EMPLOYMENT TRIBUNALS

Claimant: **Mr T Lawal**

Respondent: **University of Bradford**

Heard at: **Leeds** **On:** **2 February 2017**

Before: **Employment Judge Maidment**

Representation
Claimant: In person
Respondent: Mr D Horan, Solicitor

PRELIMINARY HEARING

JUDGMENT having been sent to the parties on 6 February 2017 and written reasons having been requested by the Claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

The issues

1. This Preliminary Hearing was listed following an earlier Preliminary Hearing conducted by Employment Judge Rogerson on 29 November 2016. At that hearing it was determined that there ought to be this further Preliminary Hearing to consider firstly whether any of the complaints should be struck out as having no reasonable prospect of success or whether a Deposit Order should be made in respect of any complaint because it had little reasonable prospect of success and secondly whether any other complaints were out of time and if so whether time should be extended on just and equitable grounds.
2. At such hearing the Claimant's complaints were also identified. In paragraph 1 of the Claimant's own schedule of complaints he complained of direct race discrimination in employment complaining as follows:-

    2.1. At paragraph 1.1: *"stop my PGCHEP continuation, which constitutes breach of my Graduate Teaching Assistant (GTA) contract".*

2.2. At paragraph 1.2: *"deliberate distortion of my GTA contract and subsequent payments that emanated from it".*

3. At paragraph 2 of the schedule the Claimant set out three separate complaints of harassment related to race in employment as follows:-

   3.1. At paragraph 2.1: *"deliberate falsification of relevant facts and policies in order to deny me rights and privileges entailed in GTA contract and PGCHEP training".*

   3.2. At paragraph 2.2: *"withdrawal of access to the library when my contract was still alive".*

   3.3. At paragraph 2.3: *"sudden removal from departmental emails".*

4. Finally, the Claimant brought a single complaint of indirect discrimination which was set out at paragraph 3.1 of his schedule as being based on the application of a PCP putting people of the Claimant's race at a disadvantage, namely: *"policy of the university to stop my PGCHEP's continuation based on my tier 4 visa".*

5. Employment Judge Rogerson noted that the Claimant relied on race as the protected characteristic and in particular on his nationality. He is a Nigerian national. She noted that the Claimant has a tier 4 general student visa issued on 7 January 2014 with an expiry date of 30 April 2017. This permitted him to undertake a PhD course which he commenced with the Respondent in Development and Economic Studies. Employment Judge Rogerson is recorded as having explained to the Claimant that his complaints about the Respondent's decision in relation to the PGCHEP programme was, it appeared, about his relationship as a student which was not within the Employment Tribunal's jurisdiction. She noted further that the Respondent's application of the immigration rules (rightly or wrongly) was an assertion, the Claimant agreed, was made because of his tier 4 visa. She noted that the Claimant's "immigration" status is not a protected characteristic.

6. Following this earlier Preliminary Hearing Employment Judge Rogerson ordered the Claimant to provide further information regarding his complaints. The Claimant did so by way of a detailed response attached to an email of 20 December 2016 which as well as providing further details regarding his complaints set out what were put forward as the *"just and equitable grounds*" relied upon by him in respect of any complaint which was potentially out of time. The Tribunal had read such document prior to the commencement of this Preliminary Hearing.

7. Having received its information the Respondent submitted to the Tribunal and served on the Claimant an amended response dealing with the Claimant's complaints as further particularised. Again such response which was accepted by the Tribunal had been fully considered prior to the commencement of this hearing.

8. On 26 January 2017 Employment Judge Rogerson issued a further Case Management Order clarifying the issues before this Preliminary Hearing and directing that the Claimant prepare a witness statement if he sought to rely on any just and equitable extension of time setting out the grounds indeed relied upon.

9. At this Preliminary Hearing it was clear that the Claimant had not prepared any such statement but in fact he relied upon those matters set out in the further information he had provided in December 2016. The Tribunal swore the Claimant in so that he could confirm that the content of that document was his witness evidence in relation to the out of time point and he was given an opportunity to expand upon the information he had provided. Mr Horan had no questions of the Claimant.

