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

RESERVED RECONSIDERATION JUDGMENT

Heard: In chambers **On:** 16 December 2019 and 7 January 2020

Before: Employment Judge Hoey (sitting alone)

1. The claimant's application in respect of reconsideration of the judgment dated 31 July 2019 is refused.

2. In respect of the claims in respect of which a Deposit Order is issued, namely:

    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

    the orders are varied such that the claimant is ORDERED to pay a deposit of £300 per said claim, resulting in a total of £3,000 not later than 21 days from the

date this Order is sent as a condition of being permitted to continue to advance those claims. The Judge has had regard to any information available as to the claimant's ability to comply with the order in determining the amount of the deposit.

Introduction

1. By claim form received by the Tribunal on 8 February 2019 the claimant (a doctor) raised a number of claims against four respondents. The respondents sought strike out which failing a deposit order. A number of those applications were granted following a hearing, the outcome of which the claimant seeks a reconsideration. The parties wished matters to be considered via written submissions. The claimant has also appealed against the outcome.

2. The claimant submitted written submissions to which each respondent replied followed by a further submission from the claimant, all of which have been fully considered.

3. It is assumed that the reasons and facts as set out in the original judgment are read alongside this judgment. The facts are not repeated. I have noticed that due to an administrative oversight the original judgment did not have paragraph numbers. This is corrected in the attached judgment which should help the parties and the Employment Appeal Tribunal.

Grounds for reconsideration

4. The claimant argues that each of the orders should be revoked (and addresses them as a whole rather than on an individual basis). In his reconsideration application he relies on 5 separate generic grounds.

5. Firstly, he argues that documents submitted by the claimant were disregarded. He says that the claimant did nothing wrong and "the negligence of 3 public bodies had been transferred to him because of their alleged stereotypical view of the claimant being a black man". The claimant argues that he did not need to be on the register to complete the training and that the respondent knew the claimant did not work as a GP – he made an innocent mistake on the form and as a result he was "persecuted because he was the only black doctor". He says the treatment was "inexplicable apart from the claimant's race". The broad statements made do not seem to relate to the specific claims as such but instead to the treatment as a generality the claimant relies upon.

6. The claimant relies on the timeline that was submitted which he argues was not properly considered. The claimant did not know about the Scheme and sought advice from the respondents in 2016. The claimant submitted his application on 4 May 2016 and he included his CV and background. The respondents therefore knew of the claimant's qualifications and background and ought to have seen that he answered the question wrongly. It was also obvious that the claimant was not on the register which the respondents noted on 4 August 2017.

7. The claimant also points to witness statement evidence produced by the respondents. He says this shows that the respondents knew the claimant was not on the register. This was seen by the third respondent on 4 August 2017. If the first and third respondent knew the claimant was not on the register and not entitled to be on the Scheme why did they allow him to proceed, he asks.

8. As the first and third respondent knew the claimant was not on the register on 4 August 2017, why was the claimant referred for investigation, he asks, and why did the first and third respondent allow him to be paid a bursary.

9. The claimant argues that the decision was made upon the respondents' case without looking at the facts as set out by the claimant. This, he says, is evidenced by the fact that the respondents alleged the claimant called himself a GP when in fact he was called a doctor, which is seen from his trainer's statement. If the second respondent's director knew the claimant was a doctor in training, how could anyone conclude the claimant was a GP, asks the claimant.

10. The claimant argues that the respondents fabricated the position and says that "it is inexplicable if not race tainted". He argues that discrimination requires an exploration of the thought processes of the putative discriminator and all claims should be remitted to a Hearing.

11. There is no basis within the claimant's submission as to why the claimant's race was in some way connected to the specific treatment relied upon (even subconsciously) on which he relies nor are there any facts suggested by the claimant which would allow an inference of race discrimination to be drawn, whether from the claimant or otherwise. These arguments should have been raised. In making my assessment I have taken the claimant's case at its highest and assumed each of the facts relied upon by the claimant (including those in the chronology provided by the claimant) are accurate.

