EMPLOYMENT TRIBUNALS

Claimant: Mr V A Udoye

First Respondent: NHS England (Cheshire and Merseyside)
Second respondent: Health Education England - North East
Third respondent: Linda Cullen
Fourth respondent: General Medical Council

JUDGEMENT FOLLOWING A PRELIMINARY HEARING

Heard at: Carlisle Magistrates Court **On:** 22 July 2019

Before: Employment Judge Hoey (sitting alone)

Representatives
For the claimant: Mr Echendu (non-practising barrister)
For the first to third respondent: Mr Williams (Counsel)
Fort the fourth respondent: Mr Hare QC (Counsel)

1. The claimant's application to amend under cover of his agent's communication dated 26 March 2019 is allowed.

2. The following claims are struck out on the basis that they have no reasonable prospects of success:

    a. The claim advanced at paragraph 41(g) of the paper apart to the claim form
    b. The claim advanced at paragraph 41(h) of the paper apart to the claim form
    c. The claim advanced at paragraph 41(i) of the paper apart to the claim form
    d. The claim advanced at paragraph 41(j) of the paper apart to the claim form
    e. The claim advanced at paragraph 41(k) of the paper apart to the claim form
    f. The claim advanced at paragraph 41(n) of the paper apart to the claim form

g. The claim advanced at paragraph 41(o) of the paper apart to the claim form
h. The claim advanced at paragraph 41(q) of the paper apart to the claim form
i. The claim advanced at paragraph (d) of the amendment

j. The claim advanced at paragraph (e) of the amendment

k. The claim advanced at paragraph (f) of the amendment

3. In respect of the following claims a Deposit Order is made, in the sum of £300 per claim (the total sum being £3,000), said claims having been shown to have little reasonable prospects of success:

    a. The claim advanced at paragraph 41(a) of the paper apart to the claim form
    b. The claim advanced at paragraph 41(b) of the paper apart to the claim form
    c. The claim advanced at paragraph 41(c) of the paper apart to the claim form
    d. The claim advanced at paragraph 41(d) of the paper apart to the claim form
    e. The claim advanced at paragraph 41(e) of the paper apart to the claim form
    f. The claim advanced at paragraph 41(f) of the paper apart to the claim form
    g. The claim advanced at paragraph 41(l) of the paper apart to the claim form
    h. The claim advanced at paragraph 41(m) of the paper apart to the claim form
    i. The claim advanced at paragraph 41(p) of the paper apart to the claim form
    j. The claim advanced at paragraph 41(r) of the paper apart to the claim form

4. The claimant has 28 days from the date this Judgment is issued to advise the respondents (and the Tribunal) which, if any, of the amended claims he wishes to advance (including those in respect of which he wishes to and does pay the deposit) and the respondents have 28 days thereafter to provide a response to the amended claims, if so advised.

Introduction

By claim form received by the Tribunal on 8 February 2019 the claimant (a doctor) raised a number of claims against four respondents. The claimant alleges unlawful race discrimination in a number of ways, including direct discrimination, harassment and victimisation. This is not an employment case but involves qualification bodies.

The claimant was represented by a legally qualified barrister in the drafting of his claims, the amendment to his claims and at this hearing. At paragraph 42 of the ET1

paper apart the claimant sets out the particulars of his claim with the preceding paragraphs largely providing background.

The first to third respondents were represented by Mr Williams and the fourth respondent respondent by Mr Hare. Each of the respondents lodged response forms denying the claims and raising a number of preliminary issues.

Amendment

On 26 March 2019 the claimant sought to amend his claim with the benefit of his legally qualified barrister's assistance. At paragraph 13 of the communication sent on that day a number of additional claims are set out in paragraphs a to f. The claimant withdrew the claim set out at paragraph (b).

Neither respondent objected to the amendment and having heard the claimant's barrister who explained that the additional claims arose following receipt of the response forms and having balanced the prejudice to the parties I decided to allow the amendment. The fourth respondent had already prepared a response and the 1st to 3rd respondent would do so if required

Preliminary hearing

This hearing had been fixed to determine each of the respondent's applications to strike out each claim on the basis the claims had no reasonable prospects of success which failing they had little reasonable prospects of success in which case a deposit order should be granted.

Facts

The preliminary hearing proceeded on the basis that the claimant's claims were taken at their highest and matters would proceed on the basis of the written evidence which was, as I understood it, undisputed.

The parties

The claimant was never employed by any of the respondents who are qualification bodies with exception of the third respondent is employed by the first respondent. The first respondent is an executive non-departmental public body of the Department of Health and Social Care overseeing the day-to-day operations of the NHS under the Health and Social Care Act 2012.

The second respondent is a local education training board and non-departmental public body established under section 28 of the NHS Act 2006 which plans and delivers education and training to employees and prospective employees of the NHS in England.

The fourth respondent is the statutory regulator for doctors in the UK under the Medical Act 1983. Part of the fourth respondent's duties is to maintain a medical register of GPs.

The Scheme

The second respondent overseas the GP Induction and Refresher Scheme – the Scheme. The second respondent assists doctors back to work following career breaks and orients overseas doctors who wish to work as a GP in the UK for the first time. EEA rules apply to EU doctors and different rules applies to those based out with the EU. The claimant was an international medical graduate and fell into the latter group. There are two routes to entry via the Scheme namely via a portfolio route or via a learning needs assessment. The claimant opted for the latter route.

Training process

There is an established process which involves registration, assessment, examination, training and practice assisted by a bursary which is funded by the second respondent.

The GP register

The second respondent's position is that in order to begin the placement stage of the training (which takes place in a GP practice), it is a statutory requirement that a doctor must be on the fourth respondent's GP register and secure conditional inclusion on the notational performers list.

Page 133 of first respondent's bundle sets out this requirement which is repeated at page 187 on the step-by-step guide to the Scheme. Paragraph 6 states that an individual must be on the GP register to qualify for the Scheme. It also states at page 189 "to undertake the clinical placement the individual must be on the GP register".

The claimant disputes that it is a statutory requirement to be on the GP register while training.

The claimant follows the process

The claimant contacted the head of continuing practice at the second respondent in early 2016. The process began on 2 May 2016 - at pages 139 to 148. The form at page 139 asked the claimant if he was on the GP register to which he said yes. The claimant accepts this was an error as he was not on the register.

The claimant maintains it ought to have been obvious that the claimant was not on the GP register from the context and the information that he provided to the second respondent.

Despite not being on the list, the second respondent supported the claimant's application following his passing the exams and they secured a training placement for him.

On 4 August 2017 at page 202 the claimant was reminded that he was not on the GP register and was told to ring the fourth respondent and sort this out.

