Application No. UKEAT/0162/14/RN

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 14 October 2014

Before

THE HONOURABLE MRS JUSTICE SIMLER

(SITTING ALONE)

HER MAJESTY'S ATTORNEY GENERAL — APPLICANT

MR M GROVES — RESPONDENT

Transcript of Proceedings

JUDGMENT

RESTRICTION OF PROCEEDINGS APPLICATION

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APPEARANCES

For the Applicant	MR TIM AKKOUH (of Counsel) Instructed by: Treasury Solicitor's Department One Kemble Street London WC2B 4TS
For the Respondent	No appearance or representation by or on behalf of the Respondent

SUMMARY

PRACTICE AND PROCEDURE - Restriction of proceedings order/vexatious litigant

Order restricting proceedings where habitual and persistent claims that are vexatious have been made by the Respondent without reasonable grounds.

THE HONOURABLE MRS JUSTICE SIMLER

Introduction

1. This is the hearing of an application by the Attorney General for an order pursuant to section 33 of the **Employment Tribunals Act 1996**. This morning at 8.39am an e-mail application was made by Mr Groves, the Respondent to the application, in which he made clear that he is unable or unwilling to attend the hearing today. He gives two reasons for that. First, that he has recently discovered that a job offer made to him has been withdrawn and he is, too upset to deal with the hearing as he needs to phone that organisation "to do a bit of begging". Secondly, he has sent a Skeleton Argument, which is the same as his unsworn affidavit, and has nothing further to add to that. He indicates in the e-mail that he expects that the order applied for will be made, as in all cases he has read, the Attorney General always wins. He also applies prospectively for permission to appeal the order made.

2. Mr Akkouh on behalf of the Attorney General invites me to proceed with the hearing, not treating this as an application to adjourn. In my judgment, for the reasons given by Mr Akkouh, that is the correct course to adopt. First, this application is made against a background of other applications made yesterday without any proper basis, seeking an adjournment. Those applications were made before Mr Groves had received the withdrawal of the job offer. Secondly, Mr Groves makes clear in his e-mail that the Skeleton Argument he has produced says everything he wishes to say in relation to this application and he says in terms that he has nothing further to add to that. In those circumstances it seems to me that the proper course, in circumstances where this application was notified to Mr Groves many months ago and he has had many months to prepare for it, is to proceed with the hearing today and to deal with the application in Mr Groves' absence but having regard to the Skeleton Argument which says all he wishes to say in relation to it. Moreover I had no doubt that Mr Akkouh would be

scrupulously fair in drawing to my attention points that Mr Groves had made in opposition to this order and in identifying, by reference to the documents, points that might be said to weigh in Mr Groves' favour.

The applicable legal principles

3. Section 33 of the **Employment Tribunals Act 1996** provides as follows:

> **"If, on an application made by the Attorney General or the Lord Advocate under this section, the Appeal Tribunal is satisfied that a person has habitually and persistently and without any reasonable ground—**
>
> > **(a) instituted vexatious proceedings, whether before the Certification Officer, in an employment tribunal or before the Appeal Tribunal, and whether against the same person or against different persons, or**
> >
> > **(b) made vexatious applications in any proceedings, whether before the Certification Officer, in an employment tribunal or before the Appeal Tribunal,**
>
> **the Appeal Tribunal may, after hearing the person or giving him an opportunity of being heard, make a restriction of proceedings order."**

4. The characteristics of vexatious proceedings are well-established. They were set out by Lord Bingham of Cornhill in **Attorney General v Barker** [2001] FLR 759 in the context of ordinary civil proceedings. At paragraph 19 Lord Bingham said this:

> **"'Vexatious' is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law...whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves...use of the court process...in a way which is significantly different from the ordinary and proper use of the court process."**

5. Lord Bingham described there as hallmarks of persistent and habitual litigious activity a claimant who sues the same party repeatedly, relying on essentially the same cause of action, perhaps against successive parties, who automatically challenges every adverse decision on appeal and who refuses to take any notice of or give any effect to orders of the court. It is interesting to note, in the context of something Mr Groves said in his e-mail of today's date, that the Attorney General failed in his application for a restriction for vexatious proceedings in

the **Barker** case. That was therefore an example of a case where the Attorney General's application failed.

6. One aspect of the analysis of Lord Bingham in the context of ordinary litigation that has been commented on as different in the context of Employment Tribunal litigation was dealt with by this Appeal Tribunal in the case of **Attorney General v Roberts** UKEAT/0058/05. Rimer J, as he then was, presiding over that EAT observed at paragraph 6 as follows:

> **"Most cases of allegedly vexatious litigants, as Lord Bingham there points out, concern repeated claims or applications in respect of one particular matter by which the litigant has become obsessed, commonly involving the same defendant or defendants. In the employment law field this is a less common feature. Instead, what is commonly seen is the making of repeated applications of a like type to employment tribunals, usually against different respondents but founded on the like basis."**

7. There is a particular difficulty created by the victimisation provisions in section 27 of the **Equality Act**. Whereas in general civil litigation the Defendant or Respondent to proceedings can avoid further litigation by avoiding further contact with the Claimant, that is not possible for employers advertising for new recruits. Steps taken to avoid contact or dealings with a vexatious litigant in that context, are likely to put that employer at risk of a victimisation claim under section 27.

8. Mr Groves complains in his Skeleton Argument that an order under section 33 would interfere with his Article 6 Convention rights. A similar submission was comprehensively rejected in **Attorney General v Wheen** [2001] IRLR 91. The Court of Appeal there explained that the right of access to the court provided for by Article 6 is not an absolute right. There is a balance that is to be struck between the rights of a citizen to use the courts and the rights of others (including employers who cannot avoid contact with vexatious claimants who serially apply for unsuitable jobs they have no intention of accepting). The rights of those others not to be troubled with wholly unmeritorious claims must be balanced against the rights of a citizen to

use the courts. Moreover the fact that access to the court is not prohibited but rather is provided for on certain terms is also relevant to that balancing exercise.