10. Otherwise, the Tribunal heard no evidence at this Preliminary Hearing but dealt with each of the Claimant's individual complaints in turn with each side having and taking the opportunity to take the Tribunal through the relevant documentation and to make their respective submissions regarding, where applicable, the merit of any of the individual complaints in terms in particular of the Tribunal's jurisdiction and any issues regarding time limits.

Factual background and contentions

11. The Claimant commenced his studies with the Respondent for a PhD (a three year programme) in January 2013. In June 2013 the Respondent placed adverts for graduate teaching assistants (GTAs) – essentially contracts to provide teaching support to other students. The Claimant applied for such a role, was successful and commenced performing the role of a graduate teaching assistant from 1 September 2013 on a fixed term renewable contract of one year – renewable up to a maximum contract term of three years. The Respondent accepted that the Claimant's engagement under this GTA contract constituted "employment" within the meaning of the Equality Act 2010 it being either employment under a contract of employment or certainly a contract personally to do work.

12. The Respondent required those engaged on GTA contracts to participate in a course of study in a programme called the Post Graduate Certificate in Higher Education Practice ("PGCHEP"). However, the Claimant received an offer for the GTA post dated 16 July 2013 which did not specify this condition of engagement as a graduate teaching assistant. It offered him such position with effect from 1 September 2013 and noted that the position carried with it a fee waiver for the equivalent to the *"Home/EU fee"* together with a scholarship of £10,000. It did provide that the postholder had to be currently undertaking a PhD, undertake teaching duties up to a maximum of 120 hours per academic year and participate in training and development opportunities to allow the graduate teaching assistant to extend their teaching experience. The scholarship was stated to be awarded annually and was dependent on successful progress in the graduate teaching assistant's PhD studies as well as acceptable teaching performance.

13. The Respondent wrote to the Claimant on 10 September 2013 confirming his scholarship award and referencing the EU portion of the Claimant's tuition fees of £3900 being covered from 1 January 2014.

14. A further letter from the Respondent to the Claimant of 15 September 2014 confirmed the renewal of the Claimant's GTA contract with the tenure being stated to be for a second annual period running from 1 October 2014 to 30 September 2015. Again reference was made to the £10,000 per annum scholarship plus approved EU tuition fees being covered from 1 January 2015. There was however again no reference to the PGCHEP.

15. By a letter of 27 August 2015 the Claimant's renewal of his GTA contract for a final year concluding on 30 September 2016 was confirmed with again reference to the £10,000 per annum scholarship. This letter did provide:

> *"If you are required to teach at the University of Bradford, please ensure you are registered for the PGC Certificate in Higher Education Practice, unless you have previously undertaken another teaching qualification"*.

16. The Tribunal was referred to the programme specification for the PGCHEP. This was said to lead to a final award after typically 18 months of part-time study. It was stated to be primarily for staff currently employed in the higher education sector in teaching and/or learner support roles. In terms of the purpose of the course, it was said that it was to assist in the participant's own professional development, assist the Respondent in its own objectives in terms of staff development and to address the needs of students. 600 study hours were required over the 18 month period. Admissions to the course were by direct application and to be eligible any applicant had to be employed at least part-time in a teaching or learner support role in higher education.

17. The Claimant applied in 2013 for a place on the PGCHEP programme but was not successful in such application as the Respondent maintains he did not have sufficient experience. However, during 2014/2015 the Claimant did undertake an alternative course of study completing a module of the PGCHEP programme available to those employed as graduate teaching assistants. No issue was ever raised regarding the Claimant's continuing teaching on the GTA contract, in particular in respect of any lack of the Claimant undertaking a PGCHEP programme such that by the time of this Tribunal hearing the Claimant had indeed completed the three one year terms of the GTA role ending in September 2016.

18. The Claimant did however re-apply in 2015 for a place on the PGCHEP programme and received a letter from the course leader dated 3 September 2015 referring to his recent application, interview and expressing pleasure at being able to confirm a place for the Claimant on the next cohort of the course. The Claimant would have commenced such programme in April 2016.