On 7 August 2017 at page 205 the claimant asks the second respondent how to proceed as he was not sure. The claimant was told on 7 August 2017 that the second

respondent would seek advice and get back to him. There is no further contact with the claimant regarding this matter. The claimant did not check the position.

The claimant is not on the GP register

In November 2017 the claimant submits documents to the first respondent in support of his inclusion on the list at page 185.

On 26 February 2018 the second respondent receives the final assessment of the claimant (following his training placement) which it submits to the first respondent to allow consideration to be given to lifting conditions and to allow the claimant to progress.

At page 214 on 26 February 2018 the second respondent notes the claimant is not on the fourth respondent's GP register and states the claimant cannot work as a GP.

At page 219 on 1 March 2018 the claimant confirms he stopped work and asks for clarification as to the position.

Investigation commences

The first respondent undertakes an investigation to determine how the claimant was allowed to progress despite not being on the GP List (page 269). The agencies decide to work collaboratively to determine what happened.

The third respondent, acting on behalf of the first respondent, spoke to the fourth respondent's employee liaison officer about the issue. She was told to refer the matter formally to the fourth respondent which is seen at pages 221 – 226.

On 20 March 2018 the third respondent writes to the claimant noting he is not on the GP register and that they are required by the fourth respondent to refer the matter to them formally.

On 9th March 2018 at page 229 the third respondent writes to the fourth respondent to confirm the claimant is not on the GP register.

The claimant had previously applied to join the GP register but his application had been refused. He did not challenge that refusal.

On 23 May 2018 at page 231 the fourth respondent tells the third respondent the claimant's case is being considered by case examiners and the claimant will be required to appear before an Interim Orders Tribunal to explain the position. That would consider whether any restrictions would be applied to the claimant's practice.

Interim Orders Tribunal

On 15 June 2018 at page 257 the claimant is referred to the Interim Orders Tribunal and a 15 month restriction is placed on the claimant's practice. The claimant is represented by counsel at the hearing and does not challenge that decision (which he could have done in the High Court).

On 20 June 2018 at page 232 the fourth respondent asks the first respondent to provide a statement setting out the background as to the system and information provided to the claimant in relation to the issues arising.

At page 234 on 20th June 2018 the claimant's application for his certificate of completion of training is refused and specific additional training aspects required are set out in detail.

On 28 June 2018 the fourth respondent advises the third respondent as to the interim orders placed on the claimant's practice at page 257.

On 4 September 2018 the fourth respondent receives information from the second respondent that the claimant received a bursary at page 156. Part of the Scheme is to receive a bursary when proceeding with the in-practice training.

The fourth respondent decides this raises serious issues about the claimant's probity and at page 154 of the fourth respondent's bundle, the assistant registrar decides the claimant ought to have known that he was not entitled to a bursary as he was not on the GP register. He had been reminded of this on 4th August 2017 and yet he continued to make claims until 3rd March 2018.

On 17 October 2018 the assistant registrar at page 161 puts the allegations to the claimant.

On 14 November 2018 at pages 170 – 200 the claimant responds claiming he is being made a scapegoat for an administrative error and negligence on the part of the respondents and at paragraph 53 mentions he is a black doctor trainee.

On 13 December 2018 the second respondent tells the claimant it was told by the third respondent the claimant worked as a GP and was not on the GP list.

On 14 December 2018 the Interim Orders Tribunal revoke the conditions originally imposed as a result of new information provided - pages 201 to 204. Paragraph 19 notes that the tribunal is not making findings of fact but considers the position with regard to the public interest.

Medical Practitioners Tribunal

On 27 December 2018 the fourth respondent refers matters to the Medical Practitioners Tribunal. This is to determine whether the claimant's fitness to practice is impaired - pages 205 to 215 of the fourth respondent's bundle. This refers to the fact the claimant said he was on the GP Register, he commenced his placement and then received a significant 5 figure sum bursary to which he was not eligible.

On 22 February 2019 at page 301 the fourth respondent seeks information from the first respondent as to when the claimant was told about eligibility.

On 18 March 2019 the first respondent provides information to the fourth respondent and on 24th and 25 June 2019 the second respondent provides evidence for the fourth respondent at the tribunal.

The claimant obtained a copy of the decision (in relation to no case to answer) at page 216. The tribunal accept the claimant was not called a GP but he was called "doctor". Patients saw him in the GP practice and patients might not appreciate he was not a GP. The tribunal concluded the claimant could potentially be regarded as "practising as a GP" during his training placement given the circumstances (see page 230 of the fourth respondent's bundle). The no case to answer submission is refused and at page 232 the panel finds that there was an arguable case that the claimant was dishonest. The hearing is adjourned until January 2020.

The law

Under Rule 37 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, an Employment Tribunal may strike out all or part of a claim or response on a number of grounds, including that the claim or response, or some part of either, has no reasonable prospect of success.

Rule 37 imports a two-stage test. The first is to consider whether the ground has been established. The second is to consider whether or not to exercise the discretion in favour of striking out. The second stage is important as it involves a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit.

In **Hasan v Tesco** UKEAT/98/16, the Employment Appeal Tribunal held that relevant factors in the exercise of that discretion that might have weighed heavily included the early stage of the proceedings, the ability to direct that further and better particulars of each claim be specified and the absence of any application on the part of the respondent for striking out.

In determining whether or not there are reasonable prospects of success, strike out should only be ordered where the tribunal is in a position to conclude that there are no reasonable prospects. If central facts remain in dispute it will only be in an exceptional case that a case is struck out on the grounds that there is no reasonable prospect of success.

This is particularly so for discrimination cases because of the particular public interest in examining such claims on their merits rather than striking them out at a preliminary stage, but there are exceptions. It was held in **Mechkarov v Citibank** [2016] ICR 1121 that it is possible to strike out discrimination claims in the clearest of cases. If the issue turns on oral evidence, evidence should be heard (**Anyanwu v South Bank Students' Union** [2001] IRLR 305).

In **North Glamorgan NHS Trust v Ezsias** [2007] IRLR 603 the Court held that the claimant's case must be taken at its highest and it is only if the claimant's case is 'conclusively disproved by' or is 'totally and inexplicably inconsistent' with undisputed contemporaneous documents, that strike out should be considered

Rule 39 of the Rules allows a Tribunal to order that the claimant pay a deposit in the event of claims or arguments are found to have "little reasonable prospects of success". The Tribunal requires to consider the means of the claimant before making any such order.

Section 53 and 54 of the Equality Act 2010 provide that a qualifications body (a body which can confer a qualification) must not discriminate against a person in certain circumstances. The parties accept that the second and fourth respondents are qualification bodies falling within the ambit of the Equality Act 2010.