9. Two other points emerge from **Wheen** and are relevant in the context of Mr Groves' Skeleton Argument. Firstly, it is not open to someone in Mr Groves' position to seek to re-open the merits of individual cases dealt with by Tribunals below, whether by striking out or by making a deposit order. That is something that Mr Groves seeks to do by reference to his witness statement and Skeleton Argument. He is not entitled to do so. Secondly, the fact that on some occasions a claimant withdraws rather than pursuing a claim, which would have been more vexatious, was commented on by the Court of Appeal. The Court of Appeal said in **Wheen**, in this context, that the real vice is the launching in the first place of proceedings that had no reasonable prospect of success. Again, that is something that applies to Mr Groves because he refers to the fact that he has on a number of occasions withdrawn proceedings and, if he had really been the vexatious litigant he is characterised as by the Attorney, surely he would have proceeded with such proceedings in order to inconvenience the particular Respondent concerned. But, like the court in **Wheen**, it seems to me that the real vice here is the launching of vexatious proceedings in the first place.

10. Finally, in the context of the applicable legal principles, Mr Groves says that an order under section 33 would be *ultra vires* because discrimination claims should be heard on their merits. He says that the right not to be discriminated against would be of little value if a victim of proscribed conduct cannot have recourse to the courts. I do not accept that submission. First, section 33 affords clear statutory power to make an order where certain conditions are satisfied. Secondly, even where those conditions are satisfied, this Tribunal retains a discretion not to make the order. Thirdly, and in any event, as I have already observed, the right to access

the courts is not absolute. It is a qualified right, and a balance must be struck as discussed in **Wheen**. Fourthly, in any event, an order under section 33, again as I have already observed, does not act as a barrier to any future litigation but rather as a filter for unmeritorious cases.

11. Consequently my approach to this application against that background is as follows. Before any order can be made by this Tribunal I must be satisfied that Mr Groves, has:

(i) habitually and persistently without any reasonable ground

(ii) instituted vexatious proceedings or made vexatious applications in any proceedings whether in a Tribunal or the Appeal Tribunal and whether against the same person or different persons.

If those conditions are not met, no order can be made. If the conditions are met, I have a discretion whether to make an order. In exercising that discretion I should bear in mind the interests of a party to take civil proceedings but bearing in mind that an order under section 33 acts as a filter rather than a barrier, and I should also bear in mind, on the other hand, the interests of the public in being protected against abusive claims.

The application

12. This application was authorised by the Solicitor General on 5 February 2014. It was made on 27 March 2014 and is supported by an affidavit from Mr Ibrahim Seedat, dated 25 March 2014. Mr Seedat is a solicitor of the Attorney General's private law team, who was authorised to make the affidavit in support of the application.

13. The application was set down for a Full Hearing by this Tribunal by order dated 28 May 2014, paragraph 3 requiring Mr Groves to lodge with the EAT and serve on the Attorney

within 28 days of 28 May, a Notice of Appearance accompanied by an affidavit in support and in response to the affidavit of Mr Seedat. Although Mr Groves served a Notice of Appearance, he did not serve an affidavit as required. There was correspondence between him and the EAT in June 2014, and the EAT officials reminded him about the requirement to serve an affidavit. He complained in unreasonable terms and was told that it was not necessary that a solicitor should draft the affidavit, but it was not necessary for a solicitor to swear the affidavit as a document of truth. Nevertheless Mr Groves failed to comply. Instead, by e-mail dated 21 June, he served a witness statement that was not confirmed as a truthful document and therefore not an affidavit, asserting that costs reasons had prevented him from complying with that requirement. Moreover, by a notice dated 23 July 2014 the EAT notified both the Attorney and Mr Groves that this application would be heard today, 14 October, and directions were given for the lodging of bundles, Skeleton Arguments and authorities. A bundle of documents, together with a Skeleton Argument on behalf of the Attorney and the affidavit of Mr Seedat, were served in accordance with the directions and lodged.

14. By e-mail dated 18 September Mr Seedat wrote to Mr Groves explaining that there was no further bundle and that the Attorney would rely on the bundle that had already been provided, together with the affidavit, although there was an indication given in that e-mail letter that a supplemental bundle might be served with updated material. Mr Groves was also invited to submit any documents he wished to rely on. Nothing was heard from Mr Groves following that e-mail until 11 October when, by e-mail of 11 October, Mr Groves complained about the Attorney's asserted failure to lodge an agreed trial bundle and suggested there be a postponement of today's hearing. That application was without any factual foundation in the circumstances I have described. It was refused by me yesterday morning before 12.00.

15. Mr Groves then challenged the fact that, as a judge alone hearing the application, he was being deprived of his right to a three-person panel and sought confirmation that there would be a three-person panel. Again, I refused that application. It is standard practice for judges of this Appeal Tribunal to sit alone to deal with applications of this kind and they regularly sit alone to deal with appeals. There is no right to a three-person panel. I refused Mr Groves' application in the circumstances and expressed the hope that he was not making that application in an attempt to secure the adjournment that he had been refused. This morning, as I have already indicated, this Tribunal received an e-mail from Mr Groves at 8.39am in the terms already described. In addition, Mr Groves says this:

> **"I would only add that the judge considers what effect the order would have. It would only add to public expense, as I would have to apply to the EAT to continue any current claims I have. If they allow that means two courts as opposed to one would have been involved. If they refuse that, it would result in appeals to higher courts at public expense."**

Mr Groves ends the e-mail by stating that if the order applied for is made "then I apply for permission to appeal".

16. Mr Groves is aged about 42. In numerous proceedings instituted in the Employment Tribunal between July 2009 and today he has claimed to suffer from a number of conditions that he asserts are disabling. He has complained about depression, obsessive compulsive disorder, obsessive compulsive personality disorder, social anxiety and passive aggressive personality disorder. In a hearing during the course of 2011 an Employment Tribunal found that Mr Groves does indeed suffer from depression and from an obsessive compulsive personality disorder.

17. Between 20 July 2009 and 16 April 2010 he was employed as a senior office clerk with the House of Commons Commission. His appointment was not confirmed following his

probationary period. He brought proceedings challenging the termination of that employment, alleging a failure to make reasonable adjustments in relation to his disability, and made complaints of unlawful victimisation and harassment contrary to the **Disability Discrimination Act** and a claim of automatic unfair dismissal. I shall refer to that claim when I come to consider the individual claims he has made in this case.

