



EMPLOYMENT TRIBUNALS

Claimant
Miss H Forrest

Respondents
v **(1) Jane James's Consultancy Limited**
(2) PricewaterhouseCoopers Limited

CLOSED PRELIMINARY HEARING

Heard at: London South

On: 4 March 2019

Before: Employment Judge Truscott QC

Appearances:

For the Claimant:	Mr R Owen Thomas of Counsel
For the First Respondent:	Ms A Macey of Counsel
For the Second Respondent	Ms K Balmer of Counsel

JUDGMENT on PRELIMINARY HEARING

1. The claimant intimated the withdrawal all of her claims against the second respondent, accordingly, all of her claims against the second respondent are dismissed.
2. The claimant intimated that she was no longer claiming under section 39 of the Equality Act against the first respondent, accordingly, her claim under that section is dismissed.
3. The Employment Tribunal has jurisdiction to entertain the claim under section 55(c) and (e) of the Equality Act 2010.

REASONS

Preliminary

1. The sole issue remaining for determination by this Tribunal was:

Whether the Employment Tribunal has jurisdiction under section 55 of the Equality Act to entertain the claims by the claimant against the first respondent.

2. The Tribunal heard the evidence of the claimant and Ms Janie Leigh James of the first respondent. There was a bundle of documents to which reference will be made where necessary.

Facts

5. The first respondent is a professional services consultancy organisation offering the Growing Talent employment programme. The Growing Talent programme provides a forum to bring unemployed people and employers together. The programme is designed to remove traditional barriers to employment including, for example, the fact that there is no requirement to provide a Curriculum Vitae.

6. Applicants for the Growing Talent programme are primarily referred to the first respondent via Jobcentre Plus (JCP). Other candidates, although much smaller numbers, are referred via charitable organisations.

7. Ms Jones conducts a 15-minute interview with the candidate to assess whether he or she is compatible with the scheme. The completed registration form is available at the meeting. The first respondent only accepts those candidates who would benefit from her service; she does not accept candidates who do not need her service even though they might be the candidates most likely to pick up work at a forum. Ms Jones did not agree with the claimant's suggestion in her witness statement that anyone can automatically register and be invited to a speed dating session.

8. The first respondent provides an opportunity for those who are unemployed and would have difficulties with a conventional job search to meet prospective employers. This is done at an initial speed dating session at which all selected potential candidates spend ten minutes with all potential employers. After this, the employers indicate which people they would like to interview on a 1-2-1 basis, at their premises, and a subsequent interview is arranged. If they are successful, a provisional job offer is provided to the individual "Associate" who it is believed can grow into the role.

9. If any employer decides to issue a provisional job offer, they commit to a 12-week work experience programme. The only commitments made by the "employer" for this work is that they, not the first respondent, provide any necessary vocational training, and they have a job that is ready to be taken up at the conclusion of the 12 weeks work experience. This is confirmed in the brochure for the Growing Talent programme which specified at page 20 that there had to be a permanent job which could be ringfenced for the selected Growing Talent Associate. It was also a condition of the first respondent that "4. You train them in the available role, assigning a day-to-day mentor." For the first week of the work experience, the first respondent organises a workplace etiquette week, which focuses on soft skills, such as time keeping, how to do handshakes and how to speak to line managers. On the sixth week of the programme, the first respondent organises a second week, which includes sessions such as nutrition on a budget, and mental health. The first respondent does not provide anything of an educational nature (e.g. reading, maths), anything vocational (e.g.

typing, computer skills), or assistance with otherwise finding work (cv writing, interview tips).

10. Whether at the time of commencing work experience, or in gaining employment, the first respondent receives no commission, additional pay, or similar. She charges the former second respondent for a service and that is the only charge she makes.

11. Should any prospective employer at a forum not see fit to provide any offers of work experience, the first respondent does not assist them further in finding any alternatives beyond potentially inviting them to a future forum which are held quarterly.

12. Initially, the claimant was referred to the first respondent via JCP in August 2017. She withdrew her application soon after as she broke her shoulder. The claimant subsequently reapplied and completed the necessary registration form.

13. On 23 January 2018, the claimant met with Ms Jane James for a compatibility meeting to assess her suitability for the Programme. Ms James informed the claimant that she was not suitable for the Programme because her expectations were out of line with the roles available on the Programme.

14. On 25 May 2018, the claimant filed an ET1 alleging disability discrimination in relation to the meeting on 23 January and her non selection for the programme.

Law

15. Section 120 Equality Act 2010, as far as relevant, sets out as follows:

- (1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—
(a) a contravention of Part 5 (work);

16. For the Tribunal to have jurisdiction to consider the claim against the first respondent, the claimant must be able to bring her claim within Part 5, which in turn requires the first respondent to be an employment service provider in terms of section 55.

