 to visit family. He produced a letter from his GP in support of the first part of his application.
7. The application was not granted, but the Tribunal set out a number of questions which the claimant was to direct to his GP, by letter dated 28 March 2023.
8. The claimant renewed his application for postponement on 4 April 2023, adding to the list of grounds for postponement the fact that he had been contacted by Police Scotland, PIRC and the Procurator Fiscal in connection

with his having reported criminal matters while working for the respondent. On 11 April 2023, he submitted a further email to the Tribunal, and attached thereto a further letter from his GP, in which he maintained that he had set out the “required wording” for his postponement application.

5 9. That application was refused by order of Employment Judge J d’Inverno dated 21 April 2023, with detailed reasons which were sent to parties on 24 April 2023. It was confirmed that the Preliminary Hearing listed for 26 and 27 April 2023 would proceed as listed, and that the Tribunal would have regard to the terms of Rule 47 of the Employment Tribunals Rules of  
10 Procedure 2013 in the event that the claimant did not attend the Hearing.

10. No further communications were received from the claimant before the commencement of this Hearing after the order refusing the application to postpone had been issued to the parties.

#### **The Circumstances of this Hearing**

15 11. The Hearing was due to commence at 10am. At that time, I as the sitting Employment Judge was informed by the clerk that Ms Sutherland, the respondents’ solicitor, was in attendance, but that the claimant had not arrived. I invited the clerk to make contact with the claimant to ask whether or not he intended to appear. She advised me that the Tribunal file did not  
20 disclose a telephone number for the claimant, but that she would send an email to him. She duly did so, and no response was received at any stage during the course of the morning.

12.1 explained to Ms Sutherland the circumstances of which the Tribunal was aware at that point, and, noting the terms of Rule 47 which requires the  
25 Tribunal to “consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party’s absence, asked her whether she had had any contact with the claimant which might shed light on the matter. She advised that she had sent the claimant a copy, electronically, of the bundle for this Hearing, and had also  
30 arranged for a hard copy of the bundle to be delivered, recorded delivery, to his home address. She received no response from the claimant, and no

notification that the electronic bundle had been downloaded by him, which would be automatically generated once the recipient did so. She was unable to provide any further information as to the reasons for the claimant's non-attendance.

5 13. Ms Sutherland submitted that the claim should be dismissed on the basis of the claimant's failure to attend, particularly in light of the clear statement in the order refusing the application to postpone that the Hearing would proceed, and referring the claimant to the terms of Rule 47. That Rule provides that the Tribunal may dismiss the claim or proceed with the  
10 Hearing in the party's absence. She also argued that the claim should be struck out due to the claimant's conduct of the proceedings and for the other reasons set out by the respondent, and maintained that the claimant has demonstrated a clear pattern of disrespect towards the Tribunal, both in these proceedings and in the 3 other cases which he has raised against the  
15 first respondent before this Tribunal. She observed that in one Hearing the claimant walked out before the conclusion.

14. She added that failing to attend this Hearing was an example of the claimant's failure to pursue his claim under Rule 37(1)(d).

15. On the basis that the respondent had presented a skeleton submission in  
20 relation to the outstanding preliminary issues, and notwithstanding that the claimant's non-attendance had been raised under Rule 47, I asked Ms Sutherland to proceed to present her submissions on the preliminary points in order to ensure that matters were fully ventilated.

### The Issues

25 16. In the Notice of Hearing for this Hearing, the issues were set out as follows (143):

**(a) Determine the Respondents' Application for Strike out in terms of Rules 37(1)(a) and 37(1)(b);**

**(b) Determine the Preliminary Issue of Jurisdiction to consider the claim;**  
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(c) The Determination of the opposed elements of any application for leave to amend if brought forward and if opposed; and

(d) Consider any other Preliminary Issues as the Tribunal may in the interim appoint for determination at Open Preliminary Hearing.

