EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4122324/2018

Hearing Held at Edinburgh on 22 July 2019

Employment Judge A Kemp

Mr A Leitch	**Claimant** **In person**
Lothian Health Board	**Respondent** **Represented by** **Mr D James** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The application to have the Claim struck out as having no reasonable prospects of success is adjourned to 30 September 2019.

2. The application to have the Clam struck out as the claimant has failed to comply with an Order of the Tribunal is adjourned to 30 September 2019.

ORDERS

The Tribunal grants the following Orders under Rule 29 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1:

(i) The claimant shall complete and return to the respondent, a Schedule within 28 days of the date of this Judgment being sent to him in which he shall:

(a) provide the date of each application for employment with the respondent which he claims was unlawfully rejected

(b) provide the date, or a reasonable estimate of that date, on which he was informed that each of the applications was not successful

(c) set out each section of the Equality Act 2010 on which he founds

(d) provide the essential facts on which he founds for the purposes of each section

(e) if any issue of timebar arises and the claimant seeks to argue that it is just and equitable to permit his claim to proceed, the basis for that argument.

(ii) The claimant shall within 28 days from the date of this Judgment being sent to him provide any medical records, reports or other documents on which he relies to establish that he is a disabled person for the purposes of section 6 of the Equality Act 2010.

(iii) The respondent shall have a period of 28 days following receipt of the Schedule to amend their Response Form, if so advised, in answer to the information provided by that Schedule by the claimant

(iv) Unless the claimant does comply with the Order at (i) above within the period specified the Claim shall be dismissed under the terms of Rule 38.

(v) If the claimant does comply with the Order at (i) above within the time set out above, a further closed Preliminary Hearing for case management shall be held on 30 September 2019 to address the respondent's applications for strike out under Rule 37, and remaining case management issues.

IMPORTANT INFORMATION ABOUT ORDERS

1 You may make an application under Rule 29 for this Order to be varied, suspended or set aside. Your application should set out the reason why you say that the Order should be varied, suspended or set aside. **You must confirm when making the application that you have copied it to the other party and notified them that they should provide the Tribunal with any objections to the application as soon as possible.**

2 If this order is not complied with, the Tribunal may make an Order under Rule 76(2) for expenses or preparation time against the party in default.

3 If this order is not complied with, the Tribunal may strike out the whole or part of the claim or response under Rule 37.

4. Any person who without reasonable excuse fails to comply with this Order shall be liable on summary conviction to a fine of £1,000.00.

REASONS

Introduction

1. The claimant pursues a claim for what he alleges is disability discrimination under the Equality Act 2010, in respect of applications he made to them for employment which were not successful. The claims are denied by the

respondent. The Response Form had intimated that the respondent did not consider that a valid claim had been presented.

2. There was a Preliminary Hearing held on 18 January 2019 before EJ d'Inverno, after which Orders were granted, as referred to below. The respondent alleges that the claimant had not complied with the orders, and separately that his claim had no reasonable prospects of success. The respondent sought a strike out of the claim. The claimant alleged that he had complied with them as far as he was able to, and argued that his claim should not be struck out.

3. No evidence was heard, and I heard submissions from Mr James for the respondent, who spoke to a written submission and case law, and from the claimant himself. The claimant was not able to state when he had sent emails to the Tribunal that he argued complied with the Order, which he said had been in about March 2019, and I gave him until 5pm that day to check his records and resend them. He submitted emails to the Tribunal in response to that. I also undertook a full consideration of the Tribunal file after the hearing. In addition by email of 23 July 2019 Mr James made further submissions in response to the emails sent by the claimant.

Issues

4. The Tribunal identified the following issues:

(i) Did the claimant comply with the Order?

(ii) If not, is strike out in accordance with the overriding objective?

(iii) Does the claim have no reasonable prospects of success?

(iv) If so, is strike out in accordance with the overriding objective?