19. It is the Respondent's case that, however, in the meantime it had cause to look at the immigration rules in respect of the Claimant as a tier 4 student which allowed for his presence in the UK in order to study for the aforementioned PhD. The Tribunal has been pointed to paragraph 4.46 of the rules which provide as follows:

> *"Supplementary study must not in any way hinder the student's progress on their main course of study. If it continues after the student has completed their main course, it must not delay their departure from the UK. Extensions of leave will not be given to complete supplementary studies"*.

20. On 6 May 2016 Mr Hughes emailed the Claimant. Within this correspondence he summarised the situation. He referred to the Claimant having been interviewed and it being confirmed that he met the academic entry requirements for the PGCHEP programme. He said that on processing this *"academic decision"* student registry had raised concerns such that the PGCHEP programme were awaiting for them to complete their investigations

and to make a decision about whether he could be permitted to enrol on the programme. It was said that the first of these concerns related to the Claimant's tier 4 status and whether that allowed him to enrol on a further part-time academic programme. The second issue related to the issue of fee waiver. The Claimant responded shortly afterwards expressing understandably a hope that the issue could be resolved as soon as possible and referring to him not being allowed into a session of the PGCHEP programme the previous Wednesday.

21. Investigation findings were produced to the Claimant dated 25 May 2016 which were arrived at under the Respondent's procedure for student complaints. Within the findings Amanda Hughes, complaints and appeals manager, apologised for the Claimant being told that he was unable to join the PGCHEP programme at very late notice describing the situation as *"regrettable".* She referred to the demands of the programme and to the tier 4 visa regulations not permitting him to undertake this programme concurrently with PhD studies. It was therefore stated that unfortunately it was not possible for the Respondent to register the Claimant on the programme and that it had to therefore withdraw its earlier offer.

22. Nothing within this decision affected the Claimant's GTA contract and indeed it was stated that he would continue to receive the £10,000 per annum scholarship and would be refunded any monies he had paid for enrolment on the PGCHEP programme. As already noted, the Claimant's final (third) annual GTA contract was due to come to an end on 30 September 2016 and given the date of the Respondent's withdrawal of its offer for enrolment on the PGCHEP programme the Claimant had no substantial duties remaining to complete in respect of that contract given the dates over which student teaching was undertaken over the academic year.

23. The Claimant escalated and pursued his complaint regarding the withdrawal of the offer on the PGCHEP programme and a decision letter was issued by Professor Neil Small on 20 September 2016. It is noted that by this stage the Claimant's complaint also referred to miscalculation of tuition fees, being denied library access and removal from the departmental email list. There was no reference within the complaint nor the resultant decision to reject it to race discrimination.

24. Part of the Claimant's complaints in these proceedings relate, as already referenced, to payments emanating from the GTA contract. At the earlier Preliminary Hearing before Employment Judge Rogerson the Claimant had referred to a shortfall in monies due to him of £227.

25. The Claimant had in his aforementioned written submission to the Tribunal presented in December 2016 set out a detailed calculation of what he felt was due. The Respondent had been through such calculation and had marked up its view of the payments and what might arguably be owed to the Claimant within the Claimant's original document. It was clear and undisputed that the Claimant's complaints related to the payment of the scholarship and tuition fee waiver which he had been granted pursuant to the GTA contract.

26. The basis for an alleged discrepancy of £227 could be seen when comparing the Respondent's and Claimant's view of the applicable home/EU tuition fee payable for the academic years 2012/13, 2013/14 and 2014/15. The fee rose each year relatively modestly but in circumstances where a difference of £227

was produced in the Claimant's favour if the applicable fee for a later academic year was used. The difference arose it appeared in circumstances where the PhD studies in respect of which the fee waiver was granted commenced in January 2013 and therefore, in terms of fee waiver, the Respondent applied the fee waiver for the academic year 2012/13, but where the GTA contract commenced in September 2013 causing the Claimant to consider that the waiver ought to be in respect of the (higher) fee applicable for the 2013/14 academic year.

