



## EMPLOYMENT TRIBUNALS

***Claimant***

Mr M Sekha

***Respondent***

**AND**

Haines Watts Bristol  
Ltd & Others

**HELD AT:** London Central                      **ON:** 23 – 27 September 2019

**BEFORE:** Employment Judge D A Pearl (Sitting alone)

***Representation:***

**Claimant:** In person

**Respondents:** Haines Watts, Mr C Vincent (Solicitor)  
Kingston Smith, Mr P Streliz (Counsel)  
Linklaters, Ms K Balmer (Counsel)  
Moore Stephens, Mr S Wyeth (Counsel)  
Creative Tax Recruitment, Ms P Hall (Consultant)  
Grant Thornton, Ms K Barry (Counsel)  
Menzies, Mr J Bryan (Counsel)

### **JUDGMENT on preliminary hearing**

The claims are all struck out as having no reasonable prospect of success.

### **REASONS**

*Introduction*

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1. Between 3 and 8 May 2018 (for the most part) the Claimant made 41 applications for employment to 8 accountancy firms and 10 of their offices at various locations.<sup>1</sup> He was rejected in all cases, without an interview or any further step in the application processes. These tribunal claims all allege direct age discrimination. The Claimant is aged 55. In none of the CVs or documents submitted with his applications did he specify his age, but he gave two dates when he obtained educational qualifications. From the first he says it could be deduced that he must be aged at least 40 and from the second he would have to have been about 55 years old in 2018. In all cases the Respondents have applied to strike out the claims and/or asked for deposit orders. The emphasis is on strike out.

2. There are two main grounds for strike out. The first is that the claims have no reasonable prospect of success. The second is that they are an abuse of process or otherwise an unreasonable or scandalous or vexatious bringing of proceedings.

3. The Claimant believes that the accountancy profession is irredeemably ageist in its practices and he has held this view for many years and has submitted previous tribunal claims. He has brought his own application to strike out all the defences in these cases. During the course of the hearing on 25 September he abandoned this application in the case of Kingston Smith only.

#### *Conduct of the hearing*

4. The timetable for this hearing was decided by EJ Brown in April. Each Respondent attended at a given time, presented a written argument and made submissions. In each case the Claimant then did the same. During the hearings he sometimes became emotional. He told me that he is on medication for anxiety (Sertraline); and he said that he has OCD, is diabetic and is 'becoming' bipolar. He believes he has been treated badly by the Respondents who have in some cases fabricated evidence and conspired with each other and, in all cases, have lied. He has a great sense of grievance.

#### *The individual claims*

5. I shall deal with these in the order in which they were heard. The claim against Saffrey Champness (2205106/18) had apparently been settled before this hearing and has been excluded from this judgment. On the final day of the hearing he told me that he wished to withdraw the claims against Haines Watts Bristol only and, in the London claim against that firm, Finchley only. For each of the posts I will set out the basic facts, many of which cannot be disputed, and also refer to some of the submissions. I have decided that for context and completeness I will set out the facts of the two late-withdrawn claims, so that the overall picture in those cases can be seen.

6. **Haines Watts, Bristol.** This is an application for one post, the tax trainee role. The job description states it "would suit school or college leavers as well

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<sup>1</sup> One of these applications was for a training job that was seemingly made in error.

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as newly qualified AAT members.” It was some way from the Claimant’s home in London. The ET3 notes that the salary was £15,000. The Claimant in a covering letter said he was an ICAEW qualified chartered accountant, with excellent qualifications including a recent Master’s degree in accounting and taxation. He said he was leaving his present work to pursue a tax specialisation career and to gain the CTA qualification. He had applied for other roles in this firm. He said he was “very keen” to obtain this position and to gain the CTA qualification. His CV shows that he is an FCA, also CPA qualified, and had over 14 years of chartered accountancy and work experience. His last (and continuing) work was a Partner in a firm of chartered accountants and we know that this was his own firm.