Facts

5. Whilst there was no evidence, the following facts are relevant to consideration of the issues, and arise from the documents produced, and the Tribunal file, together with submissions.

6. The Claimant is Mr Alexander Leitch.

7. He has not ever been employed by the respondent, which is Lothian Health Board, and operates as NHS Lothian. It is a part of the National Health Service.

8. He has made a large number of applications to the respondent for employment, over a period of many years, and in all has been unsuccessful.

9. The claimant made the present Claim on 3 November 2018 alleging disability discrimination. The respondent in its Response Form sought specification of the nature of the claim made, and as to the claimant's status as a disabled person.

10. A Preliminary Hearing was held before EJ d'Inverno on 18 January 2019. That led to an Order issued by the Tribunal dated 29 January 2019 and sent to the parties on 3 February 2019.

11. On 19 January 2019 the claimant wrote to the Tribunal alleging that the respondent's solicitor had acted "criminally".

12. On 20 January 2019 the claimant wrote to the Tribunal to ask that the Orders be "foregone".

13. On 21 January 2019 the claimant wrote to the Tribunal with what he referred to as being evidence of his relationship with the NHS. That included forms for interviews for applications he had made for roles with the respondent on 20 December 2018, and 9 and 10 January 2019.

14. The Order sent to the parties on 3 February 2019 required the claimant to send the following Further Particulars of Claim, by way of basic summary:

(a) The effect of his physical impairment which brings him within the definition of a disabled person

(b) Copies of any medical records or documents which go to support that

(c) The dates of each application and of the response to confirm lack of success which he says was because of his disability

(d) In respect of each such application and decision, the section (and if appropriate sub-section) of the Equality Act 2010 on which he founds

(e) For any direct discrimination claim, whether the comparator is actual, or hypothetical, and if the former who that is, as either the successful candidate or some other person.

15. In accordance with the Order the respondent sent a Scott Schedule to the claimant on 6 February 2019. It had columns for completion by the claimant (i) for each allegation, with numbers (ii) relevant dates (applications and responses) (iii) Section (and subsection) of Equality Act 2010 relied on and (iv) comparator.

16. On 11 February 2019 in an email exchange with the Tribunal the claimant referred to the Employment Judge as a “liar”.

17. On 13 February 2019 the claimant requested the Tribunal to grant the claimant an extension of time to comply with the order for a period of two weeks, which the Tribunal later accepted such that a response was required by 6 March 2019.

18. On 15 February 2019 the claimant returned the Scott Schedule with each column across the first row for allegation 1 marked with the word “irrelevant”. It was otherwise not completed. In the email that was sent with that schedule the claimant stated: “I am not making individual allegations against anyone

and there are no dates." It was said that the respondent had failed to assess the situation correctly and had issued a needless Scott schedule.

19. In a covering sheet sent at least to the Tribunal he provided details in response to the Order; which in summary was:

(a) as to the impact on day to day activities of his alleged disability, which included limited grip strength, a limited ability to perform fine motor tasks, semi-paralysis that caused him to drop objects continually, not being able to turn doorknobs, or to push or pull objects.

(b) "Waiting to receive"

(c) "dates cannot be known timespan can although I supply no. of applications. This request is unreasonable……"

(d) "Each act was perpetrated while I was alone."

(e) All relevant evidence had already been submitted, he went to interviews alone and confirmed "I have no comparators" but did refer to the successful party at every interview.

20. On 19 February 2019 the claimant's application to set aside the orders was refused, as was an application for variation of it save as to date for compliance as referred to above.

21. The claimant obtained some medical records from Forth Valley Health Board, but did not disclose them to the respondent as he believed that they did not provide any support for his claim that he was a disabled person.