18. It appears, according to Mr Seedat's researches, that Mr Groves has been out of work since that dismissal by the House of Commons Commission in April 2010. Since then the vast majority of the 19 claims he has launched between July 2009 and the date of this application have been complaints following on from an unsuccessful job application with a prospective employer. Mr Groves has complained of unlawful disability discrimination, unlawful victimisation and failure to make reasonable adjustments, both contrary to the **Disability Discrimination Act** and subsequently, when it was enacted, contrary to the **Equality Act 2010**.

19. In the claims where unlawful victimisation is pleaded he relies on protected acts, in particular his earlier proceedings against the relevant Respondent, which he has either disclosed in the course of his application for employment or which he alleges the Respondent knew by some other means and he relies on unlawful discrimination when he is not shortlisted for interview or when his application for employment is otherwise declined.

20. Against that short factual background, I turn to consider the individual claims that are relied on by the Attorney General as disclosing that the conditions for a section 33 order are satisfied in this case. The claims have been summarised by Mr Seedat from paragraph 14 through to paragraph 78 of his affidavit and by reference to a Schedule of Actions and relevant underlying documents contained in a large lever arch file and a shorter supplementary file.

21. I have considered all of this material with care but to avoid over-burdening this already long judgment, I do not recite the detailed facts of each action. The following critical features emerge from the material I have considered, and I adopt the same numbering as has been used by Mr Seedat in his affidavit, and in the Schedule of Actions and their underlying documents.

Claim 1 - two claims brought by Mr Groves in 2009 against the National Policing Improvement Centre

22. These were disability discrimination claims brought as a result of the Respondent's failure to invite Mr Groves for an interview. It is clear from the findings of the Employment Tribunal (dealing with an application by the Respondent in that case to have the claims struck out as disclosing little reasonable prospect of success) that Mr Groves applied for an HR assistant post, that he did not meet the minimum criteria for appointment to that post so was not called to interview, that the decision makers responsible for the decision not to call him to interview made their decision in ignorance of Mr Groves' claimed disability. However, the post was not in fact filled and Mr Groves was subsequently invited to interview but, having been so invited, he declined to attend that interview because he said he had already secured a new job offer. Notwithstanding the fact that he had declined to attend the interview having been invited to do so, he commenced Tribunal proceedings alleging unlawful discrimination in the Respondent's failure to invite him in the first instance.

23. The Employment Judge dealing with the Respondent's application for a Pre-Hearing Review published a written Judgment with Reasons. He concluded that the Claimant had failed to identify the relevant provision, criterion or practice applied by the Respondent or to show how the provision had placed him at a substantial disadvantage in comparison with persons who were not disabled.

24. Moreover, he found that the Respondent was not aware of the nature of his disability, so that he failed in that regard as well. The Judge concluded in the following terms:

> **"I form the view that the claims have little reasonable prospect of success and the claimant is ordered to pay a deposit under Rule 20 as a condition of continuing to take part in these proceedings. "**

25. Mr Groves failed to pay the deposit of £200 that was ordered, and the claim was thereafter struck out. Nevertheless Mr Groves pursued an appeal alleging that the Tribunal had shown prejudice against him, that it had denied him the right to natural justice and had been biased. The appeal was considered by the EAT under the sift procedure and Bean J (as he then was) in a decision dated 22 November 2010 held as follows:

> **"The Employment Judge found - correctly in my view - that the claim had little or no reasonable prospect of success. Even if the claimant [is] currently out of work I do not accept that this deprives the Tribunal of the power to order payment of a deposit. Otherwise the claimant could simply plough on with an unmeritorious case and, if it failed, would be liable to pay the costs of the hearing which would bankrupt him while the respondents would be exposed to the risks of incurring substantial irrecoverable costs. It is time for the claimant to face reality."**

26. Mr Groves, far from facing reality, appealed against the strike-out order and again, on the sift, the appeal was held to be unarguable because no error of law was disclosed. It is clear from this case on its own that these were claims that were made without any factual foundation and in circumstances where Mr Groves had in any event obtained an alternative job; that the claims had such poor prospects of success that a deposit order was made; that thereafter Mr Groves failed to comply with that order and the case was struck out, but he made repeated appeals without any arguable basis in law for challenging decisions that had been made.

<u>Claim 2 – claim made by Mr Groves in 2009 against East London NHS Trust</u>

27. This claim was rejected because Mr Groves had failed to follow the statutory grievance procedure. Although Mr Groves appealed the rejection, he subsequently withdrew that appeal.

Claim 3 – claim brought by Mr Groves in 2010 against Queen Mary's College

28. This was a claim for unlawful victimisation during a recruitment exercise carried out by Queen Mary's College. In June 2012 the Employment Judge, at a Pre-Hearing Review, concluded that the complaints had little reasonable prospect of success and made two deposit orders of £250 each. Once again, Mr Groves failed to comply with the deposit orders, and the claims were struck out on 27 July 2012. Nevertheless Mr Groves appealed and the EAT (HHJ McMullen QC dealing with the matter) rejected the appeal on the sift because it had no reasonable prospect of success. In that case HHJ McMullen observed that the appeal was:

> **"…an attempt to re-argue the factual issues before the Employment Tribunal. This HR professional with a personal history of Employment Tribunal proceedings cites much legal authority but the facts were obvious."**

Claim 4 – claims commenced by Mr Groves in 2010 against the House of Commons Commission

29. The claims against the House of Commons Commission arose out of the period of employment Mr Groves had with the House of Commons between 20 July 2009 and April 2010. His employment with the House of Commons Commission was not confirmed because he did not successfully complete his probationary period. His claims were for failure to make reasonable adjustments and for unlawful victimisation and harassment under the **Disability Discrimination Act**. He also made a claim for automatic unfair dismissal. All claims were resisted by the Respondents, and there was a Full Merits Hearing in this case over a period of 11 days.