12. The second ground relied upon by the claimant in his reconsideration application is that the statutory basis relied upon by the claimant was not properly considered. He argues that he was entitled to participate on the Scheme without being on the register. He argues that the respondents knew this. The only reason the claimant says he knew this (which contradicts with the respondents'' submissions and the literature they issued to all doctors and the communication issued and published by the respondents) was that "how else can the respondents explain they received his application form in 2016 which contained the fact the claimant was a doctor."

13. The respondents accepted the claimant onto the training programme, arranged a placement for him, sent the claimant to a practice for training, reminded him he was not on the Scheme and paid him a bursary (even after knowing he was not on the Scheme).

14. The claimant alleges "this falsehood was a scheme perpetrated to destroy the claimant's career" and the process was tainted by race. He argues that "but for race, the respondents championed a falsehood as a fact".

15. The claimant's position is that the failure to resolve the dispute as to the legal position around the register "infested the whole consideration of the case".

16. Thirdly, the claimant argues that the case law in this area was not applied properly. He argues that central facts are in dispute – the requirement to be on the register and the fact he was not working as a GP - that taking the claimant's case at its highest there was a case that should be remitted to a Hearing.

17. The claimant argues that there were no reasons given as to why the claims were totally and inexplicably inconsistent with the undisputed documents or why there were exceptional circumstances that justified strike out.

18. Fourthly, the claimant argues that it was wrong to look for evidence of racial discrimination: where central facts are in dispute, there should be a Hearing.

19. Finally, the claimant argues that his claims were not taken at their highest. He says there may have been a hypothetical comparator in respect of his claims. The central facts were in dispute and there were no reasons given as to why the claimant was unable to establish facts that would allow the essential basis of the claims to be set out. As central issues of fact were not resolved, it was not possible to reach a view on prospects of success, which should be remitted to a Hearing.

The first to third respondents' response

20. In relation to disregarding documentation, they argue that the claimant is seeking to reargue his case. The claimant is still unable to point to any facts or basis for facts from which relevant inferences can be made. The Tribunal assessed each of the claimant's claims, considered them at their highest, applied the law and determined prospects of success. The claimant in his reconsideration application still failed to point to any misrepresentation of evidence – he simply disagreed with the outcome.

21. It is submitted that the law was properly applied. The first to third respondents argue the claimant is asking the judge to agree with him and somehow find that the respondents were concealing discriminatory reasons. There was no basis for finding race as an operative factor for any of the decisions.

22. The first to third respondents noted that the judgment made reference on three of occasions to the exceptional nature of strike out – pages 7, 12 and 25 of the judgment and that the law was properly applied.

23. In relation to the claimant's argument that it was wrong to look for documentary evidence of discrimination, the first to third respondents note that the claimant had been unable to set out the basis for his contention that race played a part in the decisions.

24. Finally, the third to third respondents submitted the claimant's case was taken at its highest – hence not all claims were struck out and that the claimant's actual comparators were considered.

Fourth respondent's response

25. The fourth respondent noted that the claimant focusses on the dispute around the requirement (as alleged by the fourth respondent) that the claimant be on the register. However, they assert that the relevant question is what the reason for the treatment of the claimant was. The fourth respondent argues that the reasons for their treatment of the claimant were all set out in writing and show that race played no part in their decision.

26. The fourth respondent notes the claimant was unable to point to any basis for alleging race discrimination other than a suspicion. The detailed and contemporaneous documents show the reasons for the treatment, which were not related to race.

27. There is no requirement on the judge to fully set out each statutory measure nor to reach a concluded view on the dispute as to the register position. The issue is the reason why the claimant was treated in the way that he was and whether there is any basis for alleging race discrimination.

28. The fourth respondent argues the case law was applied correctly and that there was simply no basis for the claimant's assertion that he was treated unlawfully by reason of his race.

29. Finally, the fourth respondent argues the claimant's case was taken at its highest. They point to eight references to this in the judgment. They also point out their submission was not accepted in relation to comparators, which was why the claims were not all struck out. The claimant's claims were therefore properly considered.

30. The fourth respondent argues that the claimant's case is based upon unsupported assertions which are contradicted by contemporaneous documents.

Claimant's further submissions

31. The claimant made further written submissions in a communicated dated 26 November 2019. In that document he summarises the facts as essentially set out above.