7. The Respondent is sceptical that the Claimant was genuine in seeking this post, but its principal defence is that the two successful candidates had been identified and offered positions before the Claimant’s application was received. The Claimant was sent evidence last September showing that the decision to offer the posts was made on 4 May, 3 days before the Claimant’s application. The Claimant’s response was to say the evidence was not “independently verifiable.” The written evidence includes 1:140, meeting notes of 4 May. Mr Sekha’s written submission makes sweeping allegations that Ms Gale for the Respondent has lied and that the Respondent has engaged in fraudulent conduct. He told me, before withdrawing this claim on the third hearing day, that he believes that page 140 might be a document created after the event and backdated. In my view, the other disputes concerning the telephone calls between the parties are irrelevant. The email dated 24 May from the Claimant to Ms Gale states that he was instituting a tribunal claim that day; and he was considering publicising “your attitude towards older workers” (which he said was not a threat).

8. **Haines Watts, London (Finchley and Esher).** The Claimant applied for the posts of Tax semi-senior at Finchley and Tax Advisory manager at Esher. He has now withdrawn the Finchley case. Again, this is a case where the Respondent offered the post to another candidate 12 days before the Claimant’s application.

9. As to Esher, the Respondent maintains that this is a specialist tax role and managerial in nature. Page 2:43 shows that the role reported to the Tax Partners and that it included “tax planning, advisory work and assisting the Tax Partners in implementing tax projects.” The defence to the claim asserts that the Claimant lacked specialist tax advisory experience; and that so did the other applicants. Nobody was shortlisted and the Respondent decided not to recruit for the position. A contemporaneous email to the Claimant explained that the role required “a very niche set of experience ... which unfortunately you don’t have.”

10. The Respondent invites me to compare the requirements for the role at 2:43 under the headings ‘Experience’ and ‘Qualifications’ with the Claimant’s covering letter at 2:65. (In particular, the third and fifth paragraphs.)

11. I note the document the Claimant prepared on 1 November 2018 entitled in part, "The deceitful and deliberately misleading conduct and illegal and unethical practices adopted by Haines Watts ... " This has much devoted to the Bristol, Finchley and Peterborough posts but nothing about Esher.

12. In oral submissions, the Claimant's principal point was that he considers his CV shows he had the requisite tax experience and that he should have been shortlisted or appointed.

13. **Haines Watts, Peterborough.** This was for the tax semi-senior role, which was also the Finchley role (now withdrawn.) The Finchley role has excited considerable suspicion on his part, including his making allegations of deceit and possible fabrication of documents. The additional factor in the case of Peterborough is the telephone call the Claimant had on 17 May with Mr Yousaf, an accountant at the firm. The Claimant says this lasted 49 minutes, Mr Yousaf was aggressive, raised questions of religion, offered the Claimant an alternative role and "warned me not to ask for a salary of £50,000 even though I never asked him about any salary." The ET3 makes counter-allegations of rudeness against the Claimant. It is said that no appointment was made for this role.

14. The Claimant taped the last 11 minutes of the call and I have 7 pages of transcript. The religious issue, that does not feature in these claims, was about fasting in Ramadan and is dealt with at 10:61. As far as I can tell, the earlier untaped conversation about working for a week in the office is about gaining work experience. Mr Yousaf, in answer to the Claimant trying to exact the promise of a job, said, "yes, I probably would have paid you, don't turn around and say that you now need £50,000." He also said that the Claimant offered to come in, himself, which I consider to be telling. He said he could not guarantee anything: "I don't guarantee anybody raising an application for a job ... you offered it not me." On page 63 My Yousaf says clearly that the Peterborough office had not at that point rejected the Claimant. He then went on to refer to the Claimant's attitude and the fact, as Mr Yousaf alleged, that he was not listening to him. The Claimant said he would not come into the office, he would sue in this tribunal. He would put things on LinkedIn.

15. The argument went back and forth and Mr Yousaf says: "Why are you arguing with somebody you don't know? From somebody you are looking to get a job for? ... Do you know what you are doing?" Just before the conversation ended the Claimant for the first time raised age: "And even age. You got the age issue as well, this is age discrimination, I will take it to the highest authority, I swear."