Section 123 of the Equality Act 2010 ("the Act") states that a claim must be brought within 3 months (less a day) from the relevant date unless it is just and equitable to allow the claim to proceed outwit the limitation period. A discriminatory act might form part of a policy or practice which was considered in **Owusu** 1995 IRLR 574, **Hendricks** 2002 EWCA Civ 1686 and **Lyfar** 2006 EWCA Civ 1548. The question is whether the acts complained of are linked and the fact the same person is responsible for the decision is relevant (**Aziz** 2010 EWCA Civ 304).

Direct discrimination is set out in section 13 of the Act. It is unlawful to treat a person less favourably that someone else on grounds of race.

Victimisation is set out in section 27 of the Act which is where someone suffers a detriment because they carried out a protected act (which includes making an allegation that the Act has been breached).

Harassment is set out in section 26 of the Act which is where there is unwanted conduct on grounds of race which violates a person's dignity or creates an intimidating or hostile or degrading environment.

Section 109 of the Act states that an employer is vicariously liable for acts carried out by an employee.

Under section 1 of the Medical Act 1983 the overriding objective for the fourth respondent is protection of the public.

The General medical Council (Fitness to Practice) Rules 2004 set out a process in the event of allegations about a doctor's fitness to practice. A Registrar is required to consider any relevant allegations which can be referred to an Interim Orders Tribunal

The Medical Act 1983 at section 35C contains provisions that requires allegations of misconduct to be referred to a Medical Practitioners Tribunal from which there is a right of appeal (under section 40).

Section 34C states that the fourth respondent must keep a Register of GPs and Schedule 3A allows an appeal against a refusal to be placed upon this register.

Section 120(7) of the Equality Act 2010 ousts the jurisdiction of the Employment Tribunal in claims against qualification bodies where the act complained of can be appeal against (or proceedings in the nature of appeal exist). This was considered in **Khan** 1996 IRLR 1032 and **Michalak** [2017] 1 WLR 4193 which found that provided a differently constituted body can consider the decision, that would be proceedings in the nature of appeal (excluding judicial review which does not consider the merits of the claim).

Under Schedule 23(1) of the Equality Act 2010 there is no breach of the Act if the body acts pursuant to an enactment where the discrimination is by reason of nationality.

Section 136 of the Equality Act 2010 recognises that it is not always possible to identify overt acts of discrimination and so the law allows discrimination to be made out where the claimant leads evidence that shows that an inference of discrimination can be drawn. The onus would then be on the respondent to show the conduct was unrelated to the protected characteristic. Guidance can be found in **Barton** 2002 IRLR 332 and **Igen** 2005 IRLR 258.

A claimant must prove on the balance of probabilities facts from which the Tribunal could conclude in the absence of an adequate explanation that there was unlawful discrimination. This can be based on inferences and assumptions but there must be something that entitles the Tribunal to find that the prohibited factor may have been at work.

In **Madarassy** 2007 IRLR 240 the court held that a claimant must establish more than a mere difference in treatment and difference in status. It is not enough simply to show the claimant had a different race and was treated differently. There must be "something more" to suggest the treatment was due to the prohibited ground. The fact conduct is unfair or unreasonable is not enough – there needs to be a connection to the prohibited ground. It is possible to rely upon stereotypes but there must be evidence to show that such stereotypes influenced the treatment.

Submissions for first to third respondent

Mr Williams stated that the thrust of the claimant's claims is that the respondents were negligence – they failed to pick up the fact he was not on the register. They allowed him to continue despite the fact he was not on the register. The main complaint is the referral to the fourth respondent.

The claimant requires to show that there is a connection to what he says happened and his race.

The procedure followed in this case is heavily regulated and defined by statute. The claimant was not on the register and he did not challenge this in the High Court.

The claimant blames the third respondent as an individual for actions and yet she was directed by the fourth respondent. This can be seen at page 211 (email from first respondent to third respondent), page 227 (Letter from claimant to first respondent at 228) and at 287 the claimant appears to accept the third respondent made the referral upon the instructions or direction of the fourth respondent. If the third respondent wasn't the main protagonist, the first respondent cannot be liable.

The claimant fails to identify a proper comparator whose circumstances were not materially different to the claimant.

In all the circumstances there is no link to the claimant's race. The issue arose as a result of the claimant's mistake regarding his application and this is being challenged in a different jurisdiction.

There was no racial element in any of the claims and in the absence of any evidence each of the claims should be struck out, which failing a deposit order granted.

Submissions for the fourth respondent

Mr Hare noted that any challenge to the outcome of the Interim Orders Tribunal must be struck out given section 120(7) of the Equality Act together with section 41A of the Medical Act 1983 since there were proceedings in the nature of an appeal available. This resulted in the claim at para 41(n) challenging the interim orders as having no reasonable prospects of success.

As to time bar, the application for a review of the section not to be admitted to the register is out of time, having occurred on 28 June 2018. There is no continuing act.

Mr Hare noted that qualifications bodies are not the same as employers which is acknowledge by section 120. This is to avoid parallel proceedings which is happening in this case given the claimant is running similar arguments in another tribunal. Such bodies have limited discretion given their statutory and regulatory responsibilities. In certain cases referrals need to be made and it is a question of the public confidence. There is clear structured decision making with written reasons issues showing why decisions are taken.

It was clear why the fourth respondent did what it did. There was a statutory responsibility to protect the public interest. The claimant's race was entirely irrelevant given the concerns and his admission that he made a mistake on the form. His admissions – the error as to his not being on the GP register, his completing his training and receiving the bursary by themselves provide the reason for the fourth respondent's actions.

The claimant's comparator is materially different from the claimant's circumstances

The fourth respondent is required by primary legislation to allow EEA nationals to join the GP register. This cannot be race discrimination given Schedule 23(1)(2). The doctor's nationality was entirely irrelevant and any doctor would be treated in precisely the same way – the reasons are set out in writing for the actions taken. See page 214 and 214A of the fourth respondent's bundle.

There are no reasonable prospects of success and discretion should be exercised in favour of striking out to deal with the matter proportionately. There is no prospect of the claims succeeding.

Claimant's submissions

The claimant's barrister began by stating that both counsel had fundamentally misunderstood the law and facts. The claims stem from 20 April 2016 at page 314 when the claimant said he wanted to be a GP in the UK. The respondents all knew from the start that the claimant was not on the GP Register. At page 315 on 21 April 2016 the claimant asks for help. The claimant provided all the information enquired of him and was honest. He made a mistake in completing the form at page 139 but it

ought to have been obvious from the context and given what he said and provided that he was not on the register and the respondents therefor knew he was not on the GP register. This is seen at page 183 on 8 November 2016.

The issue is only picked upon 7 August 2017 at page 205. The claimant asked for help as to what to do and was told by the first respondent they would be in touch – see page 205 and no further communication with him was made. The claimant proceedings to accept the placement and bursary assuming there is no issue.