5 17. So far as points (c) and (d) are concerned, no further issues arise since that Notice of Hearing, and accordingly this Hearing was only to deal with (a) and (b).

18. As to the points referred to in (b), these were expanded upon in the Note following Preliminary Hearing on 14 December 2022 by Employment Judge  
10 d'Inverno (137):

1. Does the Tribunal have jurisdiction to hear the following claim set out in the claimant's ET1 claim form "*Breaches of Rights to mutual dignity, respect, trust under Contract of Employment Legislation (ERA 1996)*", given the claimant's employment continues and which it was recorded in Case Number 4101091/2022 the Tribunal did not have jurisdiction to hear?  
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2. Does the Tribunal have jurisdiction to hear the following claim set out in the claimant's ET1 Claim Form: "*Modern Slavery: free and legally entitled to work in a safe place free from bullying, harassment, victimisation and from being forced into working at remotely or not various primary schools, nurseries infected with Covid-19 virus past and presently through threats made by senior EYOs Laura Maguire and Faye-Maria Shumba who stated were following on orders by Senior Education Officer Shona Murray and they said publicly 'Donna is the boss' she can do that, it is written in Contract of employment T&Cs*" which it was recorded in Case  
20 Number 4101091/2022 the Tribunal did not have jurisdiction to hear?  
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3. To the extent that the claimant's claim noted at (2) above relates to him being asked to work at other nurseries, is this a repetition of  
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the part of the claimant's claim Case Number 4101091/2022 namely does the Tribunal have jurisdiction to hear it in this case 4103605/2022?

- 5 4. Is the following claim set out in the claimant's ET1 Claim Form already being pursued by him in Case Number 4101091/2022:  
*"Unlawful deduction or reduction of monthly wages due to new sickness leave occurred into new financial year starting 1<sup>st</sup> October 2021 and/or new sickness leave occurred at the previous End of year ended 31<sup>st</sup> September for annual holidays and Sickness*  
10 *Absence Leave purposes at City of Edinburgh Council, following threatening letter from Payroll Manager"*? If so, does the Tribunal have jurisdiction to hear it in this case (4103695/2022)?
- 15 5. If the Tribunal does have jurisdiction to hear the claimant's unlawful deduction, does it have jurisdiction to hear it against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents?

19. This represents the issues for determination at this Hearing.

#### **Submissions for Respondents**

20. For the respondents, Ms Sutherland presented a written submission, to which she spoke briefly. A summary of that submission follows.
- 20 21. She summarised the procedural history of the case, emphasising that the claims for unfair dismissal, redundancy payment and notice pay had been dismissed following withdrawal; that this is the claimant's 4<sup>th</sup> Employment Tribunal claim against the first respondent; that the claimant was required in September 2022 to provide further and better particulars of his claim; and  
25 that no application to amend has been made by the claimant.
22. Firstly, she advanced an application for strike-out of the claim under Rule 37(1)(a), on the ground that the claim is scandalous or vexatious, or has no reasonable prospect of success; and under Rule 37(1)(b), on the ground that the manner in which the claimant had conducted the proceedings had  
30 been scandalous, unreasonable or vexatious. Having set out the legal

framework to be considered by the Tribunal, she submitted that the claimant had, at various stages, failed to engage properly with the questions he was asked to answer. For example, the claimant has, she said, repeated the same answers for both direct and indirect discrimination, and has repeated the same answers for every protected characteristic which he is relying upon. As a result, the claimant has not properly considered the claims which he is seeking to make, and has made a number of claims in which he relies upon a list of 5 protected characteristics without properly identifying which he is relying on, in the hope that one might be successful.

23. The respondents argue that it is not possible to have a fair trial of the case because the respondents have not had fair notice of the claims against them.

24. Ms Sutherland then took the Tribunal through the different claims made, and set out why the respondents submit that they have no reasonable prospect of success.