22. On 1 March 2019 the claimant emailed the Tribunal and respondent to state that he could not provide medical records.

23. The respondent applied for strike out on 7 March 2019.

24. By a series of emails the claimant sent to the Tribunal and respondent letters he had received from the respondent with regard to interviews. The dates of those interviews provided, and the posts concerned, not completely but as material examples, are set out below:

Date	Post
10 March 2016	Nursing Assistant
13 October 2016	Healthcare Support Worker
3 March 2017	Biomedical Support Worker
15 May 2017	Healthcare Support Worker
16 May 2017	Technical Support Worker
11 April 2018	Healthcare Support Worker
14 June 2018	Radiography Support Worker
20 December 2018	Clinical Support Worker
9 January 2019	CSW Nursery Assistant
10 January 2019	Medical Secretary

25. The claimant has not thus far sought legal or other advice on the claims that he is pursuing. He has not sought his General Practitioner's records, He remains unemployed.

26. The claimant commenced Early Conciliation on 1 November 2018, and the certificate of compliance was issued by ACAS on 2 November 2018.

27. The Claim Form was received at the Tribunal office on 3 November 2018.

Respondent's submission

28. The following is a summary of the written submission. The claimant had been on notice since the Response Form that he had not provided specification of his claim, and at the Preliminary Hearing had been ordered to provide that, together with medical records. The claimant had not done so. He had returned the Scott Schedule that was sent to him by the respondent in accordance with the Order marked only with the word “irrelevant”. No detail as required had then, or otherwise, been provided. The authorities Mr Long referred to, set out below, made it clear that such a deliberate refusal to provide the detail required entitled the Tribunal to strike out the claim.

29. Separately, as the claim did not disclose any basis in law, it would be bound to fail at a hearing. None of the details as to date, who had been involved, and why there was said to be discrimination, had been provided. The Order had sought that information, but had not been produced. There were not any medical records produced to establish that the claimant was a disabled person. The test in authority was a high one, but there was no prospect of the Claim succeeding, and that high test was met.

30. He invited me to strike out the Claim.

31. In the supplementary submission on 23 July 2019 it was accepted that the claimant had responded with the interview dates and details but argued that that did not comply fully with the Orders, and there was an application for an unless order.

Claimant’s submission

32. The claimant said that he had done the best he could, that he was acting for himself, and that he had not obtained any independent advice. He said that he had sent the Tribunal a series of emails with copies of interview details, and had sent a covering email with the Scott Schedule with further information. He said that he had been diagnosed as severely disabled when attending the Accident and Emergency department of the hospital he was

treated at after the accident he had sustained the injury in. He thought that it was obvious to the respondent that he was a disabled person. He had obtained some medical records but they did not disclose anything that explained his injury or was relevant to the claim, and he did not wish to give the respondent all his medical records which included other issues.

33. On the issue of the nature of his claims, he said that he sought to argue direct discrimination but could not point to a comparator. He said that he had attended interviews, and was just told that he had been unsuccessful. He mentioned a claim of indirect discrimination, but was not able to say what the Provision, Criterion or Practice (PCP) on which he founded was, either for that claim or one as to reasonable adjustments.

34. In his supplementary emails on 22 July 2019 he said that he hoped that he had demonstrated that he engaged fully and to the best of his ability, and amongst other matters said: “you have to adjust to the facts of my case”.

The law

35. A Tribunal is required to have regard to the overriding objective when applying the rules, within the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, which is as follows:

> “**2 Overriding objective**
> The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
> (d) avoiding delay, so far as compatible with proper consideration of the issues; and
> (e) saving expense.

> A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal."

36. Rule 37 provides as follows:

> "**37 Striking out**
> (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
> (a) that it is scandalous or vexatious or has no reasonable prospect of success……
> (c) for non-compliance with an order of the Tribunal."

37. The EAT has held that the striking out process requires the application of a two-stage test in ***HM Prison Service v Dolby [2003] IRLR 694***, and further in ***Hasan v Tesco Stores Ltd UKEAT/0098/16***. The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim. In ***Hasan*** Lady Wise stated that the second stage is important as it is 'a fundamental cross check to avoid the bringing to an end prematurely of a claim that may yet have merit' (paragraph 19).