16. In contemporaneous correspondence My Yousaf maintained (clearly, without access to any telephone transcript) that the Claimant had not been rejected at the time of the call. This is central to the Respondent's submission. It is further contended that the transcript shows the Claimant to have been trying to generate evidence for a discrimination claim. He was provocative. He continued with his various allegations in the subsequent email correspondence

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and the reason his application was not progressed is wholly explicable by his behaviour.

17. **Kingston Smith.** The Claimant, among other allegations in the ET1, says that this firm is fraudulent, ageist, has acted in a criminal way and should be 'severely punished.' He applied for a range of 7 roles. Five were managerial, one was for an assistant manager's role and one was for Tax Senior. I accept that 'Senior' is a term used in accountancy to describe a more junior role than that title normally connotes. The Respondent submits that his CV was unsuitable for each job.

18. Three of the managerial roles were General Practice Manager. The key accountabilities are at 3:82-83 and there are 16 of them. The Claimant's CV includes at page 76: "I am now leaving my present work in order to pursue a tax specialisation career in practice and to gain the CTA qualification ...". The Respondent submits that this alone largely explains his not being shortlisted for these three roles.

19. For the Assistant Manager's job, the successful candidate's CV is at 77-78 and shows that s/he had been a Tax Manager, Private Client since 2014. The Claimant told me he accepts the strength of this CV, but still maintains that he was not shortlisted because of his age.

20. For the Tax Senior role, the 'Key Accountabilities' on page 93 state: "A candidate with around 3 years personal tax experience with a track record of portfolio management essential." The successful candidate's CV is in stark contrast to the 15 years' record of accountancy roles set out in the Claimant's CV.

21. The specification for the Senior Tax manager is at 101-102. There are 6 headings under 'Skills, knowledge and experience' and I would refer to the first 4 bullet points under 'technical expertise.'

22. The Claimant's email of 21 May 2018 to the firm states that he suspects that his seven applications were "binned the moment your firm would have ascertained my approximate age" from one piece of data in the CV. At this point he alleges they knew he was "at least 40", rather than 55. The response of Mr Twum-Ampofo, a Partner, of 24 May went off on a misconception. He saw from the records that the Claimant at an earlier date had applied for 10 roles via agencies, between September 2017 and 16 May 2018 and he dealt with those. He was clearly unaware of these seven applications. The Claimant pleads that this is a dishonest attempt to create a time bar defence. I regard this as a wild allegation. Not only is it inherently implausible, given that these earlier 10 applications had in fact been made, but it would have been impossible for the Respondent to have expunged all evidence of the 7 applications; and the Claimant would have had his own evidence. Nevertheless, he responded by making inflammatory allegations of obstructing or perverting the course of justice and he repeated these in a without prejudice letter of 11 June. The Claimant has waived privilege on all such correspondence in the bundles.

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23. **Linklaters.** The Claimant applied for two roles. The first was Tax Accountant. 31 applied and 7 were invited to the interview. They did not include the Claimant. The second was Tax Assistant. 54 applied, 4 were selected for telephone screening and 2 were interviewed thereafter.

24. Dealing with the Tax Accountant job, there is objective evidence at 5:41, in respect of another candidate, that the Respondent was looking for an accountant with an audit background from the 'Big 4'. Neither of these points is apparent from the Role Specification and this may be a point of criticism. It is, however, nothing to do with age. On 10 May an internal email stated "we still seem to be struggling to attract candidates with the right accounting/audit background ...". The response to this was that agencies should be told that "successful candidates will be from a Big 4 audit background with good experience of working with multiple currencies ... A good role for someone looking to make their first move in-house ...". I should also note page 73 that records that the Claimant was rejected because of a "lack of strong audit experience within a large organisation."

25. The rejection of the application for the Tax Assistant role was because the Claimant's CV showed greater accountancy experience than was required. Page 78, a similar internal document to page 73, shows 5 candidates who were rejected for this reason. In an email of 22 May the Claimant was told that "... we are looking for candidates who are in the early stages of their Tax career and your CV illustrated that you had considerably more experience than required for a role of this nature."