25. She submitted that the Tribunal lacks jurisdiction to hear the two claims identified by Employment Judge d'Invemo (and set out above). The claimant's employment is continuing and accordingly he cannot maintain a claim of breach of contract, notice pay or constructive unfair dismissal (though he does not seek to do the last two as it stands). With regard to the modern slavery claim, the claimant has already made such a claim in an associated case and been advised by the Tribunal that it lacked jurisdiction to hear it.

26. Similarly, since case no: 4101091/2022 has been dismissed (156/7) the claimant cannot pursue a claim that he was asked or required to work in other schools or nurseries by the respondents, since that claim is res judicata; and he cannot pursue a claim in respect of unlawful deductions from wages in relation to pay reduced or deducted due to sickness absence leave after September 2021, since that was also dismissed under that case number.

27. Finally, the Tribunal lacks jurisdiction to hear the claimant's unlawful deductions from wages claim as against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, who were not his employer but employees of the 1<sup>st</sup> respondent.

5 28. In her oral submission, Ms Sutherland added that under Rule 37(1)(d), the claim should be dismissed on the grounds that his failure to attend this Preliminary Hearing demonstrates that he is failing to pursue his claim properly.

29. She submitted that if the Tribunal were not minded to grant the strike out application, a deposit order should be issued to the claimant.

#### 10 **The Relevant Law**

30. 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-*

15 *(a) that it is scandalous or vexatious or has no reasonable prospect of success;*

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

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

*(d) that it has not been actively pursued;*

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

25 31. 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.”*

5 32. In this case, plainly, the claimant was given the opportunity to attend a hearing but did not do so.

33. 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  
10 made a fair trial impossible; and in either case, striking out must be a proportionate response.

34. 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  
15 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  
20 which it and its procedures exist.”*

35. 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  
25 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....”*

36. The case of **Faron Fariba v Pfizer Limited & Others UKEAT/0605/10/CEA** was a case in which the EAT found that an  
30 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.

37. 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.*"

38. 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

### ***Should the claim be dismissed under Rule 47?***

39. The first issue for determination is whether or not the claim should be dismissed under Rule 47, on the basis that the claimant did not attend the Hearing on 26 April 2023.

40. As will be apparent from what is stated above in paragraphs 11 to 15, this matter was addressed at the outset of the Hearing, but I decided that the Hearing should proceed in the claimant's absence rather than dismiss the claim outright at that stage.

41. It is, however, an important factor in the decision which follows that the claimant did not, in the circumstances, attend this Hearing.

42. Accordingly, the claim is not dismissed under Rule 47 for the claimant's non-attendance at the Hearing.

5 ***Should the claim be struck out under Rule 37(1)(a) or (b)?***

43. The respondent's submission was that the claim itself was scandalous, vexatious and/or had no reasonable prospect of success (37(1)(a)), and that the manner in which the claimant had conducted the proceedings was vexatious and/or unreasonable.

10 44. I deal with these two aspects separately, though they are linked.

45. The claimant's claim has been formed from the original claim form, from which withdrawals have been made by the claimant, together with the further and better particulars submitted by him in response to Orders issued by the Tribunal.

15 46. The respondent's position is, essentially, that the claims have not been properly specified and that they lack fair notice of the case which they are faced with. Further, they maintain that there are aspects of the case which are so confused, and confusing, that they are incomprehensible to the respondent in seeking to prepare for a Hearing in this case.

20 47. The Tribunal well understands that the claimant is representing himself, without the benefit of legal advice; and that strike-out is the most draconian penalty which can be imposed upon any party in litigation, and as a result is only to be contemplated in exceptional circumstances.

25 48. That said, it is well-established that a claimant cannot ignore the requirements of either the law or the Rules of Procedure in presenting his claim. The interests of justice apply to both parties, and as Ms Sutherland eloquently argued, the respondents are entitled to know the case against them. This is perhaps particularly so where the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are individuals employed by the 1<sup>st</sup> respondent, rather than a large organisation

which may be taken to accept the need, from time to time, of defending litigation, without feeling that it amounts to a personal attack.