The claimant has a comparator, Mr S, who is an international entrant like the claimant seen at page 307. His circumstances are not materially different and yet he was treated more favourably. In the claimant's submission, Mr S is identical to the claimant aside from race.

The claimant did nothing wrong and yet the negligence of the other bodies was being transferred to the clamant. The other doctors involved in the process were white. There was no proper investigation report showing what the claimant did was wrong. Despite this he is put to an Interim Orders Tribunal with the respondents changing their position when the orders are revoked firstly relying on the public interest and then alleging it is because he practised as a GP.

The claimant is the only non-white person and is treated badly. He is being made a scapegoat because of his race.

The claimant's position is that a doctor training to be a GP via the Scheme does not need to be on the fourth respondent's GP register. The respondents focussed on the person and not the law – they got it wrong and then discriminated against the claimant. Dr S was in the same situation and not subject to any investigation. The respondents ought to have known the GP register was not a prerequisite and there is no other explanation for the treatment of the claimant aside from his race.

In **Uddin v GMC** 2013 UKEAT 78 it was submitted that it was held that **Khan** was not good law and any claim beyond section 40 is subject to the Employment Tribunal's jurisdiction, including harassment and discrimination.

The second respondent fabricated information – they knew the claimant was not on the register.

The claim relates to acts extending over a time and the policy continues and so no parts of the claim are time barred. Otherwise it is just and equitable to extend.

In the claimant's witness statement produced with the claimant's skeleton argument, he argues at para 56 that the fourth respondent is subject to institutional racism with the "aim to destroy minority doctors". He argues art para 66 that the referral to the fourth respondent is tainted by race as was the decision by the fourth respondent to instigate an investigation against him.

In terms of the claimant's means, he has a limited income which just about covers his outgoings and he has around £9000 debts with no assets or savings.

The first to third respondent's counsel responded by noting that the claimant's agent was asked 11 times to explain why any of the claims related to the claimant's race and no clear response was given. It is not enough to talk about negligence and the claimant's race. Further Mr S's circumstances are materially different since he had not commenced his placement. There is no prima facie case.

The fourth respondent's counsel noted that the claimant was raising same claims before the other Tribunal which is the risk with parallel proceedings. The question is whether the respondent was motivated by race – the interim orders tribunal is about public risk. Page 214A shows that the question was whether patients thought the claimant was a GP – see page 229-230 at para 48-53.

He submitted that **Khan supra** is good law as confirmed by **Michalak supra** and that the claimant has failed to identify a suitable comparator. In his ET1 he refers to Mr M whose circumstances are different. Even if there is a comparator, there is no evidence race was the reason for the treatment. **Bahl** 2004 IRLR 799 confirms negligence and unreasonable treatment is not enough. There is no prima facie case and nothing to shift the burden to show that the stated reason is not the true reason.

The claimant's agent concluded by stating that Mr S was not present and his evidence needs to be heard.

Discussion and decision

The question the Tribunal needs to determine is whether the claimant's claims have no reasonable prospects of success or little reasonable prospects of success – taking them at their highest and looking at the bundle to which I was referred.

The challenge during the submissions from the claimant's agent was to understand why it was asserted that race was the reason for the treatment, in relation to the direct discrimination claims, and why the treatment was on grounds of race for the harassment claims. As counsel for the first to third respondent noted in his submissions, I had to ask the claimant's agent repeatedly to help me understand the facts from which the claimant asserts an inference of less favourable treatment by reason of race can be made or any direct evidence. The position was far from clear. I have spent a considerable amount of time reviewing the submissions of the claimant and his pleadings together with the bundle.

I have considered the claimant's agent's written submissions in detail but there is no basis set out that shows why race was a reason for the treatment or why the treatment is said to be on grounds of race. The claimant makes broad assertions in his witness statements but there is no clear link between the acts relied upon and the claimant's race, other than simply the fact the claimant is black. The response in oral submissions was far from clear as to this key issue.

Nevertheless I am conscious that it is important, especially in discrimination claims, to allow matters to proceed to a hearing and avoid striking claims out except in the rarest of cases. I have considered the authorities set out above in detail in reaching my decision and I have sought to ensure my discretion is exercised judicially. I have

carefully considered the claimant's agent's submissions and the statement he produced together with the bundle referred to.

I have not heard any evidence and the focus has been on what the parties understood the facts to be. I have taken this into account. The first to third respondent's counsel had sent the claimant's agent his detailed submissions which set out the facts as understood in the hope it could be agreed but no response was received. I am unclear as to precisely what is not agreed since the matters upon which submissions were made were the written reasons issued and the statutory basis for the approach taken by the respondents together with the contemporaneous correspondence. I proceed cautiously given no evidence has been heard and take careful account as to the pleadings and what the claimant has said.

It is also relevant to note that the claimant has been represented throughout the proceedings which are at a relatively advanced stage (given the claimant has recently further amended his claims).

I note that the claimant asserts that as against the first and third and as against the fourth respondents he argues that there is a specific comparator relied upon (in relation to certain (but not all) of the claims) which the claimant says is identical in circumstances (aside from race) to the claimant's situation. This is disputed by the respondents who say the circumstances of each comparator is materially different. Their submissions are compelling but I must assume for current purposes that the claimant's case is taken at its highest and the comparators are appropriate.

I have carefully considered the judgment of Lady Wise in **Hasan supra** where she noted that dismissing claims without factual inquiry could prevent light being shed on the significance of issues (see para 16). Equally, however, I accept that in that case the clamant was not legally represented and pleadings were at a relatively early state. In the current claim, the claimant has been represented by a legally qualified barrister throughout proceedings and the pleadings are at a more advanced stage.

I shall consider each of the claimant's claims in turn and assess their prospects and reach a decision in light of the applicable authorities which I must apply.

Claim pled at paragraph 41(a) of the ET1 – This is a claim that the first respondent's referral to the fourth respondent including false facts, led to less favourable treatment because of the claimant's race. The claimant maintains Mr S is in an identical position to the claimant aside from race and he was treated more favourably in the same circumstances – he was white - and no referral was made.

The first to third respondent's counsel has set out clear and compelling reasons why Mr S is not an appropriate comparator, not least since he did not start his placement and he self-reported the fact he was not on the Register.

I take the claimant's assertion and claims at their highest and find that it cannot be said that there are no reasonable prospects of success.

The referral appears to have been made on 9 May 2018 and the referral could be regarded as a one-off incident, thereby resulting in the claim potentially being out of time. That is another relevant factor to be taken into consideration.

However, I find that there are little reasonable prospects of success. The first to third respondent's counsel's submissions appear to show why the comparator is not appropriate. It is difficult to see how the claimant's race was the reason for the referral rather than the fact the claimant was not on the register (and the fourth respondent asked that the matter be referred to them).