27. Further, the Tribunal has already described that the Claimant received a £10,000 student award for the performance of his role under the GTA contract. The tuition fee for the PhD was £12,100. The Claimant in his first year of study had received a £2,000 "nations scholarship". Entitlement to this ceased after the first year because the Claimant was then in receipt of the additional £10,000 award but, from the schedules produced, it appeared that the payment of the further £2,000 had continued for the subsequent two years. The Respondent's case was that as a result the Claimant in fact had been effectively overpaid.

28. The Claimant pointed to documents of his own creation, rather than emanating from the Respondent, which he said showed discrepancies in the amounts paid to him compared to payments which the university had purported to make. This did not however appear to the Tribunal to impact on the argument regarding the amount to which the Claimant was actually entitled. The Claimant stated that any discrepancy and shortfall in payments related to his race because if the Respondent had dealt with a person from another race the distortion would not have happened. As a result of the distortions in payment he said he was subjected to a lot of ridicule and intimidation because he was put in a disadvantageous position.

29. The Respondent also maintains that the Claimant's complaint in respect of any payment issues is timed barred in that it is put forward that the Claimant was aware of concerns regarding tuition fees and waivers back in September 2015 when there appeared indeed to have been a lengthy dialogue between the Claimant and the Respondent regarding the correctness of the payments. The last payment made to the Claimant appeared to have been made in August 2015. The Tribunal has seen correspondence from the Claimant in October to November 2015 about his concerns and from payment statements from the Respondent the Tribunal considered that the last tuition fee invoice and then credit note was processed on 17 March 2016. The Claimant maintained that he did not know until the end of the academic year how the payments received and/or purportedly receivable could be reconciled and that the Respondent did not come to a conclusion regarding the issues until the appeal decision was issued in 2017.

30. It is noted that the Claimant separately has a complaint of harassment where the alleged perpetrators were individually named as Amanda Hughes, Professor Congdon and Peter Hughes with date references indicating a particular complaint regarding Amanda Hughes relating to a letter of 25 May and in respect of Peter Hughes his email of 6 May whereas Professor Congdon's responsibility if any must have lain in the appeal decision - she was the chair of the panel. The Claimant clarified that this complaint related to the communication regarding his lack of ability to proceed onto the PGCHEP programme. He expanded to say that there had been

false information given regarding the amount of study hours involved and the commitment necessary for such course to deny him his rights under the GTA contract.

31. The Respondent's position was that the Claimant did not in his particulars provide any information as to on what basis such complaint and alleged detrimental treatment was said to be because of the Claimant's race. The Claimant before the Tribunal said that this was race discrimination because he believed some people were allowed to carry out the PGCHEP programme who had the same visa as himself, referring to an individual Wen Yu Zang and Zhang He. The Respondent's position was that these were not true comparators. When Wen Yu Zang, a Chinese national, completed a GTA (which commenced on 1 January 2006) and PGCHEP eight years previously, during the period of her GTA she had limited right to remain in the UK rather than a right to be in the UK pursuant to a tier 4 student visa only. The Claimant disputes her to immigration status. As regards Zhang He, the Respondent's position was that such individual completed the GTA and PGCHEP around 4 years ago but at the time of carrying out the GTA teaching had indefinite leave to remain. Again the Claimant disputes that.

32. The Respondent puts forward that in fact the more appropriate comparator would be a Mr Assuru who is of Ghanaian nationality and who was at the Respondent pursuant to a tier 4 visa as was the Claimant. He had commenced PhD studies in January 2013 and obtained a place on the PGCHEP course in 2015. He also was sent a letter withdrawing the offer on 25 May 2016. The only difference between him and the Claimant was one of nationality and the Claimant's complaint was based on his nationality as a Nigerian.

33. The Claimant also complains regarding withdrawal of access to the library when his GTA contract was still active. This related to, on the Claimant's own account, a temporary deactivation in 2014 for a week or two prior to access being restored.