49. This claim is an experienced litigant. This is his 4<sup>th</sup> claim against the 1<sup>st</sup> respondent before this Tribunal, and he has engaged in not only raising Employment Tribunal claims but also lodging appeals against the decisions of the Employment Tribunal, without any apparent success.

50. Although he has entered the field of complex litigation by raising proceedings alleging discrimination in relation to a number of protected characteristics, and therefore requires to be granted a degree of latitude which a professional legally qualified practitioner would not, there is a limit to the latitude which he may reasonably expect to be given. He has chosen to engage in litigation, and cannot now be said to be ignorant of what is involved.

51. Not only has he engaged in litigation against the same 1<sup>st</sup> respondent on a number of occasions, he has also indulged himself in raising the same claims more than once, despite being told by this very Tribunal (in the person of at least 2 other Employment Judges) that those claims - relating to modern slavery and breaches of contract or trust - have no prospect of success and must be struck out. The claimant's attitude appears to be that either he can simply repeat his earlier claims in the hope that the next Employment Judge to address his case does not notice that the claimant has raised the complaints before, or that he knows better than the Employment Judges who have made clear what claims he can and cannot bring are.

52. I take each of the claimant's claims in turn in order to assess whether it can be said that they have no reasonable prospect of success.

53. The claimant complains of detriments under section 47B of the Employment Rights Act 1996 (ERA). The further and better particulars set out his purported detriments at paragraph 5 (93). What the claimant sets out in paragraph 5 are a number of effects which he claims the treatment had upon him, but he does not specify what treatment can be said to amount to

detriments. He refers to “discriminations” and “harassment”, but does not say what he means by this. Paragraph 5 corresponded to question 5 under this heading set out by the respondent, as ordered by Employment Judge d’Inverno, to ask him for the further specification required, in which they asked the claimant what detriment or detriments he had been subjected to on the ground of having made a protected disclosure (82).

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54. In my judgment, the claimant has singularly failed to answer this question, and has left the Tribunal and the respondent without any understanding of the basis of this claim. As a result, this complaint has no reasonable prospect of success.

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55. The claimant then complains of discrimination arising from disability under section 15 of the Equality Act 2010 (EqA). His further and better particulars set out the answer to the respondent’s question about this at paragraph 2 (94). What he says there is that the “something” was “being fobbed off as mine numerous letters and emails went unanswered satisfactorily by the Respondents.” He maintained that he was treated with contempt and suffered hurt feelings post whistleblowing and being unwell when being told by Pat Brack that he was seeking guidance from HR.

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56. It is not clear what unfavourable treatment the claimant is complaining of here. It is notable that his further particulars tend to emphasise the effect of treatment upon him, rather than delineating exactly what the treatment was. In addition, there appears to be some confusion as to whether or not he is attributing the hurt feelings to his having engaged in whistleblowing or due to disability.

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57. The claimant complains of a failure to make reasonable adjustments under section 20 EqA. The respondent complains that the claimant has not set out a provision, criterion or practice upon which he relies. In paragraph 2 (95), he narrates actions taken by the respondent, including arranging Occupational Health referrals, a failure to address emails and paying for a private consultancy to investigate the claimant post-whistleblowing to

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intimidate and discredit him. In addition, he seems to suggest that there were errors made in the calculation of sick pay.

58. These do not appear to amount to PCPs, but actions taken against him which he regards as unfair and perhaps discriminatory (though precisely how is unclear).

59. He also refers, in paragraph 3, to "physical features", which include descriptions of his illness rather than of physical features of the workplace.

60. It is entirely understandable that the respondents cannot work out what the claim under section 20/21 is in this case.

10 61. The claimant complains of direct discrimination under section 13 EqA, in relation to the protected characteristics of disability, age, race, religion and sex.

