EMPLOYMENT TRIBUNALS

Claimant: Mr D Ireland

Respondent: University College London

At: London Central Employment Tribunal

Before: Employment Judge Brown

THIRD COSTS JUDGMENT

The judgment of the Tribunal is that:

1. EJ Brown does not recuse herself.

2. The Claimant's applications for wasted costs dated 22 March and 21 April 2021 are dismissed.

REASONS

Background

1. By a claim form presented on 6 October 2019 the Claimant brought a claim of race discrimination against the Respondent. The Tribunal dismissed that claim by a Judgment promulgated on 25 March 2021.

2. By a Judgment promulgated on 27 June 2021 the Tribunal ordered the Claimant to pay the Respondent's costs of the proceedings in the sum of £14,000.

3. Before the Final Hearing, on 22 March 2021 the Claimant had made a written "Wasted costs application" against the Respondent's representatives. The application was in the following terms;

> "**.. Wasted costs order application against James Major of Clyde & Co for improper, unreasonable or negligent conduct**
>
> **<u>Series of Improper Acts</u>**
>
> <u>A - Disclosure Order Application 1</u>

Further to EJ Quill's 17 August 2020 email statement that "A decision about whether to order specific disclosure of any further items in this category can be made in due course", on 8 November 2020 I submitted a disclosure order application for these documents, which relate to the respondent's HR staff overturning its recruiting manager's refusal of my request for interview travel expenses following her breach of an equal opportunities procedure of candidate anonymisation, as it was my firm belief that these disclosure of these documents would weaken the respondent's position enough to cause it to concede liability without the need for a hearing.

On 11 November 2020 the respondent sought to obstruct a disclosure order by falsely asserting to the Tribunal that EJ Quill had already refused disclosure, when it is objectively clear that on 17 August 2020 he stated by email "A decision about whether to order specific disclosure of any further items in this category can be made in due course"

B - Disclosure Order Application 2

Following receipt of the respondent's sole witness statement on 27 November 2020, on 21 December I submitted a disclosure order application for documents relating to:
a) the race of the other interview candidates
b) the race of the individual due to be my direct line manager at the respondent who was not on the interview panel despite being required by policy to be on it, and c) a document showing who authorised the department's most recent interview travel expenses of £36

This disclosure order application was in direct response to unsubstantiated assertions made in the respondent's sole witness statement on these three issues, as it was my firm belief that disclosure of these documents would weaken the respondent's position enough to cause it to concede liability without the need for a hearing.

In its 21 December response the respondent sought to mislead the Tribunal and obstruct disclosure by asserting that:

i) the race of the other candidates is irrelevant. This is despite a) having relied on the race of the other candidates in the grounds of resistance and as the central theme of its November 2019 application to convert the preliminary hearing to a strike out hearing, and b) the race of the other candidates being relied on several times in the respondent's sole witness statement

ii) that the race of those selected and not selected to join the interview panel is irrelevant. This is despite this issue being core circumstantial evidence of racial bias in the recruiting manager as cited in the ET1, and both the grounds of resistance and respondent's sole witness statement making numerous references to this issue

C - Disclosure Order Application 3

Following receipt of a subject access request reply from the respondent on 17 December 2020, on 31 January 2021 I submitted a disclosure order application relating to redacted and anonymised emails written by its HR staff about me regarding its investigation of its policies on unsatisfactory references and interview travel expenses. At the time I was planning to submit witness order applications for the respondent's relevant HR staff which the respondent had avoided calling to give evidence, including the authors of these anonymised emails.

On 2 February 2021 the respondent sought to obstruct disclosure of these emails by falsely asserting to the Tribunal that:

i) I had no rights under the disclosure order to obtain unredacted and unanaonymised versions of these relevant emails obtained via SAR
ii) such disclosure order applications can be disregarded by the Tribunal and instead left to witness cross-examination
iii) the content of the HR emails about how its policies deal with "unsatisfactory references" are irrelevant. This is despite EJ Quill stating at Point 39 of the deposit order that "An argument by the Respondent that it received unsatisfactory references can be determined at the final hearing if necessary. As, if necessary, can the argument about whether there is a relevant difference between “receiving unsatisfactory references” and “not receiving satisfactory references”