26. **Moore Stephens.** The Claimant made 6 applications: Associate Manager (2); Manager (2); Senior Executive and Associate. 3 were tax roles and 3 were outsourcing roles. He was unsuccessful and the Claimant's immediate reaction on 8 May was that he strongly suspected age discrimination; and unless provided with acceptable reasons, he would assume age discrimination and would sue. The Respondent maintained that there were stronger candidates.

27. The Claimant's application form for the Outsourcing Associate job at 7:42 should be noted. He gives there his reasons for applying. He says he is studying for the ATT/CTA tax exams, having sold his own practice. He now needs external tax/accounting experience to obtain membership of the CIOT. He needs, therefore, to relaunch his career; and this junior post is "something of a last choice."

28. On 26 June 2018 the Respondent wrote to the Claimant with a detailed response. Of the 3 tax roles, it was said that his CV showed he did not have a specialist professional tax qualification and also that his tax experience had been gained in more generalist roles. The advertised roles were "relatively senior tax specialist positions." One of the roles had at that time been filled and the successful candidate had the required specialist experience. Nothing was known about that candidate's age. For that role, 16 had applied. For the three tax roles as a group, 70 had applied.

29. Of the outsourcing roles, the letter cited what the Claimant had written (see paragraph 27) and went on to say 49 had applied for these three roles and that nobody at that point had been appointed. They expected suitably qualified candidates to see the post as a first rather than a last chance.

30. **Creative Tax Recruitment.** The Claimant applied for 14 roles. The Respondent is a recruitment agency, so this case differs in that respect from the others. The Respondent identifies 3 as senior positions, 2 as mid-range, 8 at tax senior level and one as a graduate opportunity. The Respondent specialises in tax professionals and all the roles were in that speciality.

31. The Respondent's defence is that the positions required experience of corporate tax and that his experience was lacking. Nor had he managed a team. A 55 year old candidate for one of the roles (personal tax manager) was progressed for that role, ie forwarded to the agency's client. Others who were progressed were over 45 and the Respondent maintains that age is irrelevant. The Claimant confirmed to me that he adheres to the argument he advanced in an email of 25 May 2018, that the Respondent's clients commit age discrimination and have either instructed the agency to discriminate, or it knows it should do so to retain its fees. "Your firm is a proxy for undisclosed ageists practising age discrimination under various false pretences."

32. **Grant Thornton.** On 7 May 2018 the Claimant applied for two roles at an Assistant level and three managerial posts. (The salary range for the 5 roles was £18,000 to £80,000.) The Respondent maintains that the two lower roles had been filled just before the Claimant applied. I consider that this is implied in the text of the Respondent's 4 July letter at 11:141. The Claimant, on 24 May, believed that one role only had 'gone', but there is no good reason to doubt the Respondent's pleaded case. This is consistent with what Mr Harris, Senior Resourcing Advisor ("SRA"), did after 24 May. He knew that another Tax Team Assistant role would become available soon. Before the vacancy went live, he contacted the Claimant and also other previous candidates.

33. The problem, as disclosed in the papers, is that the Claimant had earlier been in correspondence with Ms Thompson, another SRA, had alleged ageism and said he would sue in the tribunal. This readily explains his defensive or hostile response to Mr Harris. "Your offer is too good to be true ..." The Claimant, who has throughout all these cases been thoroughly suspicious of the motives of his interlocutors, clearly thought he was being bought off. This is clear from his next email, the next day: "Unfortunately, I have lost faith in your firm's integrity ..." Mr Harris persisted with his offer and the Claimant's frame of mind is shown by what he wrote to him at 11:110. "On the one hand if I refuse your offer, then I will fall into the trap you have set for me, ie to suggest I am not a genuine candidate. On the other hand, if I was to discuss this role further, I am convinced you will offer me an interview, just to prove a point, and will no doubt then reject me." He said in terms that he was "highly suspicious". He then made a rather unrealistic offer to Mr Harris who responded by saying that he could not offer a role on the basis of a telephone interview. Even still, he kept his offer open but the Claimant, after apparently speaking to a solicitor, then ended the dialogue.