34. The Respondent maintains that his access was deactivated from the library as an employee as part of a cleansing exercise of systems which identified him as a leaver. The Claimant was still allowed to access the library as a student but this limited his ability to book out, for instance, particular rooms. The Respondent's position was that access was reactivated once an effective mistake had been recognised because the Claimant's employment indeed was continuing.

35. The Respondent has produced a note on the library access system which referred to contracts on a particular employment project having expired and a new end date having been inserted to close the account with the reference made as follows:

> *"Spoken to Rachel Ward in SSIS and she says he should just have student access now …"*

36. A final complaint of harassment related to the Claimant being removed from departmental emails. The Respondent's account was that the Claimant had declined an entirely separate offer to provide part-time teaching hours and as a result of his decision had been removed from the economics department employee email list. The Tribunal has seen a chain of emails where the

Claimant emailed stating that he had noticed his removal from the email list. This followed shortly after an email which had been sent by Rachel Ward to say that the Claimant had indeed declined the part-time hours contract referred to above and that she had removed him from the email list. That resulted in a response from an Emma Roberts to Rachel Ward approximately an hour later to the effect that she had been told by Tim Squire-Watt (to whom the Claimant had previously corresponded regarding the removal from the list) and that she now understood that the Claimant was still carrying out seminars. Rachel Ward responded just over an hour later confirming that the Claimant was in fact still undertaking his GTA work and to let her know if he should be on the email list due to that. Ms Roberts responded that afternoon confirming that she understood that GTAs needed still to be on the departmental email list. The Claimant was restored to it.

37. The Respondent maintained that the Claimant at no point had ever suggested that this removal was related to his race. The Claimant before the Tribunal said that if someone from another race had been in this situation he would not have been treated that way. He said he was pressurised to take the hourly contract when he was struggling to iron out issues relating to the GTA contract and alleged, albeit without reference to any corroborative documentation, that the head of division, i.e. the Dean, must have given the order to remove him from the email list.

38. The Claimant's final complaint was of indirect discrimination and on discussion between the parties it appeared to the Tribunal that this was simply another way of seeking to bring a complaint regarding the Claimant not being permitted to enrol on and continue with the PGCHEP contract.

39. In the Claimant's evidence on the time points he confirmed the statements which he had made in his documents sent to the Tribunal on 20 December and in particular paragraphs 1.4 and 1.5 of that submission where he sought to explain why it would be just and equitable to if necessary extend time. He said that many of the issues raised were continuing, the Respondent delayed in rectifying the unfavourable treatment, the Claimant had relied on internal procedures to seek rectification and that instances of discrimination were linked.

40. It was noted that the Claimant had submitted his Tribunal application on 20 September 2016. He said that he had contacted the Tribunal and had been told that he needed to go through ACAS. He said that he realised that delaying tactics had been used by the Respondent to get him to fall outside the requisite time limit. He said that he told ACAS about his complaints and they agreed an extension of time of one month.

41. The Tribunal pointed to the early conciliation period being recorded as continuing from 8 July to 22 August 2016.

42. The Claimant regarded all of the issues as described above as continuing acts. He said that after the aforementioned incident in 2014 regarding library access he did not complain because he believed the adverse treatment of him would stop and because of an apology he had received. He said that he believed that his removal was related to race but that he did not know much about Employment Tribunal proceedings and their availability at the time. He did not take advice. He did not seek to go on the internet to find out what options were available to him.

43. As at 17 September 2015 when the email list removal occurred, he said that it was not his behaviour to try to bring any issue to court and he wanted to believe that such an incident would never happen again. It was the withdrawal of the PGCHEP which made him consider bringing a claim and if that had not occurred he would not have brought a claim. He did not feel that the Respondent had properly listened to his grievances and that there had been a calculated attempt on the Respondent's part to ensure he was out of time.

44. He was of the view that in terms of financial payments the Respondent had delayed its investigation.

45. Otherwise, the Claimant summed up his arguments regarding the PGCHEP contract as being one where the Employment Tribunal had jurisdiction. He said that he had picked up the GTA employment because he thought he would get development through the PGCHEP programme. He considered the enrolment on the PGCHEP as part of an obligation owed from the Respondent to him. In return for this he was supposed to carry out his obligation of teaching under the GTA contract. Having done that, if the Tribunal was to allow the Respondent to "knock him out", the Tribunal would be enabling the Respondent to succeed in denying him his contractual rights and benefits. He said he had been treated in this way because he is a black man.