38. As a general principle, discrimination cases should not be struck out except in the very clearest circumstances. In ***Anyanwu v South Bank Students' Union [2001] IRLR 305***, a race discrimination case Lord Steyn stated at paragraph 24:

> "For my part such vagaries in discrimination jurisprudence underline the importance of not striking out such claims as an abuse of the process except in the most obvious and plainest cases. Discrimination cases are generally fact-sensitive, and their proper determination is always vital in our pluralistic society. In this field perhaps more than any other the bias in favour of a claim being examined on the merits or demerits of its particular facts is a matter of high public interest."

39. Lord Hope of Craighead stated at paragraph 37:

> " … discrimination issues of the kind which have been raised in this case should as a general rule be decided only after hearing the evidence. The questions of law that have to be determined are often highly fact-sensitive. The risk of injustice is minimised if the answers to these questions are deferred until all the facts are out. The tribunal can then base its decision on its findings of fact rather than on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence."

40. Those comments have been held to apply equally to other discrimination and similar claims such as for public interest disclosure claims in ***Ezsias v North Glamorgan NHS Trust [2007] IRLR 603***. The Court of Appeal considered that such cases ought not, other than in exceptional circumstances, to be struck out on the ground that they have no reasonable prospect of success without hearing evidence and considering them on their merits (paragraphs 30–32). The following remarks were made at paragraph 29:

> “It seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence.”

41. In ***Ukegheson v Haringey London Borough Council [2015] ICR 1285***, it was clarified that there are no formal categories where striking out is not permitted at all, although in that case the strike out of a claim of discrimination was reversed by the EAT. It is therefore competent to strike out a case such as the present. Whether to do so is a matter of discretion. That was made clear in ***Ahir v British Airways plc [2017] EWCA Civ 1392***, in which Lord Justice Elias stated in the Court of Appeal that

> “Employment Tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context.”

42. If an Order from the Tribunal is not complied with, strike out may follow. It was an issue considered in the cases founded on by the respondent being ***Weir Valves and Controls (UK) Ltd v Armitage [2004] ICR 371, Essombe v Nandos Chickenland Ltd [2007] All ER (D) 375*** and ***EB v BA [2007] All ER (D) 50.*** The first case was one where the appeal against strike out succeeded. There the respondent had been in breach of an order for exchange of documents, and the Tribunal had struck out its Notice of Appearance. The Employment Appeal Tribunal held that it had been wrong to do so, and that there ought to have been consideration of whether a lesser penalty was appropriate, having regard to issues such as prejudice and whether a fair trial was still possible. The second was where a fair trial was not possible as the claimant had refused to provide a recording of meetings contrary to an order. The third was an unless order in a sex discrimination claim.

43. On the issue of there being no reasonable prospects of success, the respondent founded on ***Ezsias,*** referred to above, and ***Balls v Downham Market High School and College [2011] IRLR 217.*** It was accepted that it was a high test at paragraph 6 of the latter case, and before me by Mr James. It had also been the issue in ***Ukegheson.***

Discussion

(i) Is the claimant in breach of the order?

44. The claimant has not properly responded to the terms of the Order. It was clear from the Order and the Note that accompanied it that further detail was required before the claimant could be said to have pled a relevant case in law that the respondent was able to answer. There was also the preliminary issue of whether or not the claimant was a disabled person which required further detail, and where it existed some support from records. The Tribunal granted the Order as without further detail the case could not properly be considered. The claimant ought to have engaged with that Order fully and properly, but did not do so. He responded to the Scott Schedule inappropriately, stating that each issue was “irrelevant” which was not so, and then criticising the

respondent for sending it, despite the fact that they had been themselves ordered by the Tribunal to do so.