34. For two of the three managerial positions, the Respondent says, and maintained at the time, that the Claimant lacked VAT and/or tax experience. Ms Thompson said this at the time, on 25 May, and attached screenshots to her email showing the job requirements. She also commented that she had discussed this before, a reference to an earlier telephone conversation. Indeed, on 22 May the Claimant had written to her saying he was in need of external tax experience: 11:99. Ms Thompson also said in her 25 May email that two of the managerial roles, including the VAT role, had not been filled yet. These emails were in a chain that led Ms Thompson to rebuke him for the “threatening nature” of his communications: 11:97. The Claimant’s response was that he suspected age discrimination.

35. The Respondent’s explanation for rejecting the Claimant are consistent with the requirements for the roles of Indirect Tax Assistant Manager and VAT Manager that are at 11:83 and 88.<sup>2</sup>

36. In oral argument the Claimant repeated his case that Mr Harris had been out to trap him and that the emails were “fabrication and deceit.” He wants me to strike out the defence on this basis. The two SRAs were doing this together, in other words were conspiring to offer a non-existent job so as to cover up age discrimination.

37. **Menzies.** The Claimant applied for two roles, one on the ATT Tax Graduate Programme and one for a Private Client Tax Senior. The Respondent contends that both are junior roles and I refer to an earlier comment about the use of ‘Senior’ in the accountancy profession. Again, the Claimant spoke over the telephone to the firm after his rejection and he followed up with the email at 13:29. He said that rejection from the graduate programme “was a total shock. The requirements are basically nothing.” This is not wholly dissimilar to the defence, save that the Claimant alleges it is direct age discrimination. He said of the Private Client role that the requirement to be studying towards CTA was designed to catch somebody in their twenties. He threatened litigation.

38. The essential point made in the defence, and also at the time in correspondence, is that the Claimant’s experience, as set out in his CV, did not match the requirements for either job. His experience exceeded the requirements. There was further detail given in the email to the Claimant of 22 May. I would make particular reference to 13:35 where the Respondent expresses surprise that he was applying for these roles rather than those of Manager or Senior Manger.

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<sup>2</sup> There is an error in her email at page 122 where she incorrectly specifies a bullet point, but the general point made by the Respondent still holds good when the detailed job description is read against the one line concerning VAT in the Claimant’s CV.



## **Conclusions**

### *Vexatious, abuse of process grounds*

39. I indicated to Mr Bryan, whose submission went into detail on this ground, that I considered that it was not open to the Respondents to succeed at this hearing. It is evident that all parties at an earlier stage decided that no witness evidence would be needed at the preliminary hearing. The abuse of process argument centres on the Claimant (it is said) having no genuine intent to take up these jobs, or some of them. The case of Keane has been referred to. Yet, that was a determination of abuse of process that was made after a trial at which the Claimant had given evidence. My conclusion is that it would be procedurally irregular to determine this issue at a hearing at which it was never intended that the Claimant should give any evidence.

### *No reasonable prospect of success*

40. Dealing first with the Claimant's 'mirror' applications, these are entirely baseless. To the extent that they rely on allegations of dishonest or even criminal behaviour, I will touch on this below. His applications fail.

41. All Respondents submit that he has no reasonable prospects of success in any of these discrimination claims. During discussion with counsel I suggested at one point that the claims would need to be "hopeless" before they could be struck out. This attracted a submission from counsel that I was raising the hurdle to be surmounted by Respondents too high. The contention was made to me that strike out should be the correct order if the claims were not reasonably arguable. It is a debate I can ignore because the clear conclusion to which I have come is that all of these claims are lacking in substance and merit and can properly be characterised as hopeless claims. In my view, there are no prospects of success, beyond fanciful prospects based on the Claimant's suspicions about the accountancy profession and/or these particular Respondents. It is my clear view that the cases should be struck out.