30. There are a number of features that are particularly relied on by the Attorney in relation to this claim. First, whilst the complaint of automatic unfair dismissal was described as misconceived and failed *in limine*, the victimisation claim was not described in the same way and indeed the Tribunal found that Mr Groves had raised a case to answer. Nevertheless, the

Respondents answered that case comprehensively and it was found to have no merit. More significantly, the Tribunal was particularly critical of the way in which Mr Groves behaved after his employment with the House of Commons Commission came to an end. At paragraphs 91-93, in particular, the Tribunal dealt with that behaviour and correspondence Mr Groves entered into with two witnesses who gave evidence on behalf of the House of Commons Commission resisting his claims. Paragraph 92, in particular, bears repeating. It reads as follows:

> **"On the same day Mr Groves sent an e-mail to Miss Taylor...which contained among other things the following: 'Very interesting witness statement, so I am watching you or have someone else watching you, you will be laughed out of the Tribunal for saying such obvious nonsense.' It then concluded 'As there is no threat of physical or financial harm then you can't even rely on witness intimidation. I hope you do have sleepless nights because you do it for the way you have behaved'."**

31. The Tribunal found this to be a sinister communication. The Tribunal accepted that a September e-mail gave Miss Taylor the impression that she was being watched, and that was reflected in her witness statement. It seemed that Mr Groves was unwilling or unable to understand that as the Tribunal found:

> **"Furthermore, what Mr Groves says about witness intimidation in the e-mail shows in the Tribunal's Judgment an element of calculation and an awareness of the possible effects of this communication, as distinct from the possible legal consequences.**
>
> **93. This was underlined in cross-examination when Mr Groves repeated his observations regarding the significance of threats of physical and financial harm and further stated that the relevant legislation did not apply to Tribunal proceedings, showing again in the Tribunal's judgment an element of research into the matter, and a lack of insight into the real point about it. Although Mr Groves said he had no intention of frightening Ms Taylor, he showed no understanding of how she might have felt about those communications."**

32. That behaviour was, in my judgment, an egregious breach of process, as the Tribunal found, and a course of conduct designed to frighten witnesses. The Tribunal deplored it, as do I.

33. The Tribunal ultimately rejected all the claims made by Mr Groves against the House of Commons Commission in a lengthy Judgment running to 142 paragraphs. Although a costs

application was made against Mr Groves, it ultimately concluded, despite the behaviour just described as deplorable and despite having found that at least one of the complaints was misconceived, that no order of costs should be made. Mr Groves then embarked on a series of appeals. Having previously appealed the Tribunal's case management decision alleging bias in support of the appeal allegation, which was rejected on the sift, he pursued an appeal against the Full Merits Decision. That appeal was similarly rejected on the sift, and HHJ McMullen dealt with the application on the papers. He concluded that the Notice of Appeal disclosed no point of law with a reasonable prospect of success and expressed disappointment that "the claimant appears to have learned nothing from the materials I cited in my opinion rejecting his interim appeal."

34. Mr Groves, in the course of that appeal made allegations once again of perversity and bias, none of which were regarded as having any substance. It is right to record, however, as Mr Akkouh drew to my attention, that two points were permitted subsequently to proceed to a full appeal hearing: first, a submission that the Tribunal had misapplied the burden of proof and, secondly, a submission that the Tribunal's reliance on the behaviour of Mr Groves in the period after his dismissal was in error of law. Despite the fact that he succeeded in obtaining a Full Hearing limited to those points only, Mr Groves pursued an appeal against the limitation on his right to appeal in full. That was rejected on the papers by Mummery LJ, but he persisted in further appealing and sought an oral hearing. That oral hearing took place before Underhill LJ on 23 May 2013, and was refused.

35. In due course Mr Groves' limited appeal was dealt with by this Appeal Tribunal on 21 May 2013 where the two points that had been permitted to proceed were considered but were ultimately rejected as disclosing no misdirection or error of law.

36. The Attorney relies, in particular, in relation to this claim on the egregious conduct of Mr Groves by reference to the intimidation of witnesses and to the plethora of appeals, none of which ultimately were found to have any substance or merit.

Claim 5 – claim against Historic Royal Palaces, commenced by Mr Groves in 2011

37. This was a claim for unlawful discrimination following an unsuccessful job application. Mr Groves did not attend the hearing of this claim but instead filed written submissions. His first application was held by the Tribunal to be misconceived and wholly without merit. A second application in relation to this claim was also subsequently held to be wholly without merit, and those conclusions were reached by Tribunals following a careful and thorough analysis of the facts. Mr Groves subsequently applied for the decision to be reviewed but that application was rejected as unfounded, and once again he sought permission to appeal but was again refused permission on the basis that his appeal was a yet further attempt to challenge the facts, raising no error of law.

Claim 6 – a claim against University College London, commenced by Mr Groves in 2011

38. This was another claim of victimisation following an unsuccessful job application. Again, Mr Groves failed to attend or to be represented and the Tribunal unanimously concluded that the claims of disability discrimination by victimisation were not well-founded. Once again, there was a detailed investigation, but the Tribunal concluded that Mr Groves had not established a prima facie case unlawful discrimination in the treatment of him by University College, London.

39. Mr Groves appealed. His appeal was dealt with on the sift by HHJ McMullen QC. Once again, Judge McMullen concluded that the Notice of Appeal had no prospect of success. He said:

> **"Again the claimant did not attend. The Employment Tribunal found his case did not get past the first stage of the burden of proof. The facts were plain to the Employment Tribunal. It has comprehensively dealt with the paper allegations in the application process. This Notice of Appeal is an attempt to re-argue the factual issues before the Employment Tribunal."**

40. The Respondent subsequently made an application for costs of the Employment Tribunal proceedings and, by an order dated 6 August 2013, the Tribunal unanimously upheld the application on the basis that the claims against University College, London were misconceived. Mr Groves was ordered to pay costs in the sum of £5,000-odd. In the course of its reasons the Tribunal expressed the view that it should have been clear to Mr Groves from the middle of November 2011, if not before, that his claim was misconceived and had no reasonable prospect of success.