15 62. The respondent denies that there has been less favourable treatment and maintains that the claimant's descriptions of the events under consideration do not reflect the terms of contemporaneous documents and emails. His response also refers to whistleblowing disclosures rather than any protected characteristic.

20 63. Essentially, the claimant appears to be taking a very broad brush to allege that he was discriminated against on the grounds of 5 different protected characteristics. At paragraph 4 (96), he provides some detail about the illness from which he suffered. However, the response is very confused and difficult to follow, and lacking in substance; for example: "Any employee who may not had made Whistleblowing Protected Disclosures nor been subject to Discriminations, Hurt to Feelings, harassment, distress, inconvenience they caused but unfairly, insult to my injuries, aggravated damages, clinical depression and financial detriments by the Respondents."

25 64. That was, in essence, his complaint of direct discrimination on the grounds of disability. For the characteristics of age, race, religion and sex, the claimant simply noted that the same answers should be applied, but did not

in any way explain how those characteristics could be said to have been engaged.

5 65. In his complaint of indirect discrimination, the claimant simply refers to his answers under direct discrimination (85). As Ms Sutherland points out, those answers cannot be transmitted across between the two different heads of claim.

10 66. The claimant then claimed that he was harassed on the grounds of all 5 protected characteristics under section 26 EqA (98). Ms Sutherland pointed out that the claimant's assertions were again inconsistent with contemporaneous emails, and argued that what the claimant asserts as unwanted conduct cannot amount to a stateable claim. In addition, the claimant's answers to the question of why he related the unwanted conduct to his disability were less than clear. He maintained that the OH department of the respondent reported that he remained absent from work in June 2022  
15 due to anxiety and depression, which were all attributed to perceived workplace stressors at St Cuthbert's Primary School and Nursery. That may be so, but of itself that does not provide a clear link between the claim of harassment and the claimant's disability. It simply indicates that the OH department was prepared to report that the claimant's absence was due to  
20 anxiety and depression, and that there may have been some connection between his illness and the issues ongoing at the workplace. There is nothing explicit about the actions of the respondents amounting to harassment and the claimant's condition, other than, perhaps, to suggest that the claimant's condition was caused, exacerbated or otherwise affected  
25 by his treatment by the respondent. However, that is rather a different matter from an allegation that the treatment was visited upon him because of his disability.

30 67. The claimant then went on to apply the answers given under harassment to age, religion, race and sex, but without distinguishing between the different protected characteristics or identifying what acts amounted to harassment, for example, on the grounds of age as distinct from disability. The claimant's practice of simply stating "same answers given above" is an inadequate

response to the detailed questions put to him by the Tribunal, in my judgment.

5 68. So far as the victimisation claim is concerned, under section 27 EqA, the claimant's answers (99) are a repetition of the answers given under previous headings. The respondent argued that what he relies upon cannot be categorised as a protected act. Reading the claimant's responses under this heading, it appears that the claimant is declining to classify or specify the basis of his claims, but instead is asserting broadly that he considers that the protected acts were all of those set out at 2.1 to 2.4 of the respondents' questions. He makes no attempt to define what act belongs in 10 which category.

69. There is also a degree of obscurity in the claimant's claim that he was subjected to detriment on the grounds of having raised a protected act or acts.

15 70. In summary, it is clear that the claimant's claims have been presented, in response to the opportunity to clarify and specify his complaints, in a sweeping, broad-brush approach, which fails to do what the claimant was being asked to do. As a result, there is, at best, a lack of clarity about what the claimant is actually claiming and seeking to bring before the Tribunal.

20 71. As it stands, there are many aspects of the claimant's claims which have no reasonable prospect of success. In particular, where the claimant sets out some assertions, and then seeks to apply them to all 5 protected characteristics which he relies upon, he has completely failed to understand the need to provide fair notice of his claim. If he is, for example, that an act by the respondents amounts to both disability and age discrimination, he 25 needs to be clear as to how that act affects him in relation to both categories. He cannot simply say "see answers above". By doing so, he fails to understand the Tribunal process and fails, more importantly, to provide the Tribunal with clarity as to what his claim is. So far as the disability complaints are concerned, for example in the harassment claims, 30 it may be possible to draw out from the information provided by a claimant



that he wishes to link the respondent's actions to their knowledge about his having a disability (though he has not done so here), but at the same time it is difficult to see, without any specification having been provided, how that same act could be said to amount to an act of harassment on the grounds of age.