D - Two Witness Order Applications for relevant HR staff

Further to the respondent demonstrating its willingness to use false statements to obstruct me from applying for witness orders for its relevant HR staff, on 3 February I submitted two witness order applications for the Tribunal to call the respondent's relevant HR staff on its own initiative which would enable me to cross examine them, including

i) those mentioned at point 8 of the ET3 as being centrally involved in the decision to withdraw my offer and

ii) Sam Reid & Chloe Milano, who had respectively been centrally involved in the decision to withdraw my offer and in subsequently investigating my concerns

These applications were submitted because, whilst the respondent could prepare a witness statement for its recruiting manager which demonstrated her lack of acknowledgement of her unconscious racial bias, it could not produce witness statements for its relevant HR staff which demonstrated that they believed the recruiting manager had acted entirely properly and that my offer had been withdrawn in accordance with HR's recruitment and selection policy, both as asserted in the ET3. My witness statement objectively shows that neither of these positions

are true. It was therefore clear to me that were these witness orders issued, the respondent would have no option but to concede liability, making a liability hearing unnecessary.

These two witness order applications were never directly objected to by the respondent, as it clearly wanted to avoid arousing the Tribunal's suspicions. However, on 19 February the respondent objected to my application for a preliminary hearing at which they could be considered by asserting that "*It would be disproportionate and a waste of Tribunal time for any further witnesses to be called*" and "*the Respondent would be severely prejudiced if the Claimant's application were to be granted".*

This is despite:

i) the respondent having asserted to the Tribunal in its email of 4 June 2020 that its relevant HR staff were "likely witnesses"
ii) at Point 45 of the deposit order EJ Quill stating about the respondent's HR witnesses that "*I am not satisfied that the Respondent's witnesses will be dissuaded from attending tribunal*"

iii) at Point 4 of the preliminary hearing case management summary EJ Quill wrote "It is recorded that the Respondent's representative sought to persuade me to list for one day or two days" and "I declined to reduce the listing from the previous 3 days" which ensured adequate time for multiple HR witness attendance
iv) the respondent's HR department having been put on notice of exemplary damages
v) Per this link https://www.ucl.ac.uk/human-resources/about-hr/hr-leadership-team/chloe-milano Chloe Milano having moved to a director role directly responsible for the respondent's management of these proceedings, who appears to have sought to avoid giving witness evidence despite being cited in the ET1 as the Head of HR who "fobbed me off"

<u>E - Information Commissioner Decision Notice</u>

On 11 March 2021 I received a Decision Notice from the Information Commissioner which stated that the respondent had breached the FOIA by concealing the existence of its internal research which identified that its procedures had failed to mitigate racial bias against colleagues in recruitment practices, which is an issue of direct relevance to these proceedings.

The respondent subsequently made false statements by asserting in its 16 March 2021 response to the Tribunal that:
i) "the Claimant's Freedom of Information Requests are entirely separate from these proceedings" in an attempt to deny my statutory right to elicit evidence for these proceedings from the respondent using the FOIA
ii) "The Respondent has complied with its disclosure obligations" despite it having received a direct disclosure request for this same research

information on 21 November 2021, to which it responded on 27 November by objectively stating "The Respondent does not hold the information requested", which the Information Commissioner has since proven to be false.

F - Recusal Application

On 15 March 2021 I submitted an urgent application to the Tribunal to postpone the liability hearing in order to provide time to consider my aforementioned disclosure order applications 1, 2, and 3, and my two witness order applications. This was because it was clear to me that the respondent has acted entirely improperly in its intent to avoid having to concede liability and instead hold the liability hearing absent highly damaging document and witness evidence.

My hearing postponement application provided applications in the alternative, either for the provision of reasons for how not case-managing these applications in the weeks prior to the hearing (as expected following the Tribunal's emailed assurance that they would be prioritised 2-3 weeks before the hearing) had furthered the overriding objective, or if refused then the immediate recusal of the relevant Employment Judge.