On that basis I find there is little reasonable prospects of success. Having considered matters I also find that it is proportionate to order a deposit be made if the claimant wishes to proceed with this claim. A Deposit Order should accordingly be made.

Claim pled at paragraph 41(b) of the ET1 – This is a claim that the first respondent by pushing and supporting the claimant to proceed with the Scheme and then make serious allegations amounted to harassment.

This appears to be a claim for racial harassment – unwanted conduct on grounds of race. There is no explanation given in the pleadings or submissions or witness statement as to why the treatment is alleged to be on grounds of race.

For the purposes of this claim I am prepared to accept the claimant's submission that the comparator is appropriate. It is possible that such a finding could have an impact upon this claim, albeit I am unclear as to the factual basis for such a position.

I do not find there to be no reasonable prospects of success but I find there to be little reasonable prospects of success. It is incumbent on a claimant in a race discrimination claim to be able to show facts from which the Tribunal could conclude that race was a reason for the treatment. It is not enough simply to show a difference in treatment as the authorities show. The respondent's reason for their treatment of the claimant is clear and compelling – they encouraged the claimant as they considered him an excellent candidate and made the allegations when the error he made was discovered. That does not suggest the treatment was on grounds of race.

I find there to be little reasonable prospects of success. On that basis I find there is little reasonable prospects of success. Having considered matters I also find that it is proportionate to order a deposit be made if the claimant wishes to proceed with this claim. A Deposit Order should accordingly be made.

Claim pled at paragraph 41(c) of the ET1 - This claim is that the first respondent in providing a witness statement which was false in nature continued to harass the clamant and treat him less favourably.

The claimant's argument appears to be that the first respondent ought to know he was not practising as a GP and their continued insistence that he was amounted to unlawful race discrimination.

This approach fails to appreciate the reasoning adopted by the Case examiner at page 214A where it was stated that "we remain unconvinced and conclude that the claimant

was practising as a GP during his placement". There is a dispute as to what "practising as a GP" actually means.

It is unclear who the claimant compares himself so for the purposes of this claim and why he says the treatment is on grounds of his race. No assistance is given on the written documents supplied but the claimant nor his oral submissions.

I am prepared to accept the claimant's submission that the comparator used for the previous claims could well shed light on this claim, albeit this was not submitted at the hearing. Even if I do so, it is far from clear that his comparator would be treated any differently sine the first respondent believes that a Dr in training in the circumstances of the claimant could be considered as practising as GP. This is because the doctor is called Dr and is in a GP setting such that patients are unlikely to appreciate the difference.

While I cannot say that there are no reasonable prospects of success, given the claimant maintains there is a comparator who is identical to his situation, I can say there is little reasonable prospects of success. There is no basis at all from what I have seen that connects the first respondent's actions and the claimant's race.

On that basis I find there is little reasonable prospects of success. Having considered matters I also find that it is proportionate to order a deposit be made if the claimant wishes to proceed with this claim. A Deposit Order should accordingly be made.

Claim pled at paragraph 41(d) of the ET1 - This claim is that the first respondent in failing to issue a certificate following the training, treated the claimant less favourably by reason of his race.

The position is similar to that set out in relation to para 41(c) above. While there is no evidence presented to the Tribunal orally or in writing that the claimant's race was in any way linked to the first respondent's decision not to issue the certificate, I am prepared to accept the claimant's assertion his comparator could well shed light on this issue. That, to me, seems unlikely but I cannot say there is no reasonable prospects of success. It is a matter for evidence to assess why the certificate was not issued.

There is clear evidence from the documents that shows the claimant was an excellent candidate (and believed to be so by the respondents) and that the reason why the certificate was not issued was due to outstanding training issues. This is a cogent and powerful explanation for the treatment of the claimant.

Given the absence of any link to the claimant's race I find there to be little reasonable prospects of success. Having considered matters I also find that it is proportionate to order a deposit be made if the claimant wishes to proceed with this claim. A Deposit Order should accordingly be made.

Claim pled at paragraph 41(e) of the ET1 – the claim is that the first and second respondent encouraged the claimant to undertake the Scheme and by raising allegations of misconduct treated him less favourably than Mr S.

While it is not expressly stated that the less favourable treatment is on grounds of race that is presumably what this claim is about. Counsel for the first to third respondent set out above why the comparator relied upon appears to be in materially different circumstances but I am required to take the claimant's case at its highest. The first to respondent have also set out clear grounds as to the reason for the treatment – they discovered the claimant said he was on the register when he was not. Each of the respondents clearly believed that it was a legal requirement to be on the register before commencing the placement. This had been communicated to the claimant.

I cannot say that there are no reasonable prospects of success but in all the circumstances in my opinion there are little reasonable prospects of success. The first to third respondents appear to have a cogent explanation for their treatment of the claimant and the comparator appears to be in materiality different circumstances (not least I am told he did not commence his placement and self-reported).

It is proportionate and just to issue a Deposit Order in relation to this argument given the foregoing.

Claim pled at paragraph 41(f) of the ET1 – This claim states that the first respondent operated a discriminatory policy by refusing to include the claimant on the list on 18 January 2019.

It is not clear firstly what type of unlawful conduct the claimant says occurred. It is assumed it is again by reason of his race albeit at no point in the pleadings, witness statement or oral submissions did the claimant's agent point to factors which support an assertion that his race caused the first respondent to operate the policy in the way it did. There also appears to be time bar issues arising,

It is difficult to see any connection with the claimant's race and the treatment in this claim. This claim is close to there being no reasonable prospects of success given the lack of any connection as to the claimant's race and the clear documented reasons given by the respondents for their treatment of him. I exercise my discretion however, not to strike the claim out (given what the claimant has said about a comparator) but I do consider there to be little reasonable prospects of success given the cogent explanation set out by counsel for the treatment sustained by the claimant. I consider it proportionate and fair to order a Deposit Order in relation to this claim.

Claim pled at paragraph 41(g) of the ET1 – This claim is that the second respondent by making false allegations against the claimant (to the fourth respondent) treated the claimant less favourably when they knew differently.

This appears to relate to the fact the second respondent said that the claimant was practising as a GP when the claimant maintains he was not (he was a doctor in training) and this was something the second respondent knew or ought to have known. It is again assumed the claimant is relying upon his race as to the protected characteristic.

It is again unclear why the claimant says his race was a factor when the second respondent made the allegations. There is no suggestion his comparator had allegations made against him. It is also not clear whether the second respondent knew

the allegations were false (given their clear belief as to the requirement to be on the register). I can see and was shown no link between the claimant's race and the making of the allegations.

The allegations relied upon by the claimant are that he was practising as a GP. There are no suggestions that by itself related to race. There is no link at all between the treatment and race and none is evident from the pleadings, submissions or claimant's witness statements. I can see no facts from which an inference of race discrimination can be drawn. The claimant's agent was unable to point to any such link or nexus in the course of his submissions.