17. The Explanatory Notes to the Act state: 'This section replaces the separate provisions for vocational training and employment agencies and assisting persons to obtain employment in previous legislation with a single provision covering all these aspects'.

18. Prior to the Equality Act 2010, there was separate provision in relation to the prohibition of discrimination by employment agencies. This is provided for in the following statutory provisions: SDA 1975 s 15; RRA 1976 s 14; DDA 1995 s 19(3)(f) EE(RB)R 2003, SI 2003/1660 reg 18; EE(SO)R 2003, SI 2003/1661 reg 18 and EE(Age)R 2006, SI 2006/1031 reg 21. Harvey states that the definition would therefore include, for instance, a university or local education authority careers service, and the state employment services, as well as private businesses. In **Commission for Racial Equality v. Imperial Society of Teachers of Dancing** [1983] ICR 473 EAT, the Employment Appeal Tribunal confirmed that a head of careers at a school is an

'employment agency' within the Act. The report does not contain detailed reasoning. The substance of the law remains the same.

19. The relevant sections provide:

"55 Employment service-providers

(1) A person (an 'employment service-provider') concerned with the provision of an employment service must not discriminate against a person...

"56 Interpretation

(1) This section applies for the purposes of section 55.

(2) The provision of an employment service includes—

- (a) the provision of vocational training;
- (b) the provision of vocational guidance;
- (c) making arrangements for the provision of vocational training or vocational guidance;
- (d) the provision of a service for finding employment for persons;
- (e) the provision of a service for supplying employers with persons to do work;
- (f) ...
- (g) ...
- (h) ...
- (i) ...

(3) ...

(4) ...

(5) ...

(6) 'Vocational training' means—

- (a) training for employment, or
- (b) work experience (including work experience the duration of which is not agreed until after it begins).

20. Further guidance is provided in the Explanatory Notes to section 56, which provides:

Examples of the types of activities covered under this section include providing CV writing classes, English or Maths classes to help adults into work; training in IT/keyboard skills; or providing work placements.

Discussion and decision

21. The Tribunal accepted the evidence of Ms James who was conversant with the structure of her business. The claimant relied on what she had been told by others.

22. Whilst acknowledging their service can be very loosely linked to potential work in the future, the first respondent submitted said that this is not sufficient to place it within Part 5 of the Equality Act. The first respondent convened semi-social events in which prospective workers might gain work experience, but not through her, and she had no financial interest in seeing a) anyone offered a work placement, or eventually employment; b) a recruiter fulfilling a position; c) matching particular people to particular positions, which she did not do in any case. Any training provided for the job is provided by and through the providers of the work experience.

23. The claimant relied on each definition in section 56(2).

24. Before addressing the current legislation, the Tribunal noted the history of the provision and the wide interpretation given to it in the **Imperial Society of Teachers of Dancing** case. The Tribunal also noted the change of section heading from “Employment Agencies” to “Employment Service Providers”

25. Section 56(2) of the Equality Act 2010 contains a number of definitions each of which will be dealt with in turn. Any one ground is sufficient, if established, to give the Tribunal jurisdiction.

(a) The Tribunal accepted that the first respondent does not provide vocational training. It is the potential employer who provides vocational training. The guidance that is provided by the first respondent only applies once employers have decided to take them on an Associate on a work experience placement.

(b) By parity of reasoning, the Tribunal accepted that the first respondent does not provide any vocational training guidance. This is provided by the potential employer. The first respondent provides advice on soft skills and holistic sessions.

(c) The Tribunal finds that the first respondent does make arrangements for the provision of vocational training or vocational guidance. Considering the purpose of the Growing Talent programme which is to provide a forum to bring unemployed people and employers together, the initial interview and what follows thereafter constitute arrangements notwithstanding the first respondent has no involvement in whether the two parties have any future relationship.

(d) The Tribunal finds that the first respondent does not provide a service for finding employment for persons because the first respondent is not concerned with finding employment for particular people with particular employers but with a more general approach to enabling some of those who might struggle to find work with alternative opportunities for meeting potential employers.

(e)...The Tribunal find that the first respondent does provide a service for supplying employers with persons to do work. Whilst the first respondent does not match directly potential employers with potential work experience candidates, for similar reasons as with section 56(2) (c) the definition is sufficiently wide to cover the activities of the first respondent in the programme.

26. The Tribunal considered the initial interview in the context of the structure of the Growing Talent programme described by the first respondent and concluded that it fell within the definitions in sections 56(2) (c) and (e) and the Employment Tribunal has jurisdiction to hear the merits of the claim under either or both provisions.

Employment Judge Truscott QC

Date 14 March 2019