In its 16 March email the respondent objected to my application for postponement. It also objected to my application for recusal simply by asserting that it was "baseless" but with no substance whatsoever to support this assertion. It is thus apparent that the respondent improperly considers that:

i) my disclosure and witness order applications, made in good time, should not be case managed by the Tribunal, and instead be kicked into the long grass
ii) the Tribunal has no requirement to provide reasons on how not case managing them furthers the overriding objective

This is again intended to achieve the respondent's aim of holding the liability hearing absent relevant and highly adverse document and witness evidence.

Application

One of the fundamental reasons for eliciting evidence, including applying for disclosure and witness orders, is to cause the proceedings to conclude without the need for a hearing when a party acknowledges that it has no prospect of success and consequently concedes.

As outlined above, I consider the respondent's representative James Major to have abused Tribunal process by acting improperly, unreasonably, or negligently between 11 November 2020 and 16 March 2021 by making or allowing the aforementioned series of objectively false statements to achieve the respondent's aim of holding the liability

hearing absent relevant and highly adverse document and witness evidence, which, had it been ordered to provide at some point in the past would knowingly have caused it to concede liability.

I thus apply for my currently uncalculated preparation time at the standard rate for: i) dealing with all related correspondence per the above between 11 November 2020 and 16 March 2021
ii) preparing for this week's scheduled liability hearing,
iii) attending this week's scheduled liability hearing, if held against the respondent's representative. …"

4. The Claimant sent a further email to the Tribunal on 22 April 2021, setting out the costs he claimed in relation to each alleged example of improper/negligent/unreasonable conduct by the Respondent's representatives.

5. At the Final Hearing on 23 March 2021 the Tribunal invited the Claimant to make any outstanding applications for case management orders at the start of the hearing. The Tribunal made decisions on those applications before hearing evidence. The Tribunal's Liability Judgment records its decisions on those applications as follows:

> *".. 5. EJ Brown asked the Claimant to list his outstanding applications. The Claimant had made an application for reconsideration of a decision made earlier in the case. EJ Brown explained that the reconsideration application would need to be dealt with by the Judge who had made that decision.*
>
> *6. The Claimant said that he had applied for specific disclosure of 3 categories of document. Ms M Tutin for the Respondent explained the Respondent's position on each:*
> *6.1. Documents relating to the decision made by HR documents, showing the reasons for rejecting the Claimant's travel expenses. The Respondent said that all documents relevant to the decision to reject the Claimant's travel expenses had already been disclosed.*
> *6.2. Documents recording the race of the other 2 candidates for the job; documents recording the race of the Claimant's prospective immediate line manager who was not chosen to be on the selection panel. The Respondent said that its witness would give evidence about this and the Claimant could cross examine her.*
> *6.3. Documents relating to the appointment of the 3rd panel member. The Respondent said that all these documents had already been disclosed.*
>
> *7. The Tribunal ordered the Respondent to disclose any records it held of the 2 other candidates' race/ethnicity and the race/ethnicity of the Claimant's prospective manager who did not sit on the interview panel. These documents were relevant. It would be quicker and easier to address the issue of these people's race by disclosing relevant records than cross examination on the subject.*

> *8. The Respondent then disclosed these records, before the Claimant gave his evidence.*
>
> *9. The Tribunal did not make any order regarding the other documents the Claimant sought. The Respondent had said that all such documents had already been disclosed. The Tribunal would not make an order where it was futile to do so. If it later appeared that the Respondent had failed to disclose relevant documents that would be a serious matter.*
>
> *10. The Claimant asked the Tribunal to call a member of the Respondent's HR department, of the Tribunal's own motion, rather than on his application, so that the Claimant could cross examine them. He said that the Respondent had made assertions in its Response for which there was no evidence. The Claimant wanted to cross examine a Respondent HR witness, to prove that the assertions were incorrect. The Tribunal said that, if there was no evidence to support some of the Respondent's contentions, then the Claimant could make submissions about that. It was not necessary for a fair hearing for a witness to be called, and cross examined, to prove that lack of evidence. It would not be in accordance with the overriding objective to order a witness to attend to prove an absence of evidence – this would increase the length of the hearing and costs, and would not alter the state of the evidence."*

6. It is apparent, therefore, that the Tribunal dealt with the dispute between the parties about specific disclosure at the start of the liability hearing. It ordered the Respondent to produce one document, but did not make orders on the Claimant's other disclosure applications. It accepted the Respondent's arguments as to why no order should be made on the remaining documents.