Having considered matters carefully and in light of the authorities I have decided that there are no reasonable prospects of success in relation to this argument. The second respondent did what she was required to do – reported what her understanding of the position was I(which was what the claimant had said in his form – he was not on the list and he was working in the GP practice). There has been nothing to suggest it was in any way linked to race and it is incumbent on the claimant to present some form of evidence, whether by way of direct evidence or facts from which an inference can be made.

There are no reasonable prospects of success. I have also considered the authorities (such as **Hasan supra**) and I have to carefully consider whether to exercise my discretion to strike out the claimant's claim, bearing in mind that would prevent the leading of evidence. I am satisfied it is just and proportionate to do so in relation to this claim. There is simply treatment with which the claimant disagrees and the claimant's race. There is no link between the two. In all the circumstances I have considered it proportionate and just to strike this claim out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(h) of the ET1 – the claimant alleges that the second respondent in her response on 13 December 2018 made a false allegation which amounted to less favourable treatment. This is essentially the same claim made in (g) above. The claimant believes that the second respondent knew (or ought to have known) he was not practising as a GP and as such the making of the allegation was somehow connected to his race.

Again there is no direct evidence of race discrimination nor any facts from which an inference that race was in any way relevant. For the same reasons set out above I have concluded there are no reasonable prospects of success. The clamant could not point to anything from which the burden would shift to the respondent. I have deicide that it would be just and proportionate to strike this claim out at this stage given the factual position. There are no other documents or adminicles of evidence upon which the claimant could rely to show race was a factor. It is just that the claim be struck out and I exercise my discretion to do so given the circumstances of this claim.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(i) of the ET1 – This appears to be that the first and second respondents in causing their statements to be relied upon in carrying oppressing and unwarranted investigations against the claimant treated him less favourably on grounds of his race.

This allegation is unclear. It is not clear how the respondents caused their statements to be relied upon. It is also not clear whether the claimant is saying both respondents carried out an oppressive investigation. It is likely that the claimant is saying the first and second respondents, by complying with the fourth respondent's investigation, led to the less favourable treatment, that appears to be the nub of his claim.

There has been no suggestion that the claimant's race played any role at all when the first and second respondent prepared their statements. The statements set out the facts as understood. It is also unclear as to the claimant's comparator. There is no basis suggested as to why statements prepared for the purpose of an investigation would be any different – they would set out what the first and second respondent considered the truth to be,

I take the claimant's assertions and case at its highest. I have carefully considered the authorities in this area. In Hasan the claimant was not legally represented and the pleadings were at a relatively early stage. In this case the claimant has had the benefit of his legally qualified representative from the beginning and his pleadings have already been amended.

The purpose of the investigation was to find out the facts. Both respondents did just that in their statements and set out the position they understood it to be. There is no suggestion that the claimant's race was in any way relevant or even considered. The claimant may well disagree with the facts as suggested but there requires to be something more, something that suggests in some way the claimant's race is a factor. I have found no such facts and none was suggested to me in the course of submissions. In all the circumstances I find there to be no reasonable prospects of success. There is a total absence of any evidence or facts that could be relied upon at least to require the respondent to show that race was not a factor.

I have balanced all the factors and exercised my discretion and I have decided that it would be just and proportionate to strike out this claim. I do not consider that there is any additional evidence or facts which could alter the position as set out by the claimant's agent. He is unhappy with the statements but cannot point to anything that suggests race is relevant. Leading evidence would not alter that fact. The claim is therefore struck out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(j) of the ET1 – the claimant alleges that the second respondent in encouraging and directing the claimant to undertake the Scheme and then alleging misconduct on his part treated him less favourably because of his race.

It is again unclear as to why the claimant says the treatment was because of his race. The misconduct was that the claimant was practising as a GP when he was not on the

register. The respondents believed a Doctor required to be on the register at the point the placement began. This is clear from their literature (which was sent to the claimant). The claimant was not on the register and he was working in the GP practice, as a Doctor. Page 231 shows how the claimant's honesty has been questioned as a result of his actions in this process – that was the respondent's position. There is no link to his race set out by the claimant.

The claimant's agent was unable to point to any evidence or facts from which an inference of race discrimination could be made. Here there is treatment and the claimant's race. There was nothing to link the two. The claimant has been unable to identify any comparator in this regard.

I have decided that there is no reasonable prospect of success. No documents or evidence would alter the reason why the respondent alleged misconduct and treated the claimant in the way they did – the written reasons and approach make the position clear. In the absence of any facts from which it is possible to infer race was connected din some way to the treatment the claim has no reasonable prospects of success.

As with the other claims I have carefully balanced the issues arising. I appreciate striking out the claim prevents evidence being led but I am satisfied in this case there is no evidence which would alter the position and the claimant was unable to point to any reason why race could be a factor in the mind of the decision maker. It is just and proportionate to strike the claim out at this stage.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(k) of the ET1 – the claimant alleges that the second respondent by "shifting their negligent acts to the claimant to save face from the fourth respondent" treated the claimant less favourably.

I shall assume this is again a claim for race discrimination. From his verbal submissions, the claimant's agent suggested the negligence is in not picking up that the claimant was not on the GP register – this was an honest mistake on his part and the context and information supplied by the claimant ought to have made this obvious. The respondents then allowed the claimant to proceed through the system and encouraged him to do so. His position is that the second respondent essentially "scape goated" the claimant rather than focus upon their own error.

There were no facts to which the claimant could point which suggested his race was relevant in some way to the first respondent's actions. He was unhappy that they took matters forward formally but he was unable to point to any connection with his race. He was also unable to show any comparator and explain why they would be treated more favourably.

There was a strict regulatory and statutory scheme which had to be followed. The claimant had failed to tick the correct box, by his own admission. The second respondent did what it required to do in terms of reporting the claimant to the fourth respondent.

I take the claimant's case at its highest and shall assume that the respondent did "shift its negligence" albeit that is not something that is self-evident. Even if it is accepted. The claimant has been unable to point to any facts that suggest his race was in some way connected at all. There is simply the treatment and the claimant's race which the claimant seeks to connect without any factual basis. There is nothing more to suggest the claimant's race was connected;

I find there to be no reasonable prospects of success in this claim. I have exercised my discretion and have decided that it would be just and proportionate to strike out the claim. There is no prima facie case of race discrimination and there is no suggestion or evidence which the claimant can point to which would alter the position. It is appropriate to strike out the claims.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit order be made.

Claim pled at paragraph 41(l) of the ET1 – the claimant argues that the second respondent in causing the claimant to be subjected to a stressful investigation by the fourth respondent, when it knew the claimant did nothing wrong, he was treated less favourably compared to Mr S.

