



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Sanwar Ali

**Respondent:** Office of the Immigration Services Commissioner  
and others

**Heard at:** East London hearing Centre

**On:** 11 November 2021

**Before:** Employment Judge Jones

**Representation**  
Claimant: Mr R Kumar (Counsel) with the claimant  
Respondent: Ms L Robinson (Counsel) with Ms A Khan (GLD) and Ms  
S Amin (GLD clerk)

## JUDGMENT

1. Claim number 3202412/2019 is dismissed by way of withdrawal.
2. Claim number 3200461/2020 is dismissed by way of withdrawal.
3. Claim number 3200738/2021 is dismissed by way of withdrawal.
4. All claims against the individual named respondents are dismissed as having no reasonable prospects of success.
5. It is this tribunal's judgment that the complaints in number 3202630/2020 have no reasonable prospect of success. Under Rule 37(1)(a) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

## REASONS

1. This was an open preliminary hearing to determine the respondent's application to have the claimant's complaints struck out as having no reasonable

prospect of success. The Tribunal would go on to make case management orders in relation to any claims that were judged to have reasonable prospects of success. In the event that the Tribunal judged that the claims had little reasonable prospects of success then it would have considered whether it was appropriate to make a deposit order against the claimant.

2. This hearing had initially been listed as a case management hearing to deal with various applications by both parties. It was initially listed to be heard on 7 September 2020. On 27 August, the Respondent applied to have the hearing converted to an open preliminary hearing to consider its application for strike out. The hearing could not proceed on the initial date due to a lack of judicial resources. The respondent's request to have this hearing converted to an open preliminary hearing was not resisted by the claimant.

3. At the start of today's hearing I confirmed with the parties that it would be an open preliminary hearing. The Claimant was ably represented by Mr Kumar. I thank both representatives for their helpful representations on behalf of their respective clients.

4. The Tribunal considered the following law in dealing with the respondent's application and in considering the claimant's complaints.

#### Law

5. Section 53 of the Equality Act 2010 states that

(1) a qualification body (A) must not discriminate against a person (B) –

- a. In the arrangements A makes for deciding upon whom to confer a relevant qualification;
- b. as to the terms on which it is prepared to confer a relevant qualification on B;
- c. by not conferring a relevant qualification on B

(2) a qualification body (A) must not discriminate against the person (B) upon whom A has conferred a relevant qualification -

- (a) by withdrawing the qualification from B,
- (b) by varying the terms on which B holds qualification and/or
- (c) by subjecting B to any other detriment.

(3) a qualification body must not, in relation to conferment by it of a relevant qualification, harass

- (a) a person who holds the qualification, or
- (b) a person applies for it.

(4) a qualification body (A) must not victimise a person (B) –

- (a) in the arrangements A makes for deciding upon whom to confer a relevant qualification;
- (b) as terms which it is prepared to confer a relevant qualification on B, and/or
- (c) by not conferring a relevant qualification on B.

6. Section 54 Equality Act defines a qualifications body as an authority which can confer a relevant qualification. A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

7. The Tribunal also considered rule 37(1) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states that at any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim or response on any of the following grounds –

that it is scandalous or vexatious or has no reasonable prospect of success

8. In today's hearing, both parties made submissions on the law and the claims. After an adjournment to allow him to confer with Counsel, the claimant withdrew claim numbers 3202412/2019, 3200461/2020, and 3200738/2021 as he agreed that the tribunal had no jurisdiction to consider them.

9. The Tribunal struck out the complaints against Ms McCarthy, Mr Perera, Mr Johnson and Mr Samwell as they are not regulatory bodies and the claim can only be brought in this Tribunal under section 53 of the Equality Act 2010 which only gives the Tribunal jurisdiction to hear complaints against regulatory bodies.

10. The Tribunal considered submissions from both parties on claim number 3202630/2020. Also, the guidance given by HHJ Tayler in the recent case of *Cox v Adecco* UKEAT/0339/19 (9 April 2021, unreported) in which he set out the following:

- a. *Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;*
- b. *If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;*
- c. *The Claimant's case must ordinarily be taken at its highest*
- d. *It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;*
- e. *This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings*

*and any other documents in which the claimant seeks to set out the claim;*

- f. In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;*
- g. Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;*
- h. If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances."*

11. The Tribunal had to decide whether it had jurisdiction to consider the complaints in claim number 3202630/2020 and if so, whether those complaints had any reasonable prospects of success. If it was judged that they had little reasonable prospects of success then the tribunal would consider if it was appropriate to make a deposit order under rule 39 of the Employment Tribunal Rules 2013.

12. The claim number 3202630/2020 is of direct race, religion and/or belief and age discrimination; victimisation and harassment, all related to the letter to the claimant dated 29 July 2020 from the office of the immigration services Commissioner (OISC) written by Adam Harrison. The respondents to this complaint are the OISC and John Tuckett who was immigration services Commissioner at the time the letter was written.