7. Further, the Tribunal did not make the witness orders sought by the Claimant.

Appropriate Judge to Consider the Application

8. I decided that it was fair and proportionate for the Claimant's 22 March 2021 application for wasted costs orders to be dealt with on the papers by me, EJ Brown. The Respondent's solicitors, who were the target of the wasted costs applications, had agreed to them being dealt with on the papers.

9. I was familiar with the case. I was the judge who conducted the Final Hearing. I had been provided with a Costs Bundle and Bundle of Recent Correspondence at that time, containing the parties' voluminous correspondence about procedure, disclosure and costs. I was able to refer to these documents in making this judgment.

10. That bundle did not, however, contain any written response from the Respondent to the Claimant's 22 March 2021 wasted costs application. On 21 January 2022 the Tribunal asked the Respondent to provide a copy of any written response it had made to the application.

11. On 25 January 2022 the Respondent replied, saying in material part, "The Respondent did not respond in writing given the proximity to the final hearing and the assumption that outstanding applications, including a costs application that the Respondent had made, would be dealt with at that hearing.
……Whilst it is the Respondent's position that the Claimant did not pursue this application at the hearing when he had the opportunity to do so, should the Tribunal consider it now the Respondent objects to the Claimant's wasted costs application for the following reasons:
-The Claimant is essentially seeking wasted costs for the Respondent reasonably objecting to disclosure requests and related applications where it saw fit to do so. He is also attempting to claim for his preparation for and attendance at the hearing, which is plainly unreasonable;
-The majority if not all of the related applications the Claimant made were not ordered by the Tribunal in any event, which supports the fact that the Respondent did not act in a vexatious way in these proceedings such that any costs at all should be ordered; and
-The Respondent denies that it or its representatives at Clyde & Co "sought to mislead the Tribunal" in any way or that it made any false assertions to the Tribunal. These are serious and unsubstantiated remarks to make and this is a further example of the Claimant pursuing numerous spurious applications (as he did throughout the proceedings)."

12. The Claimant had sent another email to the Tribunal on 6 January 2022 which contained a further recusal application directed to me. It said, amongst other things, that I had refused to provide a fully reasoned reconsideration judgment on the Claimants' reconsideration applications relating to the Liability and Costs Judgments. The Claimant referred to *r72 ET Rules of Procedure 2013*.

13. This provides in material part, " r 72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application."

14. The Claimant is simply wrong in his interpretation of this provision. A fully reasoned reconsideration judgment is not required in response to all reconsideration applications. R72 clearly provides that where the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal.

15. I had previously considered the Claimant's applications for reconsideration of the liability and costs judgments and decided that there was no reasonable prospect of the original decisions being varied or revoked. The Final Hearing Tribunal, which

was a full Tribunal, with 2 members as well as EJ Brown, came to unanimous judgments and gave full reasons at the time. Nothing that the Claimant has said in his reconsideration applications calls for those decisions to be reconsidered. The Claimant has tried to recast and reinterpret the facts and reargue the case. He has made contentions which are simply in contradiction of the clear findings of the Tribunal in the original decisions.

16. The fact that I have declined his baseless reconsideration applications is not grounds for recusal.

17. The Claimant complains that I have not given judgments in relation to his further applications for reconsideration. Yet those applications appeared to ask that a different Judge conduct a further reconsideration exercise. It is illogical for the Claimant to ask a different Judge to conduct a further reconsideration exercise, but to complain that I have not carried out that further reconsideration exercise myself.

18. In correspondence on 9 September 2021, I told the Claimant that reconsideration is considered by the Judge who heard the case. The Claimant appeared to be under the erroneous impression that he could ask another Employment Judge, at the same level as me, to come to a different conclusion on the same matter. That was incorrect and a different Judge has therefore not carried out that exercise.

19. I have already set out this chronology of the correspondence in my Second Costs Judgment dated 2 November 2021.

20. None of this is grounds for my recusal either.

21. The Claimant also made the following applications: a further application for reconsideration of the 27 June 2021 Costs Judgment and 2 November 2021. I have separately rejected those applications under *r72(1) ET Rules of Procedure 2013*. The Claimant asserts that refusal of those applications would demonstrate bias. The mere fact that a Judge disagrees with the Claimant's contentions and refuses his applications plainly does not demonstrate bias.