I shall assume (for the reasons set out above) that Mr S is an appropriate comparator whose circumstances are not materially different from the claimant's, aside from race but that is far from clear for the reasons I set out.

On that basis I cannot say there are no reasonable prospects of success but I am of the view the claim has little reasonable prospects of success. The second respondent is investigating matters given its obligations and the issues arising. There was no suggestion the claimant's race was in any way relevant.

I have decided it would be just and proportionate to issue a Deposit Order in relation to this claim.

Claim pled at paragraph 41(m) of the ET1 – it is alleged the fourth respondent subjected the claimant to a stressful investigation on no reasonable basis and thereby treated the claimant less favourably.

I shall assume this is alleged to have been based on his race. I shall also assume that the claimant is relying upon Mr M, to whom reference is made by him later, but this matter is far from clear. I am taking the claimant's claim at its highest and assuming the comparator to which he refers was not treated in the same way, where his circumstances were (other than his race) the same as the claimant's.

The fourth respondent had an obligation to investigate given the statutory basis. The claimant had begun his placement when he was no on the list, as the respondents understood the law required. There was no clear basis as to why the claimant said his race was a relevant considered.

I am satisfied that there are little reasonable prospects of success and I have decided that it is proportionate just and reasonable to order a Deposit Order in relation to this claim.

Claim pled at paragraph 41(n) of the ET1 – the claimant alleges that the fourth respondent in securing an interim order against him on the basis they knew to be false treated him less favourably.

I shall again assume this is allegedly race discrimination. This allegation involves the claimant challenging the decision of the Interim Orders Tribunal. The Employment Tribunal's jurisdiction is ousted where challenge is made to a decision that has the right to appeal or proceedings in the nature of an appeal – section 207. I accept counsel for the fourth respondent's submissions that the Employment Tribunal has no jurisdiction to consider this particular claim.

In any event the claimant was unable to point to any fact which supports his assertion the decision was in ay way related to his race. There was no evidence the fourth respondent knew the allegation to be false – this was a matter of interpretation and the fourth respondent acted reasonably in believing issues of probity arose.

There was no suggestion by the claimant that his race was a factor in the treatment. There were no facts relied upon in submissions, oral or in writing, which could lead to a prima facia case of race discrimination. The statutory basis underpinning the process would have led to the same result.

I find there to be no reasonable prospects of success in relation to this allegation. The Tribunal's jurisdiction is ousted and in any event there is a lack of any connection with the claimant's race. The reasons for the treatment are clear and the reasoning set out. The respondent's explanation is cogent and powerful and the claimant has pointed to nothing to suggest this is incorrect. There is no event to which the claimant can point that would suggest remitting the matter to a hearing on the evidence would make any different.

I exercise my discretion and find that it is just and proportionate to strike this claim out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(o) of the ET1 – the claimant alleges that the fourth respondent by continuing to insist the claimant committed gross misconduct despite a clear determination by the Interim Orders Tribunal on 4 December 2018 treated him less favourably in the form of a policy.

Again I shall assume the claimant relies on race as the protected characteristic. This claim appears to be that because the claimant is black the fourth respondent insisted he was guilty of gross misconduct.

It is unclear to whom the claimant compares himself. The treatment appears to have no link whatsoever to his race. The Interim Orders Tribunal makes no findings of fact but instead makes a decision based upon its view as to the effect on the public interest.

I find there to be no reasonable prospects of success of the claimant showing that the fourth respondent was somehow motived by race or that his race was somehow a factor in the treatment he sustained. There were no facts to which the claimant could put which suggested his race was at all relevant to the decision that was taken. He alleges he was treated badly and this was due to this race and yet there was no connection at all between these 2 issues.

I have considered whether or not strike out should be ordered. I find no facts or evidence which could be presented which would make any difference. There was no connection to the claimant's race and in all the circumstances I am satisfied it is just fair and proportionate to strike this claim out. It has no reasonable prospects of success.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(p) of the ET1 – it is alleged that the fourth respondent by subjecting the claimant to further investigation in relation to the same allegations, which had been found baseless, amounted to victimisation.

I shall assume the claimant is alleging that he carried out a protected act which led to the investigation, the fourth respondent accepted that the claimant had carried out a protected act, as set out at paragraph 27 of the ET1 - he complained about alleged race discrimination on 14 November 2018. It is suggested that the fourth respondent then continued to pursue the allegations against him.

For the victimisation complaint to succeed, the Tribunal would have to find that the further investigations were carried out because the claimant had done his protected act. The claimant has been unable to point to any facts from which the Tribunal could reach such a conclusion. The claimant's agent in submissions suggested there was a plan to remove the claimant which was evidenced by the fact the pursuit of the claimant was relentless. It is difficult to see how this could be so given the statutory duty to which the fourth respondent was subject. The claimant relied upon the fact that the circumstances are so unfair that there must be another explanation, and he relies on his race as the defining reason.

It is difficult to see how this could be sustained but I cannot say it has no reasonable prospects of success. I find it highly improbable given the statutory and regulatory duty to which the fourth respondent is subject. The key facts are not in dispute. I find there to be little reasonable prospects of success and I consider that it is proportionate fair and just to order a Deposit Order in relation to this claim.

Claim pled at paragraph 41(q) of the ET1 – it is alleged that the fourth respondent by making further allegations the clamant took the bursary amounted to unlawful race discrimination and victimised the claimant.

The allegation is unclear. It spears the claimant is saying that because of his race he was asked to repay the bursary and the raising of this allegation was unlawful. He had been admitted onto the scheme and encouraged to do so and the bursary was almost automatic. He alleges his race led the allegations to emerge.

There is no evidential basis for this assertion. The claimant's agent could point to no facts at all which could give rise to an inference that the fourth respondent in some way took account of the claimant's race in deciding to make this further allegation. The fourth respondent was of the view that he was not entitled to the bursary as he was not on the GP Register.

There was no explanation as to why the claimant's race resulted in differential treatment. It was in fact clear that any candidate who was not entitled to the bursary would have been treated in precisely the same way.

There are no reasonable prospects of success. The claimant could point to nothing which showed his race was relevant. No further evidence or facts would assist in that endeavour. There needs to be something more than simply treatment. There was no connection at all shown between the way in which the fourth respondent treated the claimant and his race, whether orally or in writing.

I have concluded there are no reasonable prospects of success and it is just proportionate and fair to strike this claim out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

Claim pled at paragraph 41(r) of the ET1 – it is alleged that the fourth respondent by its continued reliance on a false and baseless allegation treated him less favourably on grounds of his race when it refused to investigate a named white English doctor.

The claimant is alleging that the false information is the fact he was said to be practising as a GP. The claimant says that was groundless. He alleges the fourth respondent took action against him but took no action against another doctor who had done wrongful acts of a similar severity.