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72. The claimant's position is clearly that he has now presented a response to the Order, in detail. However, on close inspection, his response is not detailed, and is not directed at the questions put to him. His response is simply an attempt to broaden the allegations, but emerges as a litany of  
10 complaints about the effects of the respondents' alleged failures upon him. In order for the Tribunal to be brought to the point where we would consider the question of remedy, there has to be a good understanding of what it is that the claimant says were the unlawful acts from which the Tribunal could attribute liability in these proceedings, in order to allow the Tribunal to  
15 decide what remedy should be awarded to him.

73. Put short, it appears to me that the claimant's claim under most, if not all, headings, is extremely weak, and poorly pled. I do take account of the claimant's lack of legal qualification, but on the other hand I note that this is the claimant's 4<sup>th</sup> claim before the Tribunal against the 1<sup>st</sup> respondent. He  
20 cannot be said to lack experience of litigation, and he cannot rely on some form of perceived naivete in his approach. This claimant is determined to maintain proceedings against the 1<sup>st</sup> respondent and others, and seems to be willing to persist in those proceedings without providing clarity in relation to his complaints to the Tribunal and to the respondents.

25 74.1 will return to the consequence of this finding below.

75.1 move now to consider whether, under Rule 37(1)(b), the claimant's claims should be struck out on the basis that the manner in which he has conducted the proceedings is scandalous, vexatious or otherwise unreasonable.

76. I have already noted that the claimant is an experienced party litigant who is resolute in his insistence upon his right to proceed in Tribunal against his employer. This is the 4<sup>th</sup> case he has brought before the Tribunal.

5 77. He has been given the opportunity in this case to provide clarification of his claims, and the questions which he was required to answer, presented by the respondent in line with the Tribunal's Order, were clear and specific. His approach to answering the questions has been superficial and, in my judgment, distinctly dismissive of the importance of the exercise.

10 78. The claimant has failed, in most instances, to set out a claim which is comprehensible and clear, and has done so in the face of a significant opportunity granted to him by the Tribunal. He has repeatedly sought to apply one set of complaints to 5 different categories of protected characteristic, but has completely failed to identify the discrete basis for each such complaint being applied not only to disability but also to age, sex, 15 religion and race. It is my conclusion that the claimant either does not understand the distinctions between these characteristics - and I am not inclined to believe that by this stage in his experience he could fail to have some understanding of those distinctions - or that he wilfully ignores the need to provide clear specification.

20 79. The reality is that it was necessary for the claimant to attend this Preliminary Hearing in order to advance his explanation as to why he has failed to comply with the Orders issued by the Tribunal, but for reasons which are entirely unclear, he chose not to attend. He did seek to have the Hearing postponed, but that application was refused for clear and sound reasons. 25 He knew that he ought to attend at the Preliminary Hearing, and that if he did not, the Tribunal would be left in a position whereby it could dispose of his claim as it considered to be in the interests of justice.

30 80. The claimant did not attend this Hearing, and provided no explanation as to why he did not do so. He cannot rely upon ill health as a reason for not attending; he sought to have the Hearing postponed on that ground, but failed to provide the Tribunal with the necessary medical support. As a

result, the Tribunal expected him to attend and made clear to him that he should. In failing to attend the Hearing, the claimant has treated the Tribunal and the respondent with disrespect. He has been able to attend a number of Hearings in the past, and indeed has been insistent that his appeal to the Employment Appeal Tribunal is a relevant matter to be taken into consideration when seeking postponement of this Hearing. He made no attempt to advise the Tribunal that he would not be in attendance once his application was refused. He simply ignored the Tribunal and the Hearing.