42. I have referred to the claims that the Claimant has sensibly withdrawn. In other instances, the evidence is solidly against him. Thus, for the Esher role, the Respondent abandoned the exercise and nobody was ever shortlisted. It is tolerably clear on the papers that the Claimant cannot succeed with the claim of direct age discrimination. For the Peterborough Tax Semi-Senior Role, the Claimant got himself into an acrimonious telephone exchange and it is obvious on the papers that his application was not taken forward for that reason: see paragraph 16 above. For the Kingston Smith roles there are cogent reasons why the Claimant was rejected as unsuitable. The same is true for the two roles at Linklaters. There, for the Tax Accountant role the Respondent wanted someone with an audit background and the internal email I cited shows that this was to be communicated to agencies. It was not a requirement that was applied only to the Claimant. For the Tax Assistant job, he was one of five people who were rejected because his experience was too great. I see no possible way in which these claims could get beyond stage one of Igen.

43. For the reasons I summarise in paragraphs 26-27 above Moore Stephens had cogent reasons for rejecting the Claimant. The Creative Tax Recruitment claims also must fail. That Respondent is an agency and did progress candidates over 45. I shall return to this below. Grant Thornton seems to have a defence on the facts that must succeed and again I shall refer below to what is relevant about the correspondence between the Claimant and Mr Harris. For the managerial role I need only note my paragraph 35 above. This then brings us to Menzies where the Claimant applied for two junior roles and was, unsurprisingly, rejected in view of his CV.

44. The Respondents all make the submission that the Claimant could not establish a prima facie case because he merely asserts age discrimination without being able to point to any evidence from which direct discrimination could properly be inferred. I find myself in full agreement with those submissions. In my view, this is the correct conclusion to reach if each job application is considered on its own.

45. There is, however, a fuller background that can be seen when all of these claims are looked at globally. It is beyond doubt that the Claimant has approached the Respondents with a very high degree of suspicion concerning their motives. As the papers demonstrate, he has stated in some instances that he thought he would be rejected before he even made his applications. This is because he considers that the entire accountancy profession is riddled with ageism and discrimination. Throughout these claims it can fairly be concluded that the Claimant has lost any sense of proportion. He has frequently made allegations of fraudulent or criminal behaviour on the part of the Respondents and these are without any foundation and ought not to have been made. In paragraph 11 I noted the terms in which he described allegedly deceitful and illegal conduct on the part of Haines Watts. In relation to the Peterborough post for that firm, it is evident that the Claimant was provocative in his telephone call with Mr Yousaf. That is also a pattern that is repeated throughout. I cannot avoid the conclusion that the Claimant was seeking to trap representatives or employees of these Respondents over the telephone in his search for evidence that he could produce in support of his claims.

46. I have already commented that the allegation of Kingston Smith raising a deceitful time bar defence is completely fanciful and must be wrong. This springs from the Claimant's suspicions and his lack of trust. The agency, Creative Tax, is also alleged by him to be a knowing party to ageist practices on behalf of its clients and a willing participant in advancing those practices. This is a very serious and scurrilous allegation and seems to be demonstrably wrong. Again, without going into detail, the Grant Thornton case shows the high degree of suspicion entertained by the Claimant and his refusal to accept that anything said, for example, by Mr Harris, might be true.

47. These are merely examples, but from all these cases I draw the conclusion that, not only does the Claimant have nothing other than mere assertion on which to base his direct discrimination claim, but that he has also brought these claims on the basis of his belief that the firms practised ageism;

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and in order to support that belief his behaviour has been extravagant throughout the correspondence. This is a factor that I cannot ignore. It confirms my conclusion that his claims have no reasonable prospect of success and would never succeed once the evidence is laid out before a Tribunal. To allow the cases to proceed would, of course, involve the Tribunal in many days of evidence and it would give the Claimant an opportunity and a platform to air his grievances and more general beliefs about the profession, but that would be, in my view, a misuse of the Tribunal's resources. As I have concluded that all of these claims have no reasonable prospect of success, the correct order is that they all be struck out.

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**EMPLOYMENT JUDGE PEARL**

**2<sup>nd</sup> Dec 2019 London Central**

**02/12/2019  
Date Sent to the Parties**

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**For the Tribunal Office**