Claim 7 – claim against House of Commons Commission commenced by Mr Groves in September 2011

41. This was a claim in which Mr Groves alleged unlawful discrimination in connection with an unsuccessful job application. Although Mr Groves withdrew the claim on 2 June 2012, thereafter he sought to rescind that withdrawal, but both that application and his subsequent application to adjourn a costs application being made by the Respondent were refused. The Tribunal dealing with the costs application held that there was little or no merit in his claim from the outset and that from 30 March 2012 after disclosure in particular, he acted unreasonably, vexatiously and disruptively. Costs were ordered. Mr Groves appealed. His Notice of Appeal was considered at the sift and rejected because it disclosed no reasonable grounds for bringing the appeal. HHJ McMullen QC, dealing with the application said this;

> **"On the last occasion Mr Groves came here I wrote: I am disappointed that the claimant appears to have learned nothing from the materials I cited in my opinion rejecting his interim appeal...and so I will necessarily have to repeat some of them."**

He goes on to set out the points made and, at paragraph 2, he says:

> **"It is not surprising to me that the Employment Tribunal on this latest foray which the claimant made did not attend awarded costs against him. The Employment Judge notes the 6 other cases he has issued and the finding that he is vexatious."**

42. HHJ McMullen concluded at paragraph 7 in the following terms:

> **"I will now invite the Registrar to consider whether she should refer this litigant to the Attorney-General for a Restriction of Proceedings Order."**

That decision was contained in a letter dated 22 April 2013, addressed directly to Mr Groves.

Claim 8 – claims against Mayor and Commonality of the Citizens of the City of London, commenced by Mr Groves in November 2011 and early 2012

43. These were claims of sex discrimination and victimisation as a result of unsuccessful job applications. The claims were struck out on 11 June 2013 because they had no real prospect of success and were misconceived. A costs order was made against Mr Groves on that basis, and the Tribunal also referred to Mr Groves' conduct in failing to prosecute the claim or to attend hearings that had been fixed. As had happened previously, Mr Groves once again appealed. His appeal was struck out because it was filed out of time and because Mr Groves had failed to seek an extension of time despite being invited to do so.

Claim 9 – claim against the Attorney General and Penna plc, commenced by Mr Groves in 2012

44. There is limited paperwork in relation to this claim, but the paperwork there indicates that it was struck out on 12 November 2012 on the basis that it had no reasonable prospect of

success. A Notice of Appeal lodged by Mr Groves subsequently also disclosed no reasonable grounds for bringing that appeal.

Claim 10 – claims against the University of London commenced by Mr Groves in January 2012 and March 2013

45. Once again these claims were unlawful of discrimination and victimisation as a result of an unsuccessful job application. Mr Groves failed to attend a case management directions hearing held on 6 June 2013. The Tribunal Judge recorded in his order that he was considering striking out the claims on the basis that they were not being actively pursued. He invited Mr Groves to make submissions in relation to that within 14 days and, when Mr Groves failed to do so, the claims were struck out.

Claim 11 – claims against University College London commenced by Mr Groves in April, July and August 2012

46. These were claims of unlawful discrimination and victimisation as a result of unsuccessful job applications made by Mr Groves against University College London. In this case there was a Pre-Hearing Review on the application of the Respondent, University College London. Mr Groves did not attend and nor was he represented at that Pre-Hearing Review, but the Respondent was represented by solicitors and the Employment Judge Etherington, concluded that the three applications had no reasonable prospect of success and they were struck out.

47. In the course of giving reasons the Judge made a number of observations. He observed that the applications made by Mr Groves for positions with the Respondent were rejected at the stage of the initial sift. The job competitions were run according to a common process. There

had been more than 300 applicants in total for the posts, and the applications were subjected to preliminary scrutiny by three different panels, none of the members of which were engaged on more than one of the three competitions. The members of each team of scrutinisers independently scored the applications against clear, appropriate and objective criteria. In each case the Claimant's score indicated against selection for the shortlists that he did not meet the criteria, whilst those that were shortlisted did meet the criteria. The Judge stated that he saw the applications giving rise to the marks awarded and all the marking sheets. The objective nature of the criteria made it easy for him, he said, to form a judgment about the accuracy of the results. He found that the shortlisting panel, consisting of three people, had no knowledge of the Claimant's previous applications or of his Tribunal applications. He was satisfied that the various shortlisting panels were not influenced in any way adversely by the Claimant's reference to earlier proceedings in his applications. He held, in the circumstances, that the Claimant had failed to establish a prima facie case in that there was no evidence of unlawful discrimination. The Respondent had used measurable, objective criteria, which matched the competencies reasonably required for the job. The scoring had been fair, and the panel was not consciously or unconsciously influenced by his reference to earlier proceedings and in any event had done more than enough to disprove that their actions were in any way based on the prior protected acts so that the claim was not well-founded and was dismissed.

48. In the final paragraph of his Judgment, paragraph 10, Employment Judge Etherington said:

> **"I should note I have grave doubt as to whether the claimant's applications are in any event made in good faith. I understand that recently he was invited for interview for a post as HR administrator in the HR Central Administration team. He asked for the time of the appointment to be altered to cater for his medical condition. It was adjusted and he was advised. He cancelled the interview without explanation."**

49. As was his practice, Mr Groves appealed alleging that he had been denied the right to a fair trial and the Judge had made unsupported findings with inadequate reasons. That application was considered on the sift by the EAT and rejected. In the EAT's letter to Mr Groves dated 21 March 2013 rejecting the Notice of Appeal as disclosing no reasonable grounds for bringing the appeal, HHJ McMullen said "It is not surprising he failed in the circumstances that had been described". He went on to say:

> **"Besides the Employment Judge was entitled to doubt the claimant's good faith. This appeal is hopeless. The learning he puts into it is correct but not focussed on any error in the Judgment."**

50. Mr Akkouh, by reference to research conducted by Mr Seedat, makes the point that this is not the only claim that University College London has had to deal with from Mr Groves. It is clear from additional documents that have been provided that on 6 September 2013 Employment Judge Pearl, sitting alone at a Preliminary Hearing to consider applications that claims against University College London should be struck out as having no reasonable prospect of success, acceded to the applications. Once again, Mr Groves did not appear and was not represented, although the Respondent was represented by solicitors. Employment Judge Pearl makes clear that Mr Groves had applied for a post in February 2013 and he refers to the fact that Mr Groves had made eight claims against University College London in the period between November 2008 and August 2012. The Judge explains in the course of his Reasons that most of those claims were struck out, one was withdrawn, and one was dismissed.