45. The Order, in its Third clause, sought particulars and the claimant's response to each is addressed in turn.

(a) On the issue of the status of disabled person the claimant has at least produced a list of the impairments that he claims to suffer from, which he did when responding with the Scott Schedule. His doing so is partly in accordance with the Order. What the Order also did however was to require completion and return of the Scott Schedule, which he has failed to do.

(b) Although he has not provided any medical records, he says that those he has seen do not cover the issue he seeks to raise, in that they did not refer to his accident. If that be so, then the records may not fall within the order as they do not go to support the impact of his physical impairment upon his ability to carry out day to day activities. But having medical evidence of some kind is important if the claimant is to prove his case that he is a disabled person. From what he has said about an injury, there ought to be records available, or at least the ability to obtain a report from his GP. What he has provided, such as a letter about benefits from 2010, is not sufficient. He has not sought records or a report from his General Practitioner. From what he says about an accident having occurred, details of that accident and the injuries sustained should be within his GP records. I consider that he should have further time to seek such records if he wishes, and to consider either additionally or in the alternative whether he wishes to ask his GP for a report outlining the effect on him of the injuries he sustained. That is provided for in the Orders I have granted. It is relevant to state that it is not accepted by the respondent that he is a disabled person, and the onus of proving that he is falls on him. Mere assertion that he is disabled is not sufficient. There requires to be a basis

for that, and where it exists supporting evidence. If the claimant cannot establish that he is a disabled person his claim must fail.

(c) I shall however proceed in respect of remaining matters on the hypothesis that the claimant will be able to establish that he is a disabled person. The claimant has provided at least some documents from which some information can be gleaned. That includes the forms for interviews for posts he applied for. A material set of examples of them is set out above. That is a start, but it is not what the Orders sought. These documents are evidence. They are not pleading, or replying to the Orders which required detail also as to when he was informed of the rejection of each application. That is vital as it is material to a separate issue as to timebar, and that is referred to further below.

(d) The claimant has not answered this part of the Order. In his agenda return, as noted in the Note of the Preliminary Hearing, the claimant makes potentially at least a series of claims under the Equality Act 2010, under section 13 for direct discrimination, section 15 for discrimination arising out of disability, section 19 for indirect discrimination, sections 20 and 21 for failing to make reasonable adjustments, and section 27 for victimisation. But that is not sufficient to plead a relevant case. What is needed as a bare minimum is the detail sought from the Orders and Scott Schedule. The claimant has not yet set out the very basic facts required to found a claim under each of the statutory provisions on which he relies. The facts for each section are not the same. As a result of that, the respondent does not know what case it has to meet, and the Tribunal does not know what facts are in dispute, or why that is. Although the claimant has said more recently that you, by which is presumed he means the Tribunal “have to adjust to the facts of my case” it is for the claimant to set those facts out, at least at a bare minimum level, for each of the individual claims he makes. If he cannot or will not do that, it is likely that a fair trial of the claim will be impossible.

(e) Whilst he was not clear in what was stated, he did indicate that the successful applicant in each case is the comparator. That detail, of who the person was and what their circumstances were, will be known to the respondent.

46. In light of this, it appears to me that the claimant has failed to comply sufficiently with the terms of the Order. He has not completely failed to do so, as he did at least provide some response, but the level of response is inadequate, and does not enable the respondent, or Tribunal, to know what the claims are, why they are pursued, or what basic facts are relied upon.

47. I consider that the respondent is accordingly correct to say that the claimant is in breach of the Order.

(ii) Does the claim have no reasonable prospects of success?

48. I also consider that the respondent is correct to say that, as matters stand currently, his claims have no reasonable prospects of success. The fundamental and basic facts that require to be set out have not been. They are not ones that can be guessed at. Issues such as who did what, when, and why are critical in a claim such as the present.

49. The first stage of the test is met.

(iii) Is strike out in accordance with the overriding objective?