32. The claimant argues in this document that the respondents had conspired against him to frame allegations to stop him working. He says the claimant answered a wrong question on the form but had sent his CV and background. The respondents knew his registration status. He argues the respondent pretended not to know the claimant was on training (and not acting as a GP).

33. The claimant argues that the fourth respondent's "self allocated major objective is to destroy minority doctors in the UK" and made false allegations against the claimant.

34. He argues that it should now be seen that there was “no reason whatsoever for the claimant to have been subjected to the treatment”. He concluded that “the whole acts of the respondents are bent on racial aggravated malice. Their treatment against the claimant in such a despising manner is inexplicable but for his race”.

The law

35. By Rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 the Employment Tribunal may, either on its own initiative or on the application of a party, reconsider a Judgment where it is necessary in the interests of justice to do so. On reconsideration, the Judgment may be confirmed, varied or revoked. Technically the decision to make a Deposit Order is an order not a judgment but the decision to strike out a claim is a judgment. It is possible to seek a reconsideration of a judgment in terms of rule 70. There is also power to vary a case management order under rule 29. The test for both is the same – whether or not reconsideration or variation is necessary in the interests of justice.

36. Under Rule 70, a Judgment will only be reconsidered where it is necessary in the interests of justice to do so. This allows an Employment Tribunal a broad discretion to determine whether reconsideration of a Judgment is appropriate in the circumstances. The discretion must be exercised judicially. This means having regard not only to the interests of the party seeking the reconsideration but also the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

37. The procedure upon a reconsideration application is for the Employment Judge that heard the case to consider the application and determine if there are reasonable prospects of the Judgement being varied or revoked. Essentially, this is a reviewing function in which the Employment Judge must consider whether there is a reasonable prospect of reconsideration in the interests of justice. There must be some basis for reconsideration. It is insufficient for an applicant to apply simply because he or she disagrees with the decision.

38. If the Employment Judge considers that there is no such reasonable prospect then the application shall be refused. Otherwise, the original decision shall be reconsidered at a subsequent reconsideration hearing. The Employment Judge’s role therefore upon the considering of the application upon the papers initially is to operate as a filter to determine whether there is a reasonable prospect of the Judgment being varied or revoked were the matter to be the subject of reconsideration hearing.

39. In this case I prepared to allow the parties a hearing to make oral submissions on the issues arising. The parties agreed, however, that written submissions in relation to the issues arising would be sufficient.

40. I have considered these submissions carefully in making my decision in relation to the reconsideration of the judgment and variation of the orders applications.

Discussion and decision

41. The claimant's application for reconsideration/variation deals with the issues in generality and does not consider each specific claim, as I am required to do. I shall consider each claim in light of the material the parties have submitted to decide whether or not it is in the interests of justice to review the decision.

42. Before doing so, I shall consider the five general grounds on which reconsideration as sought.

Documents disregarded

43. In reaching my decision in respect of each of the claims, I took careful account of the claimant's submissions. The key facts were not in dispute – the respondents accept the claimant submitted his application and he said he was not on the register (which he accepted was what he said) The respondents knew that he was not on the register. The claimant accepts that the respondent believed there was a requirement that the claimant be on the register to conclude his training.

44. I do not accept that it is "inexplicable but for race" from the facts set out by the parties and taking the claimant's case at its highest. The respondents believed the claimant required to be on the register and he was not. The respondents believed that the claimant worked in a GP practice and was called Dr which created a suspicion that he may have been regarded as a GP

45. The claimant is unable to point to any facts from which a relevant inference of unlawful race discrimination could be made. There is no reason to support the assertion the claimant's race was in any way relevant or connected to the treatment he received. At no point in the papers submitted by the claimant's agent is there anything to allow an inference of unlawful treatment to be drawn– taking his case at its highest and taking into account all the facts he sets out. The claimant's race did not appear as a factor at all in the respondents' consideration of matters and there was no basis, other than suspicion, to make such an assertion.

46. I accept the first to third respondent's submissions in relation to this ground for reconsideration. The claimant is seeking to reargue his case. The claimant suspects his race was a factor but is unable to point to any facts from which an inference can be drawn that would allow a Tribunal to find *prima facie* discrimination. The fourth respondent's actions and reasons for its actions were all set out in writing and the claimant has been unable to point to any factor which contradicts those reasons.