81. It is also clear that the claimant has failed to comply properly or fully with the Tribunal's Order for further and better particulars, and the manner in which he has done so has demonstrated a clear lack of respect for the Tribunal and a lack of any intention to engage properly with the process. He has provided a lengthy but superficial and unclear response, from which it is almost impossible to discern his case.

82. It is understood, as I have indicated above, that the claimant is an unrepresented party, but his experience of previous Tribunal claims indicates that he has a degree of knowledge of the process. It would also be entirely unjust to ignore the respondents' position in this matter, since the interests of justice require to be applied to both parties. This is particularly so when 2 of the 3 respondents are individuals rather than the claimant's employing authority.

83. It is well understood that striking out a discrimination claim prior to any proof of evidence is an unusual and perhaps extreme step. However, this is a case in which the Tribunal has sought to assist the claimant by giving him time to identify the claims which he wishes to make, an opportunity which he has failed properly to take. In my judgment, it would be disingenuous for the claimant to complain that he lacks understanding or experience of the Tribunal process. It is also troubling that in failing to engage properly with the further particularisation of his claims, and in not attending at the Hearing designated to address the question of strike out, the claimant has acted as if he may deal with the Tribunal however he chooses. In these circumstances, it is difficult to see how a fair trial of the proceedings may take place. If he

does not attend when the Tribunal requires him to attend, and he fails to demonstrate proper engagement with the Orders of the Tribunal, there is no basis upon which it can be said that the claimant will comply with further Orders or attend at any future Hearing.

84. In my judgment, the claimant's conduct of these proceedings has been unreasonable and, further, vexatious, in the sense that it is clear that the claimant's actions have led to considerable expense and inconvenience on the part of the respondents. I do not take account of the claimant's previous proceedings against the respondents or any of them in addressing this particular point. The question is whether or not the manner in which he has conducted these proceedings, and no other, has been unreasonable and vexatious. The manner in which he has responded to the Orders, and his failure to attend this Hearing despite being instructed that he required to do so, demonstrates an attitude which is dismissive and disrespectful, and in my judgment it is abundantly clear that the claimant wishes to cause the respondents as much trouble as he can in this case, without defining properly the basis for his claim before the Tribunal.

85. Since his claims lack substance or any prospect of success, his persistence in presenting lengthy correspondence to the Tribunal and to the respondents demonstrates his willingness to put the respondents to as much inconvenience and expense as he can, in the pursuit of criticisms of them which, on the basis of what he has presented in this case, lacks any substance or basis.

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**Does the Tribunal have jurisdiction to hear the following claim set out in the claimant's ET1 claim form "Breaches of Rights to mutual dignity, respect, trust under Contract of Employment Legislation (ERA 1996)", given the claimant's employment continues and which it was recorded in Case Number 4101091/2022 the Tribunal did not have jurisdiction to hear?**

**Does the Tribunal have jurisdiction to hear the following claim set out in the claimant's ET1 Claim Form: "Modern Slavery: free and legally entitled to work in a safe place free from bullying, harassment, victimisation and from**

being forced into working at remotely or not various primary schools, nurseries infected with Covid-19 virus past and presently through threats made by senior EYOs Laura Maguire and Faye-Maria Shumba who stated were following on orders by Senior Education Officer Shona Murray and they  
 5 said publicly 'Donna is the boss' she can do that, it is written in Contract of employment T&Cs" which it was recorded in Case Number 4101091/2022 the Tribunal did not have jurisdiction to hear?

To the extent that the claimant's claim noted at (2) above relates to him being asked to work at other nurseries, is this a repetition of the part of the  
 10 claimant's claim Case Number 4101091/2022 namely does the Tribunal have jurisdiction to hear it in this case 4103605/2022?