50. The second stage is what the appropriate decision should be having regard to the circumstances, and this being a discrimination claim. I recognise that to strike out a discrimination claim is an exceptional step, and a draconian one, as the case law makes clear. I have seriously considered doing so despite that given the substantial level of default and the circumstances set out above. In light of that case law and its reference to the public interest in having discrimination cases heard where they can be, including the

comments in ***Wise*** and ***Hasan*** in particular, and not without considerable hesitation, I consider that it is in accordance with the overriding objective to give the claimant an additional and final opportunity to provide a basic level of specification of what he claims, on what grounds in law, and what that is. I have therefore made the Orders set out above, and adjourned consideration of the applications for strike out until after the claimant has had that opportunity, and the respondent has had an opportunity to respond, if it wishes to, by an amendment to the Response Form. I have also made an Unless Order under Rule 38, such that if the Order is not complied with timeously, the Claim will automatically be dismissed. If there is compliance, a further Preliminary Hearing shall take place to determine the issues that remain, and any required case management.

51. I consider that it is also appropriate to set out the background to the issue of time-bar that the respondent has raised, as that may have an effect on how the claimant seeks to proceed.

Time-bar

52. A claim must be pursued by commencing Early Conciliation with ACAS within three months of the event that gives rise to the claim, and then presenting a Claim to the Tribunal timeously after then which generally means within one further month, unless it is just and equitable for the claim to proceed late, under section 123 of the EqA. The event that appears to be the one most recent to the Claim Form being presented may have taken place outwith that three month period. From the interview forms provided the latest interview held for an application for employment which the claimant founds on, before the Claim commenced, was on 14 June 2018. The date of being informed of rejection has not yet given, but is important for identifying whether or not the claim is in time. The date of being informed of the failure of the application is liable to be the date that is important for calculating whether or not the claim was in time. The date of the commencement of Early Conciliation is 1

November 2018. If the information as to rejection of the application was given in June or July 2018, the present claim (at least for that application with the interview held on 14 June 2018, and those before it was made) will be out of time.

53. No explanation for it being late, or argument as to why it is just and equitable to allow it to proceed, is tendered by the claimant. The older the date of the application, the greater the difficulty the claimant is liable to have in establishing that it is just and equitable to allow the claim for that to proceed. It is not suggested (at least yet, and specifically) by the claimant that the applications are part of conduct extending over a period by the respondent under section 123(3)(a) of the EqA, but even if that were to be suggested, the end date from the present information is not yet clear as the date of rejection has not been provided, even by way of estimate.

54. Even therefore taking the claimant's case at its best, on the face of it there is a jurisdiction issue and nothing said as to why it is just and equitable to allow it to proceed. But it may yet be that either the claim is not out of time, or that an argument of it being just and equitable to proceed with can be made out.

55. The claimant has also provided some interview forms that post-date his Claim. It is not clear on what basis he does so, and on what basis such a claim for a matter that did not arise when Early Conciliation had started is competent. That is not to say that the matter is not competent, but at present nothing has been said to explain why it could be.

Schedule of information required by the Order above

56. The Scott Schedule sent to the claimant sought by the headings referred to the basic detail required by the Order. I consider that it is better to have a new Schedule which sets out the basic detail that is required, and it may assist the claimant to set out a further explanation of what is required within that schedule, and why. Providing this detail is something that the claimant

requires to do – it is not for the respondent to do that, nor can the Tribunal step into the shoes of the claimant's adviser. A claimant may be well advised not to pursue one or more potential claims, and to concentrate on the one, or more than one, where there is the best chance of success. Those decisions must be taken by the claimant, with advice where he seeks it, as he is encouraged within this Note to do.

57. To deal with each of the statutory provisions in turn, the claimant alleges **direct discrimination**, but does not say on what basis that is. He requires to plead basic facts from which a finding of direct discrimination can be inferred. The claimant must set out why it is he alleges that his status as a disabled person led to his being directly discriminated against, in the context of the refusal of his application for employment. Just being a disabled person is not sufficient. He requires to set out the essential facts on which this claim is made.