Failure to consider the statutory basis

47. The claimant argues the respondents got the law wrong. He is, I think, suggesting they intentionally misrepresented the position to discriminate against him because of his race. There is no basis given by the claimant to allow an inference

to be drawn that the claimant's race was in some way relevant to the respondents' decision to (as the claimant says) misinterpreted the law. I do not consider it axiomatic that race must somehow be relevant – there needs to be something that suggests the claimant's race was an operative factor, no matter how small. There is nothing in the claimant's submissions that points to why the claimant's race was in any way relevant to the reasons for the respondent's actions and their treatment of the claimant – even if they misapplied the law.

48. The fourth respondent is correct in noting that the issue for me is not whether or not the claimant required to be on the register but rather whether the claimant's race was in some way a reason (even subconsciously) for the respondent's actions or treatment of the claimant. A suspicion of unlawful treatment is not enough unless there is some facts from which an inference of unlawful treatment can be drawn. This was absent in the relevant claims for the reasons I set out.

Failure to apply the case law

49. The key facts in this case are not in dispute. The respondents accept it had the information the claimant provided. The claimant accepts the respondent believed the claimant needed to be on the register. The questions I had to determine were whether or not there were no or little reasonable prospects of success in respect of each particular claim being advanced by the claimant.

50. I took the claimant's case at its highest. The documentary evidence supported the respondents' position where indicated – the written reasons set out the basis for the respondents' actions. There was no evidence to which the claimant could point that suggested the claimant's race was ever considered, consciously or otherwise or that the treatment was related to race in any way. There was no suggestion that the claimant would have been treated any differently had his race been different.

51. I applied the law carefully in relation to strike out and deposit orders and reconsider each of the claims below.

Looking for evidence of discrimination

52. I do not accept the claimant's agent's submission that it is fundamentally wrong to look for evidence of race. In order to determine prospects of success, it is necessary for the claimant to show the basis upon which he asserts the treatment was unlawful. In other words, the claimant needs to be able to show that there is a basis for his claims as a matter of law. It is not enough simply to claim unlawful discrimination – there must be some basis to establish unlawful treatment. That is normally done via inference from which a Tribunal could potentially find that there was unlawful discrimination.

53. The case law shows that there requires to be facts from which relevant inferences can be made. There needs to be a basis upon which the claimant asserts he was treated unlawfully. I gave reasons why I struck out the claims I did, which was where the claimant had failed to show any facts from which the inference could

be drawn and I gave reasons where I considered the claims to have little reasonable prospects of success.

54. I took account of the draconian step of striking out a claim and I was careful to ensure I acted justly and fairly in reaching that conclusion. I had asked the claimant's agent on many occasions to point to the facts from which the relevant inferences could be drawn. He was unable to do so at the hearing and he remained unable to do so in his written submissions. I also took a step back in light of each decision I had made to ensure ultimately the outcome was fair and just, particularly given the exceptional and draconian nature of strike out of the relevant claims.

Taking the case at its highest

55. Throughout my consideration of each claim I considered the claimant's case at its highest. It was on that basis that I did not strike out each of his claims, despite the concerns set out in respect of the other claims.

Reconsideration of each claim – general issues

56. Notwithstanding the foregoing, I now take the opportunity to reconsider each specific claim to decide whether or not it is in the interests of justice to reconsider any of the decisions I made.

57. At the hearing, the challenge 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 related to 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.

58. Regrettably that remains the position following my consideration of the claimant's reconsideration submissions. While there is an assertion of unlawful treatment, and arguments the claimant believes he was treated badly because of his suspicion as to his race being the reason why he was treated the way he was, there was no facts to which the claimant could point which suggested his race was relevant, which could therefore give rise to a *prima facie* case.

59. I have spent a considerable amount of time reviewing the submissions of the claimant in relation to the reconsideration and I considered each of the claims afresh.