Is the following claim set out in the claimant's ET1 Claim Form already being pursued by him in Case Number 4101091/2022: "Unlawful deduction or reduction of monthly wages due to new sickness leave occurred into new  
 15 financial year starting 1<sup>st</sup> October 2021 and/or new sickness leave occurred at the previous End of year ended 31<sup>st</sup> September for annual holidays and Sickness Absence Leave purposes at City of Edinburgh Council, following threatening letter from Payroll Manager"? If so, does the Tribunal have jurisdiction to hear it in this case (4103695/2022)?

20 If the Tribunal does have Jurisdiction to hear the claimant's unlawful deduction, does it have jurisdiction to hear it against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents?

86. With regard to the claimant's claims of breaches of trust and mutual respect and of modern slavery, the issue requires consideration of decisions made  
 25 in a previous claim by the claimant, namely 4101091/2022.

87.2 significant documents were produced in relation to that case: firstly, a Note and Order following Preliminary Hearing dated 28 July 2022 (146ff); and secondly, a Judgment striking out that claim dated 6 February 2023 (156ff).

88. In the Note and Order, issued by Employment Judge d'Invemo, it is noted as follows:

“(Third) Records that the Tribunal lacks Jurisdiction, the claimant remaining in the employment of the respondent, to consider the claimant’s complaint of breach of contract which is set out in the following terms:-

‘Breaches of rights to mutual dignity, respect, trust and contract of employment, legislation CEL (ERA 1996).’

(Fourth) Records that the Tribunal lacks Jurisdiction to consider such claims as it may be intended are given notice of in the fourth paragraph of section 8.1 of the claimant’s initiating Application ET1 in the passage commencing ‘Modern slavery...’ and concluding ‘... it is written in Contract of Employment T and Cs.’”

89. It is plain that the claimant has sought to present the same complaints again, despite being aware that the Tribunal had already determined that there was no jurisdiction to hear such claims. There is no reason to depart from that decision of the Tribunal.

90. As a result, the Tribunal lacking jurisdiction to hear either claim, they must both be dismissed.

91. With regard to the unlawful deductions claim, this was also included within the previous claim 4101091/2022, which has now been judicially determined by Employment Judge Jones, in the Judgment striking out the claimant’s claims (156ff). There is no basis upon which the claimant can now revive this claim.

92. In any event, it is my judgment that such a claim would be incompetent insofar as directed against individuals, who would not be responsible for the payment of salary to the claimant as employers.

93. It is clear, therefore, that the Tribunal lacks jurisdiction to hear any of these claims, on the basis that they have already been determined and dismissed.

**Conclusion**

94. It is my judgment, in conclusion, that the claimant's claims lack any reasonable prospect of success, that the claimant's conduct of the proceedings has been unreasonable and vexatious, and that the claims identified above are outwith the Tribunal's jurisdiction.

95. In addition to the findings and observations made above, I conclude that the claimant's attempt to revive claims which have already been determined by the Tribunal is also an act of vexatious conduct, deliberately attempting to cause further inconvenience and difficulty for the respondents, while knowing that those claims had already been dealt with by the Tribunal. This is at best disingenuous but at worst contemptuous of the Tribunal and of the respondents.

96. It is my conclusion that this is a case in which the claimant's conduct of the proceedings justifies alone the strike out of his claims. He is quite clearly determined to create as much difficulty for the respondents as he can, by repeatedly raising hopeless cases against them; his claims lack any reasonable prospect of success on the basis that he has utterly failed to focus and clarify their terms; and he has, by raising matters already dealt with and failing to attend this Preliminary Hearing, shown such defiance to and contempt for the order of the Tribunal that it is no longer, in my judgment, possible to have a fair trial of these proceedings.

97. It is therefore my judgment that the claimant's claim should be struck out in their entirety under Rules 37(1)(a) and (b).

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**Employment Judge: M Macleod**  
**Date of Judgment: 09 May 2023**  
**Entered in register: 10 May 2023**  
**and copied to parties**

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