51. At paragraph 16 the Employment Judge turned to consider whether the claim made by Mr Groves against University College London was vexatious or scandalous, as follows:

> **"The essence of this submission is that this is yet another claim against the respondent and the claimant has only brought it in order to cause trouble and expense. The submission relies upon the fact that previous similar claims have been struck out and in this particular instance it is a significant consideration that the application form involved in this claim is identical to the form submitted in April 2012 which led to a claim that was struck out. It is therefore put very simply that the claimant knew he was presenting a claim that was in all main respects**

identical; and he could not have genuinely believed that his claim had any reasonable prospect of success. The submission trenchantly includes the following:

> **'In every job application form made to the respondent the claimant has paraded information about his previous Tribunal claims. It appears that the claimant is simply creating the relevant paper trial for another Employment Tribunal claim rather than acting as a genuine job applicant and therefore neither the job applications or subsequent claims have been made in good faith.'"**

52. At paragraph 17, Judge Pearl said, "I see no reason to dissent from this submission." Judge Pearl accordingly concluded that he had been shown sufficient material by the Respondent to warrant the striking out of the claims on the basis there were no reasonable prospects of success in claims of disability victimisation and moreover he concluded that the claims had been brought, in effect, to harass the Respondent. Mr Groves sought a review of that decision but because it was not made within the time permitted it was rejected.

Claim 12 – claims against King's College London commenced by Mr Groves in July 2012 and March 2013

53. These were claims of unlawful discrimination and victimisation following unsuccessful job applications. There was a hearing fixed for 13 May 2013, but this was postponed. Mr Seedat requested up-to-date information about the status of that claim on 16 September, and has now been told that it was dismissed.

Claim 13 – claim against the House of Commons Commission commenced by Mr Groves in 2012

54. Again, this was an unlawful discrimination claim following an unsuccessful job application. There was a case management and directions hearing held in August 2012 at which the claim was listed for a Full Hearing. Mr Groves withdrew his claim at about the time of the hearing, and it has been dismissed.

Claim 14 – claim against University College London commenced by Mr Groves in August 2012

55. This was an unlawful discrimination and victimisation claim following an unsuccessful job application. The hearing has been postponed on a number of occasions during the course of 2013, and on requesting information from the Employment Tribunal, Mr Seedat has been told that this claim, uniquely amongst the 19 claims relied on, is ongoing. Whether it will remain so is another matter.

Claim 15 – claim against House of Commons commission commenced in August 2012

56. This is another victimisation claim, based on the allegation that an improper reference was provided by the Respondent. A comprehensive response was filed by the Respondent in September 2012, resisting the claim. In February 2013 Mr Groves withdrew the claim.

Claim 16 – claim against King's College commenced by Mr Groves in November 2012

57. This was another unlawful discrimination and victimisation claim following an unsuccessful job application. Following Grounds of Resistance filed by the Respondent Mr Groves withdrew the claim, and it has been dismissed.

Claims 17 and 18

58. These claims against the House of Commons Commission were commenced in November 2012 with further proceedings in June 2013, alleging further disability discrimination and victimisation following an unsuccessful job application. Mr Groves was not shortlisted for a job. The Respondent resisted the claim on the basis that the shortlisters knew nothing of his background and asserting that great care had been taken to ensure that full anonymity had been maintained, particularly given Mr Groves' background and history, and the

Employment Tribunal dealing with an application to strike out the claims accepted that evidence and submission.

59. The Employment Judge said at paragraph 6:

> **"In fact because he was known to have submitted claims to Tribunals in the past the human resources department at the respondent took great care to ensure that the documentation for candidates was fully anonymised so that the short-listing process was done entirely free of any possibility of bias. The evidence before me fully supported the respondent's assertions."**

60. The Judge dealt with the application to strike out and at paragraph 9 referring to the fact that the House of Commons Commission sought to rely on a letter from Mr Groves to ACAS, in the following terms:

> **"...the respondent has spent well in excess of £100,000 on legal fees so far and this is highly likely to continue increasing indefinitely as I will be applying for future positions with them which they will reject me for and then I will lodge further ET claims against them."**

The Judge continues:

> **"The respondent recited that the claimant was asserting distress and hurt and that the ACAS email had been abused so as to deny him a fair hearing at the Pre-Hearing Review. The respondent denied that contention, asserting before me that the e-mail had been adduced to assist the Tribunal in deciding the question as to the efficient, fair and expedient treatment for an unmeritorious claim conducted in a scandalous, unreasonable or vexatious manner and that they had acted in accordance with the Tribunal Rules and also with the overriding objective."**

61. The Judge recorded the fact that the Respondent had asserted that the document did not fall within the "without prejudice" principle because there was no genuine attempt by the Claimant to settle and in fact the letter threatened continuing prosecution of unmeritorious claims and was an attempt to abuse the "without prejudice" principle by unambiguous impropriety.

62. At paragraph 14 of the Judge's Reasons for striking the applications out on the basis that they disclosed no reasonable prospect of success and that the manner in which the Claimant conducted the proceedings was scandalous, unreasonable or vexatious, the Judge held:

> **"14. I am satisfied that this is such a case as described and defined by His Honour Judge Clark in which it is appropriate to strike out the claim. It is clear to me beyond any doubt that the claimant's case was doomed to fail from the start. The respondent knowing of the claimant's history of applications took elaborate precautions to ensure that there was no chance of the short-listing procedure being in any way tainted by bias or prejudice and it is clear that they were successful in that endeavour. They took a properly principled stance to the request for information as they have explained in the witness statements. Believing the material requested was relevant they were nevertheless prepared to abide by any order of the tribunal to produce. They were certainly not improperly motivated. This claim is dismissed on the ground that there is no reasonable prospect of success.**
>
> **15. As to the allegation of victimisation arising from the citing by the respondent of an extract from the claimant's letter to ACAS I also find that there is no reasonable prospect of success. If the document ever possessed the status of one to which privilege applied for any purpose it certainly did not in relation to the intentions manifested in that letter by the claimant to bring repeated claims to the continuing and added cost of the respondent. He was determined to embark upon such a course, notwithstanding his previously failed sets of claims, some dismissed but others even withdrawn and clearly not because he reasonably believed in the substance of those claims but had lodged them to cause the respondent loss and much inconvenience. As I have already said he had assessed that the cost in fees alone to the respondent's disadvantage was something in the order of £100,000. The claimant believed he was by embarking on litigation causing the Respondent much expense and was embarked upon a course to continue to do so.**
>
> **16. This claim was in my view yet another abuse of the process, bound to fail given that the letter was not privileged by virtue of the 'without prejudice' principle and in any event protected from suit by judicial proceedings immunity being a document akin to a pleading. It was not a genuine attempt to settle; it threatened future unjustified and unsustainable actions in Tribunal for the inadmissible and abusive purpose of causing expense to the respondent. It was simply designed to exert improper pressure on the respondent."**

63. The Judge went on to find that the manner in which the proceedings had been conducted by the Claimant was scandalous, unreasonable and vexatious and made an order for costs against Mr Groves in the sum of £2,550.