60. I can find no basis in the claimant's agent's written submissions that identifies why race was a reason for the treatment or why the treatment is said to be on grounds of race in the relevant cases. The claimant makes broad assertions but there is no link between the acts relied upon and the claimant's race, other than simply the fact the claimant is black. Simply asserting that there was unlawful

discrimination is not sufficient – there requires to be some basis upon which a Tribunal could make such an inference.

61. 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 am conscious too that a number of the claims will proceed to a hearing but I must still apply the rules.

62. 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 all the claimant's agent's submissions and the productions referred to and in particular focused upon the reconsideration grounds.

63. I have taken account of the fact that no evidence has been heard and the focus has been on what the parties understood the facts to be. 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 particularly in his reconsideration submissions.

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

65. 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.

66. I have carefully considered the judgment of Lady Wise in **Hasan** UKEAT/98/16**,** 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.

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

Dealing with each claim

68. **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.

69. The first to third respondent set out what appear to be 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.

70. Nevertheless 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.

71. 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.

72. 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. The circumstances pertaining to the claimant and the comparator are different in a material way.

73. 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).

74. There are no other facts on which the claimant relies to support the assertion of unlawful race discrimination.

75. On that basis I remain of the view that there are little reasonable prospects of success, having applied the legal tests.

76. Having considered matters, I 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.

77. **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.

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

79. 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.

80. I do not find there to be no reasonable prospects of success but I remain of the view that there are 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 – from any source. 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 appears to be 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.

81. I find there to be little reasonable prospects of success applying the legal tests as set out above.

82. 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.

83. **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.

84. 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.

85. 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. The claimant was working in a GP practice albeit on a training basis but the suggestion was that he could be perceived as being a GP rather than in training.

86. 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 by the claimant (including his reconsideration application) nor from his oral submissions.

87. 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.

88. I cannot say that there are no reasonable prospects of success, given the claimant maintains there is an appropriate comparator. I remain of the view that there are 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.

89. On that basis I remain of the view that there are 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.

90. **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.

91. 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.

92. 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 appears to be a cogent and powerful explanation for the treatment of the claimant.

93. Given the absence of any link to the claimant's race I remain of the view that there are 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.

94. **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.

95. 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 what appear to be 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.

96. I am not prepared to say that there are no reasonable prospects of success but in all the circumstances I remain of the view that 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).

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

98. **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.

99. 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 are also time bar issues arising in this claim.

100. 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 remain of the view that there are little reasonable prospects of success given what appears to be a cogent explanation set out by counsel for the respondents regarding the reason for the treatment sustained by the claimant. I consider it proportionate and fair to order a Deposit Order in relation to this claim.

101. **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.

102. 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.

103. 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.

104. 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. The reconsideration application provides no further assistance. 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.

105. I have considered the claimant's agent's most recent submissions carefully. I remain of the view 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 (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. Even in the reconsideration submissions from the claimant's agent, there was no facts suggested from which the relevant inferences can be drawn.

106. There are no reasonable prospects of success. I considered the authorities 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 remain satisfied that 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.

107. 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.

108. **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.

109. 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 remain of the view that there are no reasonable prospects of success. The clamant could not point to anything from which the burden would shift to the respondent, even in the reconsideration submissions. There is treatment and the claimant's race but no link. The claimant has not referred to any basis that would allow the essential aspects of this claim to be established.

110. I remain of the view 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.

111. 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.

112. **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 oppressive and unwarranted investigations against the claimant treated him less favourably on grounds of his race.

113. 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.

114. 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.

115. I take the claimant's assertions and case at its highest. I have carefully considered the authorities in this area. In **Hasan** UKEAT/98/16 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 claimant has also had the benefit of considering my original decision in relation to strike out and deposit order and had the chance to raise further issues by way of reconsideration.

116. 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 nor in the reconsideration application. In all the circumstances I remain of the view that there are 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. The claimant has not shown any basis that would allow him to establish the essential parts of his claim.

117. I have balanced all the factors and exercised my discretion and I remain of the view 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.

118. 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.

119. **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.

120. 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.

121. Even if the claimant is correct in that the law does not require him to be on the register, it is clear that it was the respondents' belief that a doctor be on the register in order to proceed. The respondents applied what they considered the law to be to the claimant (and every other doctor in training). There was no suggestion (even by the claimant) that they applied the law differently just to the claimant.