Applicable Law

46. Part 5 of the Equality Act 2010 prohibits discrimination by employers against existing, prospective and former employees. The definition of employment is wide enough to cover people working under a contract personally to do work. A broader category of persons is also protected by Part 5, but in a work context. Discrimination in the provision of services, including access to education, falls outside the jurisdiction given by Parliament to Employment Tribunals.

47. In the Act direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

48. The Act deals with the burden of proof at Section 136(2) as follows*:-*

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".*

49. In **Igen v Wong [2005] ICR 935** the argument that it was sufficient for the complainant simply to prove facts from which the Tribunal could conclude that the Respondent "could have" committed an unlawful act of discrimination was rejected. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent committed an unlawful act of discrimination. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant.

50. In a complaint of harassment, Section 136 is again relevant to establishing that the unwanted conduct in question related to the relevant protected characteristic.

51. As regards the application to strike out the Claimant's complaints, the Tribunal reminds itself of the high hurdle put in place by the case of **Anyanwu v South Bank Students' Union 2001 ICR 391** where the importance was highlighted of not striking out discrimination complaints except in the most obvious of cases given their commonly very fact sensitive nature.

52. As regards time limits, the Tribunal recognises its wide discretion including in terms on weighing up the balance of prejudice to the parties in considering whether it would be just and equitable to extend time. Nevertheless, according to **Robertson v Bexley Community Centre 2003 IRLR 434** the exercise of the discretion is the exception not the rule – there is an onus on a claimant to provide an explanation for the delay.

Conclusions

Complaint 1.1 "stopping the continuance of the PGCHEP course"

53. The Claimant was in "employment" for the purposes of the Equality Act 2010 by reason of the GTA teaching contract which he fulfilled over a period of three years.

54. There was a condition of that contract that the Claimant undertook a PGCHEP course. He did not complete that course but through no fault ultimately of his own.

55. The Respondent, however, did not at any stage interfere with or seek to interfere with the Claimant's contract of employment by reason of him not undertaking a separate teaching qualification, i.e. the PGCHEP.

56. The Claimant's complaint is about the refusal of the Respondent to allow him to undertake the course of study.

57. He could have applied for that course regardless of his GTA employment and his GTA employment gave him no entitlement to pursue it or advantage in applying to pursue such study. Enrolment on the PGCHEP was not an obligation owed to the Claimant in consideration of his GTA teaching services. It was not in any sense a benefit arising from his GTA employment – the fact that the attainment of an additional qualification might have been of more general personal benefit to the Claimant does not turn it into such. He had an obligation to undertake the course of study but the Respondent did not hold him to it. That does not create a claim based on his GTA contract.

58. This is not a complaint which the Claimant brings as an employee but as instead as a prospective student. The Tribunal therefore has no jurisdiction to hear it and it must therefore be struck out.

59. The Tribunal need not therefore in the circumstances concern itself with the merits of the claim.

60. Nevertheless, the Claimant does seek to rely on comparator evidence of two Chinese nationals who undertook a teaching course whilst performing a GTA contract. However, there is a dispute as to their immigration status and

whether therefore they are true comparators. In fact an individual in more similar circumstances as the Claimant, but of Ghanaian nationality, was treated similarly to the Claimant.

61. The Respondent will put forward that immigration status was the reason for its decisions and that is not the same as race and, in particular, nationality. Whilst the Tribunal would not have struck out this complaint as having no reasonable prospects of success, the matter being fact sensitive and there being good public policy reasons why complaints of discrimination ought to be heard, it would have been minded to order a deposit on the basis of it having little reasonable prospect of success.

The Claimant's complaint at paragraph 1.2

62. The Claimant's next complaint relates to alleged payment discrepancies. These relate to benefits flowing from the Claimant's GTA contract and therefore from his 'employment' within the meaning of the Equality Act. The Tribunal might therefore have jurisdiction to hear it.