<u>Claim 19 - claim against the Parole Board, commenced in June 2013</u>

64. This was a complaint of discrimination or victimisation following an unsuccessful job application. Again Mr Seedat has received information in response to his request of 16 September 2014 that this claim was dismissed upon withdrawal.

Additional matters

65. That deals with the 19 individual cases that are relied on by Mr Seedat in his affidavit. There are two further aspects of Mr Groves' behaviour relied on by the Attorney in support of his application. The first is the conduct of the current application. I have already dealt with his failure and refusal to serve an affidavit, as required by the Rules. Mr Groves, in corresponding with officials at the Appeal Tribunal, displayed conduct that was intemperate and unreasonable. His e-mails were ill-advised. He did not comply with the requirement to produce an affidavit and he made a misconceived disclosure application seeking to identify the person he described as the "instigator" of this section 33 application. He relied on what was an incorrect account of the chronology in support of his application to adjourn yesterday, in circumstances where he had received the bundle and documents that were to be relied on by the Attorney and had been told in clear and express terms that no further bundle would be served.

66. The second additional matter relied on by the Attorney concerns the further claims made by Mr Groves against the Ministry of Justice. Mr Groves has referred to these proceedings in the witness statement served in opposition to the application and it appears from these proceedings that Mr Groves commenced employment with the Ministry of Justice on 2 April 2013 under a fixed-term contract that was due to end on 1 April 2014. That contract was terminated early and Mr Groves brought a series of claims, eight in total, on dates between 4 June 2013 and 30 July 2014. The first seven claims overlapped to a substantial extent and were ordered to be heard together. That hearing has not yet taken place. The eighth claim alleges that Mr Groves has been victimised by the Ministry of Justice as a result of the Attorney General's decision to launch this section 33 application. In particular Mr Groves complains:

> **"It did not take much to arrive at the Conclusion that [the section 33] application had been instigated by the MOJ representative....I believe the application...has been made in order to put pressure on me/scare me into withdrawing the other ET claims. And this amounts to victimisation. I believe this has been done because the Respondent [is] aware that their defences of their other claims are so weak..."**

Conclusions

67. From the history and pattern of proceedings commenced by Mr Groves I draw the following conclusions. A significant volume of litigation has been commenced and pursued by Mr Groves in a relatively short period of time. In at least 11 of the cases referred to, Mr Groves has pursued appeals without any prospect of success. Many of the claims he makes have involved either identical or very similar complaints. Whilst it is right to recognise that one of the cases is ongoing, and the case against the Ministry of Justice may also be ongoing, Mr Groves has been entirely unsuccessful in relation to the remainder of the claims. In particular, claims 4, 5 and 6 were rejected after a consideration of their merits. Claims 1 and 3 had such poor prospects of success that deposit orders were made. Claims 8, 9, 11, 17 and 18 were struck out because of their poor prospects of success. A number of claims, including 13, 15 and 16, were withdrawn by Mr Groves but only after the Respondent had been put to the trouble and expense of pleading answers to them. In claim 7 Mr Groves, having withdrawn, sought to rescind his withdrawal. In claim 2 Mr Groves failed to follow the statutory grievance procedure and the claim was held inadmissible. Claim 10 was struck out for want of prosecution. And in four claims, namely 6, 7, 8 and 18, costs orders were made against Mr Groves. The nature of the allegations made in these cases is similar if not largely identical. At least 13 of the claims arise from allegations of victimisation in connection with applications Mr Groves has made for employment. The pattern is the same: Mr Groves applies for a job; he is turned down; he accuses the employer of some form of unlawful discrimination. Mr Groves has never had any basis for making that serious allegation of unlawful discrimination.

68. I accept that merely because a claim is unsuccessful, that does not by itself lead to the conclusion that it has no prospects of success and should properly be characterised as vexatious. Mr Groves has emphasised in writing the features of discrimination claims that make it difficult

for a disappointed candidate for employment to know why he has not been successful. That is why the two-stage burden of proof operates and why courts have commented regularly that discrimination claims ought to be heard on their merits unless there is good reason not to do so. However, in the case of the claims brought by Mr Groves, a significant number of those claims were judged likely to fail from the outset, with Tribunals concluding that no prima facie case was either established or likely to be established. Moreover the persistence with which Mr Groves challenges any adverse decision as an act of unlawful discrimination has the hallmarks of the institution of proceedings without any consideration being given to their particular underlying merits. This is not a situation in which Mr Groves has brought claims based on a misjudgment about the strength of a particular claim. Rather, objectively viewed, the large number of claims he has brought is indicative of the absence of any prospect of success and of the fact that this is a kneejerk response to failure.

69. There is a further feature that emerges from a number of the claims I have described. Tribunals have commented on at least three occasions that Mr Groves appears not to be genuinely interested in securing the jobs he has applied for. In two cases that conclusion derived from the fact that, having been offered the chance of an interview, on one occasion the date having been changed in order to accommodate Mr Groves, he declined to attend for interview. That, however, did not stop him from making an allegation of unfair discrimination in relation to his non-selection. Moreover the fact that his applications for employment and his claims that follow on from those unsuccessful applications are not genuinely made may also be regarded as supported by Mr Groves' frequent failure to attend hearings without giving any proper notice to the Respondent, his failure to prosecute a number of claims, withdrawing complaints after putting Respondents to cost and inconvenience in having to respond to those complaints in detail. Finally there are the Employment Tribunal findings I have referred to,

where grave doubts were expressed as to both the genuineness of his applications and of his claims of unlawful discrimination to the Tribunal.