### **Decision**

13. I firstly considered whether the tribunal had jurisdiction to consider this complaint.

14. Section 53 of the Equality Act 2010 clearly includes the respondent as a qualifications/regulatory body. Section 120(7) of the same Act provides an exception to the right to bring a complaint to the employment tribunal relating to a contravention of Part 5 (work), if the act complained of may, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.

15. The claimant attempted to appeal a decision of the Immigration Services Commissioner dated 31 March 2014 by application to the First Tier Tribunal

(Regulatory Chamber) (FTT). Although the claimant's application to the FTT related to a different decision, I find it to be a similar decision as it was a refusal to re-register the claimant's companies. By a judgment dated 20 May 2021, Mr S Bamawo, Registrar of the FTT decided as follows: -

*"This Tribunal does not have jurisdiction to deal with (sic) matters that are quite rightly before a competent tribunal (in this case that being the Employment Tribunal). I do not consider the Tribunal has jurisdiction to deal with any of the issues raised in this regard.*

*Where the Tribunal does not have jurisdiction, it must strike out the appeals, GRC Rule 8(2)(a). It is for this further reason I do not consider it fair and just to admit the appeals."*

16. It is my judgment that the letter from the OISC dated 29 July did not notify the claimant of a final decision on his application. Instead, it notified him that the regulatory body (the OISC) was in effect, suspending his application for the two reasons, set out in the letter. Firstly, because he had not enclosed the requisite fee with his application. Secondly, because he was at that point in time the subject of criminal proceedings, which I was told had been brought by the enforcement arm of the OISC. The claimant was told that his application to register his companies as licensed providers of immigration advice, could not be considered until those two issues were addressed or the criminal proceedings had concluded.

17. The letter went on to say that even after those proceedings concluded and/or even if the criminal prosecution was withdrawn, the respondent would need to consider the circumstances in which the proceedings had been brought as they could have a direct bearing on his fitness and competence to become a regulated adviser.

18. It is this tribunal's judgment that the OISC is a regulatory/qualifications body that comes under section 53 Equality Act 2010. The restriction under section 120(7) of the same Act does not apply to this claim because as confirmed by Registrar Bamawo, the claimant has no right to go to FTT to appeal against contents of the letter, because he considered that the employment tribunal was the more appropriate venue and because, there is as yet no decision.

19. It is therefore this tribunal's judgment that the employment tribunal does have jurisdiction to hear a complaint that by suspending its decision on whether to re-register the claimant's companies to give immigration advice, it has subjected him to a detriment or has discriminated against, harassed or victimised him as alleged.

20. I then considered if, taking the claimant's claim at its highest, there were any reasonable prospects of that claim succeeding in the employment tribunal.

21. It is the claimant's case that the respondent was not suspending his application because he failed to enclose the fee and because of the criminal proceedings as stated. It is his case that instead, that it was actually engaged in harassment, victimisation and direct discrimination towards him, on the grounds of race, religion and age when it made its decision to suspend his application.

22. In any discrimination complaint, the burden will be on the claimant to prove facts from which the tribunal can draw inferences that his protected characteristics were the reasons or the main reason for the decision to suspend his application or to refrain from making a decision on his application.

23. I was not pointed to any evidence today that the claimant would rely on to support his claim that the basis of the decision not to re-register his companies/him to provide immigration advice was not as set out in the contents of the letter of 29 July 2020 but were related to or because of his ethnicity, religion and age as claimed. The claimant would need to prove facts from which a tribunal could infer that the contents of the letter and the decision-making process behind it were or contained/hid discrimination or were acts of discrimination, whether less favourable treatment, harassment or victimisation.

24. We did not go through all the claimant's letters and documents in today's hearing. However, following HHJ Taylor's guidance in *Cox* above, I did look at the claimant's earlier documents to the tribunal in which he referred to and compared himself with at least one white immigration adviser who he says succeeded in being registered in circumstances which he says are far worse. He referred to a white immigration adviser who he said had committed fraud but was still allowed to register as an immigration adviser with the respondent. It is likely that this was the claimant's belief rather than there having been actual proceedings against that person resulting in a criminal conviction. It is likely that if that were the case, I would have been referred to that this morning.

25. The tribunal was also mindful that these are allegations of discrimination on which it has not heard any sworn evidence. The claimant was a litigant in person at the time at which these pleadings were drafted.

26. Having read the claimant's documents and listened to his submissions today, the claimant's case appeared to be simply, that the respondent has suspended his application to re-register his companies which was a detriment to his business and to himself and that he is a non-white person. In his ET1 the claimant alleges that the decision to prosecute him is overwhelmingly against the public interest and that his websites are popular with people from ethnic minorities. He alleges that the OISC was concerned that he was still in business after it had refused to re-register his company.