22. Neither does a Judge's rejection of reconsideration applications under *r72(1) ET Rules of Procedure 2013* demonstrate bias. The *r72(1)* procedure is intended to allow groundless reconsideration applications to be disposed of efficiently, without wasting Tribunal resources.

23. The Claimant mentioned a judicial misconduct complaint he had made in relation to me. The fact that he might have made such a complaint is not grounds for my recusal. If it were, parties could make such complaints on a strategic basis, in order to secure their preferred judge. Plainly, would not be fair to the other party. I have not been informed that any judicial misconduct complaint has been upheld against me.

24. I have therefore determined the Claimant's wasted costs application.

Relevant Law

25. By Rules *80 & 82 ET Rules of Procedure 2013*

> “ **80 When a wasted costs order may be made**
>
> (1) A Tribunal may make a wasted costs order against a representative in favour of any party ('the receiving party') where that party has incurred costs—
>
> (a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or
>
> (b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.
>
> Costs so incurred are described as 'wasted costs'.
>
> **…**
>
> **82 Procedure**
>
> A wasted costs order may be made by the Tribunal on its own initiative or on the application of any party. A party may apply for a wasted costs order at any stage up to 28 days after the date on which the judgment finally determining the proceedings as against that party was sent to the parties. No such order shall be made unless the representative has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application or proposal. The Tribunal shall inform the representative's client in writing of any proceedings under this rule and of any order made against the representative.”

26. Regarding the procedure to be adopted by tribunals when hearing applications for wasted costs, Underhill J said in *Godfrey Morgan Solicitors Ltd v Cobalt Systems Ltd and another* [2012] ICR 305, at para 35(3), that this will depend on the circumstances of the particular case:

> “ *Procedure* . As the Court of Appeal emphasised in *Ridehalgh* (p 238 b– d and g), the right procedure for determining claims for wasted costs will depend on the circumstances of the particular case. Proportionality is an important consideration. The only essential is that the representative has a reasonable opportunity to make representations as to whether an order should be made. This does *not* necessarily mean a formal two-stage procedure: see *Wilsons Solicitors v Johnson* 9 February 2011, para 29. It may well, however, in a particular case mean that an application for wasted costs cannot be dealt with in the same hearing as that in which the application is made. Tribunals will often understandably wish to deal with such applications there and then, in the interests of economy. I sympathise with that approach: unnecessary hearings on satellite issues are to be avoided wherever possible, and in a straightforward case there will be a lot to be said for striking while the iron is hot. But sometimes that will simply not be fair, and the representative will be entitled to more time to make representations (though not necessarily at a further hearing). …. As the Court of Appeal said in *Ridehalgh* [1994] Ch 205, 238

g, although the procedure must be as simple and summary as possible, that can only be so far as fairness permits."

Discussion and Decision

27. I rejected the Claimant's applications for wasted costs against the Respondent's solicitors. I considered that the Respondent's solicitors had not committed any improper, unreasonable or negligent act or omission.

A - Disclosure Order Application 1

28. The Claimant contended that on 11 November 2020 the Respondent had sought to obstruct a disclosure order in relation to the Respondent's refusal of the Claimant's travel expenses by falsely asserting to the Tribunal that EJ Quill had already refused disclosure. He said that it was objectively clear that on 17 August 2020 EJ Quill had stated by email "A decision about whether to order specific disclosure of any further items in this category can be made in due course."

29. The full text of the Respondent's response to this request dated 11 November 2020 is as follows: "**2) Further documents in relation to the Claimant's application for interview travel expenses** The sole issue in this claim, as agreed by the Claimant at the Case Management Hearing on 1 May 2020 (which was further considered at the substantive Preliminary Hearing on 23 June 2020) is whether the Claimant's job offer was withdrawn because of his race. The Claimant does not plead any allegations relating to his travel expenses in his ET1, and he has not formally amended his claim to do so. The Claimant has made this specific disclosure request before and it has been refused, save that the Respondent was asked to confirm it has no documents in its possession which show that any decision to (potentially) withhold payment of the Claimant's expenses was because of his race. The Respondent complied with that order and confirmed it has none. As to any further documents which may exist concerning decisions made about the Claimant's travel expenses, including the overturning of the same, it remains the Respondent's position that these are irrelevant to both the Claimant's claim and the issue to be decided by the Tribunal, and accordingly the Respondent is under no obligation to disclose them. The Tribunal has already considered this request and refused it."