70. Mr Groves' conduct in the course of proceedings has been the subject matter of criticism by a number of Tribunals. I have referred to the particular criticism he received for intimidating witnesses in claim 4. In a number of claims he failed to comply with court orders and failed to comply with orders requiring him to pay a deposit. This application itself affords evidence of his failure to comply with the Appeal Tribunal's requirement that he prepare and file an affidavit and of his engagement in intemperate correspondence with Appeal Tribunal staff. In my judgment there is evidence of habitual and persistent institution of appeals by Mr Groves on the basis of wholly unfounded allegations of bias or perversity. His appeals have been regularly dismissed at the sift stage or, if not at the sift stage, at a Preliminary Hearing as raising no arguable point of law. On the only occasion when his appeal proceeded to a Full Hearing it was dismissed as raising no error of law or misdirection by the Tribunal.

71. That his appeals were plainly misconceived appears from the fact that they were brought almost automatically as a kneejerk reaction to any adverse decision by a Tribunal, without any apparent regard being had to their underlying merit. That kneejerk response is displayed in today's e-mail at 8.39, where Mr Groves says in terms that, if an order is made today, he seeks permission to appeal. As he well knows, appeals from decisions of Tribunals and this Appeal Tribunal are on points of law only. That he should choose to operate in that way indicates a complete failure to consider whether any arguable point of law is raised, and his applications for permission to appeal are kneejerk responses rather than considered responses to decisions that are capable of being properly challenged. In this regard, Mr Groves has shown himself entirely unable to learn from adverse decisions. HHJ McMullen has repeatedly observed that

Mr Groves has failed to learn from what the judge said to him in relation an earlier appeal rejection.

72. There are also, as Mr Akkouh has identified, numerous occasions when Employment Tribunals and indeed this Tribunal have been highly critical of Mr Groves' conduct in relation to proceedings. In claim 4, as I have already observed, his conduct in relation to witnesses was described as a misuse of the Tribunal's processes. In claim 7 he was said to have acted unreasonably, vexatiously and disruptively. His appeal in claim 7 was described as an abuse of the process of the EAT. In claim 11 the court expressed grave doubt as to whether his applications and claims were being made in good faith. And I have set out what the Judge had to say in relation to him in claim 18. Although Mr Groves says that he has never brought litigation described as vexatious, that is patently not the case as the account of the individual claims above shows.

73. Mr Groves suggests that a vexatious litigant is someone who brings litigation with the sole intent of harassing the Respondent. But it is clear from the well-known passages in the **Barker** case that vexatious litigants have various characteristics and that harassment forms only part of those characteristics. Nevertheless it seems to me that the comments by Tribunals in claim 18 and claim 11, and his treatment of witnesses in claim 4, do amount to evidence and findings of harassment of the Respondents and the witnesses concerned. Mr Groves says that he has never brought litigation with the intention of harassing a Respondent. Whether or not that is the case, and I am entitled to treat that assertion with some scepticism in light of the findings various different Tribunals have made, I am satisfied that this has been the effect of the unsuccessful proceedings he has brought. Those unsuccessful proceedings have plainly caused significant inconvenience, expense and harassment to the Respondents and to those tasked with

dealing with the litigation on behalf of those Respondents, who have been on the receiving end of these claims. They have been put to the trouble of explaining their actions in detail, and although some have done so to the complete satisfaction of Employment Tribunals at a preliminary stage, this has nevertheless required detailed evidence to be deployed by them.

74. It is impossible for me to state any precise figure for the costs incurred by such Respondents, but I note the suggestion made by Mr Groves, in his letter to ACAS in the course of the House of Commons Commission claim, that the House of Commons Commission has spent in excess of £100,000 on costs in defending his meritless and unnecessary claims. I do not know whether that is correct, but I have no doubt that substantial costs have been incurred and that these are unlikely ever to be recovered.

75. In the result I am entirely satisfied that the detailed history I have related shows that the conditions for the making of an order under section 33 are satisfied. I am in no doubt that Mr Groves has instituted vexatious proceedings in the Employment Tribunal and in the Employment Appeal Tribunal, that he has made vexatious applications, and that he has done so habitually and persistently and without any reasonable grounds.

76. I turn then to consider the question of discretion. An order under section 33 in this case would protect the public against the expense and inconvenience involved in responding to claims that have no foundation. It would save scarce Tribunal resources and ensure that those limited resources can be directed at claims that are properly made. It would reduce the time spent by Employment Tribunals and by this Appeal Tribunal in dealing with persistent, unmeritorious claims and applications made by Mr Groves. There is no suggestion that Mr Groves has learned from adverse decisions, nor any suggestion that he is likely to stop making

claims in the future. The five-year history of claims suggests the contrary, and the claim lodged as recently as July 2014 against the Ministry of Justice also suggests the contrary. Moreover the so-called "without prejudice" letter sent by Mr Groves to ACAS in the House of Commons Commission claim is consistent with that approach. It reveals a person who is committed to bringing claims without any genuine belief in them, but rather to harass the recipient employer. Moreover the recent correspondence from Mr Groves indicates that any adverse decision made against him is liable to be met with an allegation of unlawful discrimination. Even this application for a section 33 order has engendered that response and he has suggested unlawful discrimination by the Attorney.

77. That history gives no basis for thinking that Mr Groves is likely to stop. His behaviour is engrained and has become a kneejerk reaction without any consideration of the underlying facts or the merits of the claim he is making.

78. I have considered whether there is any basis for limiting the term of such an order, but since there is no reason to suppose that Mr Groves will stop acting vexatiously at some future point, it seems to me that an indefinite order is fully justified. I am conscious of the fact that the order will not act as a barrier to any future proceedings in the Employment Tribunal or the EAT but will act as a filter. For all these reasons, in the circumstances, and in light of the evidence and the material that has been put forward by the Attorney in the form of Mr Seedat's affidavit and the documentary material that underlies the Schedule of Actions, in my judgment an order is necessary and should be indefinite in this case and I exercise my discretion by making that order.

79. In his e-mail timed at 8.39 this morning, 14 October 2014, Mr Groves sought permission to appeal. I have considered that application. It discloses no arguable point of law and could not have disclosed any arguable point of law since it was formulated before Mr Groves could have any knowledge of whether I would make the order sought, still less of the basis on which such an order would be made and of the possible errors of law that might be disclosed by my ruling. I am satisfied that the application for permission to appeal has no reasonable prospects of success. The order was properly made for the reasons I have given for making it. I refuse the application to appeal.