122. The claimant's agent was unable to point to any evidence or facts from which an inference of race discrimination could be made. That remains the case even upon reconsideration. 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.

123. I remain of the view 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.

124. As with the other claims I have carefully balanced the issues arising and taken the claimant's case at its highest. 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.

125. 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.

126. **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.

127. 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 "scapegoated" the claimant rather than focus upon their own error.

128. 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.

129. 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.

130. 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. No further facts from which the relevant inferences can be made were suggested upon reconsideration.

131. I remain of the view that there are 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 (whether from the claimant or otherwise). It is just to strike out the claims.

132. 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.

133. **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.

134. 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.

135. I cannot say there are no reasonable prospects of success but I remain 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. The

claimant's agent has not been able to point to any facts from which a relevant inference of discrimination could be made. I could see no *prima facie* case.

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

137. **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.

138. 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.

139. The fourth respondent had an obligation to investigate given the statutory basis. The claimant had begun his placement when he was not 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 consideration. The contemporaneous documents show the respondents did what they believed they required to do – investigate the matter. That was something they would have done irrespective of the race of the relevant individual.

140. I remain 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.

141. **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.

142. 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.

143. In any event the claimant was unable to point to any fact which supports his assertion the decision was in any 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.

144. There was no suggestion by the claimant that his race was a factor in the treatment. There were no facts relied upon in submissions (including in his reconsideration applications), 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.

145. I remain of the view that there are 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 set out in the contemporaneous documents 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.

146. I remain of the view that it is just and proportionate to strike this claim out.

147. 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.

148. **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.

149. 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.

150. 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.

151. I remain of the view that there are 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 point (from any source) 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 – directly or indirectly.

152. 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.

153. 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.

154. **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.

155. 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.

156. 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.

157. 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 remain of the view that there are 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.

158. **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.

159. The allegation is unclear. It appears 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.

160. 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.

161. There was no explanation as to why the claimant's race resulted in differential treatment. Any candidate who was not entitled to the bursary would have been treated in the same way.

162. I remain of the view that 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 treatment and a difference in race. 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, including in the reconsideration application.

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

164. 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.

165. **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.

166. 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.

167. 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.

168. I remain of the view that 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. There was no basis for the claimant to contend otherwise. I have decided that it would be proportionate and reasonable to order a Deposit Order in relation to this claim.

169. 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.

170. The claimant's agent was unable to point to any evidential basis to show 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.

171. It is not clear how the provision of a statement somehow amounted to less favourable treatment *per se*. The statement contained what the author believed to be true.

172. 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.

173. I remain of the view that 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.

174. 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.

175. 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.

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

177. For the same reasons as for amended 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. That remains the case following the reconsideration application.

178. 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.

179. 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.

180. 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.

181. 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.

182. 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.

183. I remain of the view that there are 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 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. It amounts to a mere suspicion which the claimant cannot support by producing any evidence which would allow the inference to be drawn.

184. 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.

185. I remain of the view that it is 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.

186. 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.

Taking a step back and making a just and fair decision

187. It has taken me a considerable period of time to consider this reconsideration application as I have considered each of the points made by the claimant fully and carefully. I have taken a step back in light of my re-examination of the issues arising in this case. I have carefully considered the overriding objective in making the orders that I do and I remain of the view that for the orders that I have issued, which I set out below, it is in the interest of justice that the deposit orders be issued and the claims I have struck out be struck out.

188. In striking out the claims I did I 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. That remains the position following the claimant's two reconsideration submissions. A mere suspicion of unlawful treatment or stereotyping is not enough without something more (some basis for such an assertion, however small).

189. I appreciate that strike out is exceptional especially in these types of cases but for the reasons set out I have concluded that for the relevant claims I have struck out, the position is exceptional.

190. In short, the claims that I have struck out have been struck out because, despite asking the claimant's agent on repeated occasions to explain why the claimant's race was in some way a reason for the treatment, in respect of the direct discrimination claims, or related to race (for the harassment claims), no detail was provided. The claimant has a suspicion that race was linked to the treatment but is unable to point to any facts that he will present that will allow this inference to be made,

191. The claimant has had the benefit of legal advice in the pursuit of his claims and has had this with regard not just to the drafting of his ET1 but the amendment to the ET1 (which was granted) but at the preliminary hearing and indeed following the issuing of the judgment and in his reconsideration application.