63. However, the last payment was made in or around March 2016 such that the claim is out of time. In respect of this claim the Tribunal considers that it is just and equitable to extend time. No prejudice is caused to the Respondent. The Claimant explains and can justify his delay by the lack of clarity regarding payments until much later and ongoing attempts to resolve the issue.

64. Can, however, the Tribunal view this claim of race discrimination as having any reasonable prospect of success? It cannot.

65. The Claimant may be able to show a payment discrepancy, albeit he may in fact have been overpaid, but the situation regarding payments was complex with overlapping periods in terms of the applicable academic year and periods of study/durations of the GTA contract and a lack of clarity regarding entitlement.

66. In essence the difference in dispute seems to amount to £227 dependent on which year's level of tuition fees was to be taken into account.

67. Importantly, the Claimant has pointed to nothing at all upon which he would seek to persuade a Tribunal that there were facts from which it could conclude that there was a difference in treatment because of race. The Tribunal recognises the high hurdle necessary (rightly) before the claim might be stuck out and that there are disputed facts in terms of the payments/waivers due, but the Claimant will advance no positive case of discrimination. There will be no comparator evidence or relevant events or background raised in support of an inference of race discrimination. There will be a bare assertion of discrimination only. The Claimant will not be able to shift the burden of proof and even then the Respondent has a clear rationale for the payments made which the Claimant cannot assert on any reasoned basis to be tainted by unlawful discrimination. This claim has no reasonable prospects of success and is also struck out.

The Claimant's complaints of harassment

68. The Claimant then complains of harassment. This relates firstly to the Respondent's decision confirming his non acceptance on the PGCHEP course. In terms of pure process no less favourable treatment based on race is alleged. The Claimant's focus is again on the Respondent not having a

sound reason for not allowing him to undertake a PGCHEP course. It is no different in substance from the first allegation of direct discrimination in this regard. Again, as it does not arise out of any employment relationship, such claim must be struck out on the basis of the Tribunal's lack of jurisdiction.

69. The Claimant's next complaints of harassment are of a withdrawal of access to the library as member of staff in November 2014 and separately a removal from the departmental email list in September 2015. These claims can be said to be 'employment' based.

70. However, both claims are substantially out of time and out of time in circumstances where the Claimant has advanced no explanation for his delay other than that it was his choice not to pursue complaints in the hope that things would get better.

71. These acts do not form part of a continuing course of conduct. They are properly regarded as isolated acts and cannot be linked with a refusal of a course of study in May 2016 which again had nothing to do with the Claimant's employment.

72. Such complaints are therefore out of time and the Tribunal has no jurisdiction to hear them.

73. In any event the Tribunal would have struck out these complaints as having no reasonable prospect of success. There is contemporaneous documentary evidence of the Respondent's reasons for its treatment of the Claimant. Access to the library was removed as a staff member because it was thought that a contract of employment had ended. The Claimant was taken off emails, documents clearly suggest, because he refused a contract of employment and it was not immediately appreciated that he was in any event still in the Respondent's employment.

74. Both on their face appeared to be errors which were indeed quickly rectified.

75. The Claimant can and has not tried to point to any basis beyond his personal belief supporting his contentions that the Respondent was motivated by race in his removal from the library access and the email list.

<u>The Claimant's complaint at paragraph 3</u>

76. Finally the Claimant brings a complaint of indirect race discrimination. Again this is another angle of attack in respect of him not being allowed to undertake the PGCHEP programme. Again, the Tribunal has no jurisdiction to hear it as it is not a claim brought as an employee.

77. In any event, if the Claimant was put at a disadvantage, it was because of his immigration status distinct from his race or nationality such that the Claimant's complaint again if it had been pursuable would be one which the Tribunal would have considered to have little reasonable prospect of success and therefore likely to have resulted in the order of a deposit as a condition to its continuance

Employment Judge Maidment

Date: 17 March 2017

Sent on: 22 March 2017