58. The claim of **discrimination arising out of disability** requires to identify what it is that arose out of the disability, and how that is said to have impacted on the assessment of his applications.

59. The claim of **indirect discrimination** requires the identification of the provision, criterion or practice (PCP), or more than one PCP if that be the position, that the claimant alleges was applied to him by the respondent. As its term implies, and to simplify the statutory provision, it is some form of policy, work rule, working practice or similar that is said to have been applied by the respondent when, in this case, rejecting the application for employment. Only if the PCP is identified, and the disadvantage that the claimant says both disabled persons generally and he in particular was placed at as a result, can the respondent know the claim against it, confirm whether or not it accepts that the PCP was applied to the claimant, together with the issue of disadvantage, and if so whether it is to plead objective justification for that

60. The claim as to **reasonable adjustments** also requires the PCP to be identified, setting out separately the substantial disadvantage that is said to create for him, and for the steps that the claimant says should have been taken by the respondent in respect of the applications for employment he made to prevent that disadvantage, to be set out. Again, that has not been done.

61. A claim for **victimisation** requires there to be, to simplify the statute, a reaction by the respondent to an act of the claimant, such as taking a claim or raising a grievance. Nothing has been identified thus far that could amount to that.

62. The claimant was in effect encouraged to seek advice in the Note sent to him following the first Preliminary Hearing on 18 January 2019. He has chosen not to do so thus far. As was explained at the hearing however these are not straightforward issues, and having advice from someone with experience in them is an advantage. Thus far the claimant has not demonstrated an understanding of how to conduct such a claim. In addition to giving the details required, he will also require to decide which of the applications he made he wishes to make arguments about. The more there are, and the earlier in time they are made, the greater will be the difficulty he may face in establishing that the Tribunal has jurisdiction to deal with all or some of them.

63. The claimant is therefore encouraged to seek advice either from a solicitor, perhaps one offering advice under the legal aid scheme, or the Citizens Advice Bureau, or a similar organisation. He may also wish to consider online resources, and in particular the Equality and Human Rights Commission Code of Practice on Employment.

64. The claimant has used some intemperate language in his correspondence. He has referred to the Employment Judge as a "liar", and the actions of the respondent's solicitors as "criminality". He criticised the respondent for its stance generally and for sending the Scott Schedule. He would be well advised not to do so again. The respondent is perfectly within its rights to take the points that it has. The Judge has set matters out in his Note from the first Preliminary Hearing, and in email thereafter. Discrimination law is complex, but must be applied as it stands. The claimant has been given opportunities to plead a case that meets the basic tests of giving adequate notice of what is being argued for, and why, but has not met them.

65. I would encourage the claimant to seek either or both of his GP records and a report, so that the issue of whether or not he is a disabled person can be addressed properly and with the necessary evidence to support it. If he cannot or will not obtain some form of documentary support for his arguments that he is a disabled person, that can be considered at the next Preliminary Hearing either on the issue of prospects of success, or by arranging to hold a further Preliminary Hearing on the issue of whether or not he is a disabled person under the EqA.

66. The claimant stated in argument that he had done his best thus far. What has been done however is, put simply and candidly, not good enough. He now has an opportunity, once again, to take advice, and I would strongly encourage him to do so without delay. There is much detail that the claimant must provide in order to plead a case that has a prospect of giving fair notice to the respondent of a case that has more than no reasonable prospects of success, and to comply with the Orders set out above.

Conclusion

67. I adjourn the application to strike out the Claim under Rule 37 on both of the two grounds argued for, make the Orders set out above, and the matter shall

proceed to a further Preliminary Hearing on 30 September 2019 if the schedule referred to is provided as required. A formal Notice of that hearing shall be sent to the parties separately.

Date of Judgement: 25th July 2019
Employment Judge: A Kemp
Date Entered in Register: 26th July 2019
And Copied to Parties