192. Unfair treatment is not enough. I took the claimant's case at its highest and I carefully looked for the facts on which the claimant relies to establish the relevant claims. There were no primary facts to which the claimant could point for each of the claims that I have struck out that create a *prima facie* case of unlawful race discrimination. The inference can be drawn from any source (and not just from the claimant) but at no point does the claimant show that his race was relevant in the treatment he received, even where the treatment was clearly "bad". There must be some basis for the claimant to say that the unfavourable treatment was connected in the relevant way to his race. This was fundamentally absent for each of the claims I have struck out.

193. An assertion of stereotypical treatment or institutional racism is not a fact on which the claimant can rely to show unlawful discrimination without there being at least some factual basis to support such an assertion. I carefully reconsidered the ET1, the amendment, the submissions, the claimant's witness statement, submissions at the preliminary hearing and all the reconsideration submissions. These were with the benefit of a legally qualified adviser with significant time having passed.

194. The ET1 refers to the fact that the treatment was on "grounds of race" (paragraph 24), that the claimant "sees" the collective actions of the respondents as "racial aggression" (paragraph 27), that the claimant believes the reason was race (paragraphs 29, 31 and 33), that the respondent "stereotypically disqualified him based on race (paragraph 34), treatment was "tainted with race" (paragraph 34) or that the respondent "collectively ganged up against him just because of his race". There is nothing to say why race was a factor or how the claimant will establish this as a fact or inference.

195. There is no mention of race in his skeleton argument. The claimant's witness statement that was produced at the preliminary hearing first mentions race art paragraph 49 saying the action was "racially aggravated" and at paragraph 50 that it is "so obvious that it was carried out because they believe as a black man any person would believe the fabricated story". At paragraph 56

the claimant says “This is a clear case of racial aggravated attack and the fourth respondent has built into its organisation an institutional racism that aims to destroy minority doctors”. No basis for these assertions are given. At paragraph 63 the claimant notes that there was no truth in what happened in relation to what was alleged against him and the actions were “out of racial instincts” such that the respondents pursued “racially aggravated attacks in the guise of protecting the public”. He repeats at paragraph 66 that it is his “strong belief” the treatment was tainted by race.

196. For the claims I have struck out there is no factual basis at all that I can find that suggests the claimant’s belief can be substantiated, or at least that an inference of unlawful treatment on the relevant ground can be established, such that the burden would pass to the respondent to show the reason for the treatment.

197. I have taken account of the fact that not all the claims have been struck out and if the claimant pays the relevant deposit, there will be a hearing on some of the claims, which would mean evidence would be led on the relevant points. I did consider whether or not that would mean strike out of the relevant claims would not be just and appropriate. I took a step back and decided that it would be just and appropriate to strike out the claims I did. Absent any basis that would allow a tribunal to find a *prima facie* case in respect of the relevant claims, and balancing all the facts and circumstances of this case, strike out remained just, fair and reasonable.

198. In relation to the claims in respect of which I ordered the claimant to pay a deposit order I carefully considered whether or not the claims had little reasonable prospect of success from the information presented to me.

Amount of Deposit Order

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

200. I took that into account together with the claims and prospects. I remain of the view 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.

201. At the hearing I took account of the claimant’s means. There is no suggestion within the reconsideration application that the sums ordered were an impediment to the access to justice. The amounts set were reasonable.

Summary

202. In light of my review of the orders that were issued and time that has passed, I have decided not to revoke the deposit orders that were issued and instead vary the time for payment. It is important the claimant makes payment of the relevant sums (and if not paying the total sum, makes it clear which claims he wishes to proceed and what claims the payment relates to) since it is only the claims in respect of which the deposit is paid (within the timescale set) that will be allowed to proceed, subject to any successful appeal by the claimant against the decision.

203. The following claims remain 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

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Employment Judge Hoey

Dated: 9 January 2020

SENT TO THE PARTIES ON

17 January 2020

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