Taking the claimant's case at its highest I cannot say it has no reasonable prospects of success. The claimant maintains the comparator is in identical circumstances to him. Counsel for the fourth respondent showed why the circumstances appear to be materially different.

I am satisfied there are little reasonable prospects of success. The fourth respondent provides powerful reasons as to why it acted as it did, and the claimant's race did not appear to have been taken into account. I have decided that it would be proportionate and reasonable to order a Deposit Order in relation to this claim.

In relation to the **amended claim (a)** it is alleged that the first and second respondent treated the claimant less favourably by reason of his race by relying on the Scheme.

The claimant argues that he is treated differently because if he was a EU national the process would have been different. It is not clear why this relates to the claimant's race but I am not prepared to say this claim has no reasonable prospects of success or little reasonable prospects of success.

The **amended claim (b**) was withdrawn.

At **amended claim (c)** the claimant alleges the scheme is inherently discriminatory as it provides no way for an international GP outside the EEA to qualify and therefore discriminates against him directly because of his race. I am not clear as to how this amounts to racial discrimination. but it is a matter for proof. The claimant would require to show how he is treated less favourably because of his race. I heard no specific submissions on this particular allegation. If the Scheme is statutory, schedule 23(1) of the Equality Act 2010 could prevent a challenge to it but this is a matter that can be dealt with at the Hearing.

At **amended claim (d)** it is alleged that the first respondent in providing a further statement to the fourth respondent on 18 March 2019 shifted its negligence to blame the claimant and continued to harass the claimant and treat him less favourably because of his race.

The claimant's agent was unable to point to any evidential basis to who why his race was in any way connected to the provision of the statement. The statement was provided because the fourth respondent asked for it. The claimant alleges the first respondent is trying to blame him for their error in not picking up his mistake.

It is not clear how the provision of a statement somehow amounted to les favourable treatment. The statement contained what the author believed to be true.

The claimant is unable to point to any facts which would allow an inference of race discrimination to be made. This was part of the investigation process, and the claimant would ultimately have the right to present is response.

I find there is no reasonable prospect of success in relation to his claim. The claimant was unable to point to anything which suggested the treatment was connected in any way to his race. The first respondent provided a statement which contained what they believed to be true facts.

I have carefully exercised my discretion and decided that it would be fair just reasonable and proportionate to strike this claim out. No evidence could be led which would alter the position as set out above. The claim is struck out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit Order be made.

At **amended claim (e**) the claimant alleges that the second respondent by encouraging and providing a statement for the fourth respondent on 15 March 2018 shifted their negligence to blame the claimant and treated him less favourably and harassed him because of his race.

For the same reasons as for claim (d) I find there to be no reasonable prospects of success. There were no facts from which the inference of unlawful discrimination could arise. There was nothing to which the claimant could point which suggested the treatment was related to his race at all.

The second respondent provided a statement and provided information they believed to be true. The claimant disagrees with the content but is unable to say why this was in some way connected with race. There are no reasonable prospects of success.

I considered the authorities and I decided that it would be fair just reasonable and proportionate to strike this claim out. There was no suggestion the leading of any evidence would alter the position. There was nothing suggested by the claimant which would show that his race somehow affected the decision in this claim. The claim is therefore struck out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit order be made.

For **amended claim (f)** the claimant alleges that the first and second respondent in providing further statements to the fourth respondent maintaining that the claimant practised as a GP victimised him when they knew their statements were false.

The claimant argues the respondent knew he was not practising as a GP. As can be seen from page 214A there was a stateable case that the claimant was practising as a GP. That was clearly what the respondents believed. It is also not clear as to what protected acts the claimant relies upon in his claim for victimisation.

I find there to be no reasonable prospects of success in relation to this claim. The claimant is unable to point to any facts from which an inference of unlawful treatment by reason of his race could be drawn. He alleges institutional racism but provides no proper factual basis for that assertion. He says his treatment was tainted with race but can provide no facts or evidence which would allow that inference to be drawn.

The statements were provided at the request of the fourth respondent and the statements contained information which the author believed to be correct. There was no basis for the claimant alleging his race was in any way relevant and none was suggested in the verbal or written submissions.

I consider it fair just reasonable and proportionate to strike this claim out. There is no evidence which the claimant relies upon that could change the outcome. The claim is struck out.

In the alternative I would have found there to have been little reasonable prospects of success and found it proportionate to have ordered a Deposit order be made.

Observation

In striking out some of the claims above I have carefully applied the legal test in not only determining that there were no reasonable prospects of success but also in deciding whether it is reasonable to strike out. I have taken the claimant's case at its highest and assessed the position as submitted on the claimant's behalf. There were no facts from which an inference of racial discrimination could be made and no suggestion that the leading of any evidence would alter that position. There needs to be some evidence which suggests that the claimant's race was somehow relevant which could then be tested in evidence.

I appreciate that strike out is exceptional especially in these types of cases but for the reasons set out I have concluded that this case is exceptional.

Amount of Deposit Order

In relation to setting the amount of the Deposit Order, I require to consider the claimant's means. It was submitted that his income just about matches his outgoings and he has around £9,000 debt.

I take that into account together with the claims and prospects as set out above. I consider that it is fair and just to order a deposit of the sum of £300 per claim. The claimant has an income as a result of the work he undertakes. I am also conscious as to the costs incurred in proceeding with the claims for the parties.

It is open to the claimant to choose which if any (or indeed all) he wishes to advance and make this clear upon sending the sums to the Tribunal.

_____

Employment Judge Hoey

Dated: 31 July 2019

SENT TO THE PARTIES ON

20 August 2019

FOR THE TRIBUNAL OFFICE

NOTE ACCOMPANYING DEPOSIT ORDER
Employment Tribunals Rules of Procedure 2013

1. The Tribunal has made an order (a "deposit order") requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegations or arguments specified in the order.

2. If that party persists in advancing that/those allegation(s) or argument(s), a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

What happens if you do not pay the deposit?

3. If the deposit is not paid the allegation(s) or argument(s) to which the order relates will be struck out on the date specified in the order.

When to pay the deposit?

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.

5. If the deposit is not paid within that time, the allegation(s) or argument(s) to which the order relates will be struck out.

What happens to the deposit?

6. If the Tribunal later decides the specific allegation(s) or argument(s) against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

How to pay the deposit?

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.

8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.

9. Payment must be made to the address on the tear-off slip below.

10. An acknowledgment of payment will not be issued, unless requested.

Enquiries

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.

12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 9763096. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are

not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

✂----------

DEPOSIT ORDER

To: **HMCTS Finance Centre**
The Law Library
Law Courts
Small Street
Bristol
BS1 1DA

Case Number _____

Name of party _____

I enclose a cheque/postal order (*delete as appropriate*) for £_____

Please write the Case Number on the back of the cheque or postal order