27. Section 136 of the Equality Act 2010 outlines the burden of proof in discrimination cases. Subsection (2) states that 'if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred.' There is a substantial body of caselaw that deals with this. In summary, the burden of proof in discrimination cases follows a two-stage approach, the first of which is for the claimant to establish a prima facie case that any detriment/less favourable treatment/detriment was *because of* the protected characteristic (not just that there was detriment *and* the characteristic). If the claimant makes a prima facie case, the burden shifts to the respondent to prove that there was a non-discriminatory reason for the treatment or that the protected characteristic was not

the reason for the treatment. Subsection (3) states that the above does not apply if A shows that A did not contravene the provision.

28. It is my judgment that the claimant did not refer to any evidence that he would point to in support of his case at a final hearing or which would lead that tribunal to infer that his ethnicity or any protected act was related to the OISC's decision to suspend his application or not to proceed with it. The more obvious reasons were that the claimant failed to enclose the required fee with his application, which was a fee charged of every applicant and which would likely bar any application from being fully considered, no matter what the ethnicity of the applicant; and the need to allow the criminal proceedings to come to a conclusion.

29. The only document I had today before me that gave any insight into the respondent's position on the claimant's application to re-register himself/his companies was the letter of 29 July 2020. It is likely that the letter set out the respondent's preliminary thoughts on the claimant's application as it had not been fully processed because, as has been pointed out by the respondent today, the claimant had not enclosed the appropriate fee. Nevertheless, the respondent went further than simply stating that the claimant had not enclosed the fee. The letter also indicated, that even after he has paid the fee, the ongoing criminal proceedings and the existence of those proceedings would need to be considered before he could be re-registered. This gave the claimant the full picture of the issues that would need to be addressed so that he could properly prepare his application, should he choose to proceed with it.

30. Since the OISC is a body which regulates companies and individuals who wish to provide advice and assistance to vulnerable people, it is appropriate that it ensures or does all it can to ensure that those who it authorises to provide that advice are able and competent persons to do so. It must do so without offending the Equality Act and other related legislation.

31. Having considered the above, the pleadings, the submissions made by both parties today and the recent correspondence; this Tribunal's judgment is as follows: –

32. There are no reasonable prospects of a claim against Mr Tuckett succeeding. Mr Tuckett did not make any decision in a personal capacity. In addition, section 53 Equality Act 2010 refers to a qualifications body. Mr Tuckett is an individual and not a qualifications body. The tribunal has no jurisdiction to hear a complaint against him in a personal capacity and that complaint is dismissed.

33. There are no reasonable prospects of a complaint of age discrimination, discrimination on the grounds of religion and/or belief or of victimisation succeeding against this respondent; in the terms outlined. In relation to victimisation complaint, it is clear from the list of issues and the documents that the claimant relies on as the alleged detriment was the letter of 20 July 2020. That letter came before the alleged protected act which is the letter of 13 August 2020. In those circumstances, the complaint of victimisation cannot proceed. The claimant cannot conceivably be victimised for a protected act that has not yet occurred.

34. As far as the complaints of age and religion or belief are concerned, I can see no reference to age or age group in the papers either on its own or in comparison to anyone else's age and no reference to the claimant's religion or the respondent having any awareness of the claimant's religion or his age group from his application to re-register his companies.

35. It is also this tribunal's judgment that there are no reasonable prospects of the complaint that the claimant's race was the reason or the main reason why respondent wrote the letter of 29 July 2020 and suspended its decision on his application to re-register himself and/or his companies.

36. It is my judgment that the reason for the letter as set out in the letter. There are no reasonable prospects of the claimant been able to prove facts that would persuade an employment tribunal to go behind those reasons to look for other reasons for the action. The claimant accepted in today's hearing that he had in fact, not enclosed the fee with his application. That therefore is an undisputed statement of fact in the letter. The claimant did not dispute that there were indeed criminal proceedings against him going on at the time the letter was written. It was not submitted to me this morning that it would have been inappropriate for the respondent to consider the circumstances surrounding the subject of the criminal proceedings when it came to look at his fitness and competence to become a regulated adviser or to have his companies re-registered. It was not submitted that this would be inappropriate or an abuse power by the respondent or discriminatory.

37. It is likely that the claimant would say that he has an answer to such considerations and that he would be able to answer them to the respondent's satisfaction but that was not subject of this claim. The claimant has not brought a complaint that having provided the fee and made an application after the criminal proceedings were discharged, the respondent has failed to or has refused to reregister his companies; despite him providing satisfactory explanations for all their queries. Such an application would have different considerations.

38. The complaint made in the claim is that this letter represents a refusal to reregister him as an immigration adviser and therefore, because of his ethnicity, it is direct age/race/religion/belief discrimination; victimisation and harassment. It is this tribunal's judgment that there are no reasonable prospects of the claimant persuading employment tribunal that the contents of this letter amounted to less favourable treatment or harassment or victimisation in relation to the claimant's age, ethnicity, race and religion and/or belief.

39. The claim has no reasonable prospects of success. The claim is dismissed.

**Employment Judge Jones  
Date: 24 November 2021**