30. In correspondence to the parties on 17 August 2020 EJ Quill had said,
"3. [The Claimant] seeks disclosure of further documents in relation to his application for expenses. He says that some, but not all, the documents in the Respondent's possession have been disclosed. The application for expenses was initially refused, the refusal occurring after the decision maker was aware of the location from which the Claimant was planning to travel. He argues that the person who refused the application did so because of his race and that therefore there should be an inference that her decision to withdraw the conditional job offer was (or might have been) also because of his race. I previously ordered that if the Respondent had any documents in its possession which showed that the Respondent decided that any decision to (potentially) withhold payment of the Claimant's expenses was because of the Claimant's race, then the Respondent had to disclose those documents by 10 August 2020. The Respondent has since stated that it has no such documents. I further ordered that, in relation to other

documents connected to the expenses claim, the Respondent did not need to supply its comments until 14 days after the tribunal has informed the Respondent that the deposit has been paid. A decision about whether to order specific disclosure of any further items in this category can be made in due course. However, as previously stated, it is not necessary for that decision to be made prior to the date by which the deposit must be paid. I do not strike out the response based on the Claimant's assertion that there are further documents in this category which ought to have already been disclosed as per the existing case management orders."

31. I considered that, taken as a whole, the Respondent's 11 November 2021 response was reasonable. There was indeed only one issue in this case – the withdrawal of the job offer. The refusal of travel expenses was not an issue. It was reasonable for the Respondent to resist disclosure on matters not directly in issue. Further, while EJ Quill had said that a decision about disclosure of further documents in relation to the travel expenses could be made in due course, it was arguably correct to say that EJ Quill had declined to make a more wide-ranging order when the matter was first raised with him. He had made only a limited order in relation to the travel expenses, confined to documents which showed that the Respondent decided that any decision to (potentially) withhold payment of the Claimant's expenses was because of the Claimant's race.

B & C Disclosure Order Application 2 & 3

32. The Tribunal determined the outstanding disclosure applications at the start of the final hearing.

33. The Respondent's solicitors gave reasoned answers to the Claimant's requests for specific disclosure. Most of those answers were accepted by the Tribunal. That fact that one document was ordered to be disclosed by the Tribunal, so that the Tribunal disagreed with the Respondent's argument on that document, did not mean that the Respondent's solicitor had acted improperly. Arguments about the relevance and proportionality of disclosure are part of the normal conduct of litigation. It is reasonable to argue that brief oral evidence about a matter can be given by witnesses, rather than requiring disclosure of documents. Oral evidence from an existing witness can be quicker and cheaper than separate disclosure of documents through solicitors.

D - Two Witness Order Applications for relevant HR staff

34. At the Final Hearing, the Tribunal did not consider that it was necessary to hear from the Respondent's HR staff. The Respondent's solicitors acted reasonably in declining to call witnesses who were not necessary to advance the Respondent's case. That was a proportionate approach and saved time and costs at the hearing.

E - Information Commissioner Decision Notice

35. The Respondent's 16 March 2021 full response on this issue said, "The Respondent has complied with its disclosure obligations, and the Claimant's Freedom of Information Requests are entirely separate from these proceedings.

The Commissioner rightly states in the Decision Notice that "any order to disclose information by the tribunal would not be reliant on confirmation of the information's existence under the FOIA". The issue to be decided in this case is whether the decision-maker withdrew the Claimant's job offer because of his race, and the Respondent wrote to the Claimant in December 2020 stating that it did not see the relevance of any "research information on racial bias" to which the Claimant refers. Similarly, in the sift outcome to the Claimant's appeals, His Honour Judge Martyn Barklem wrote that, "I do not understand the basis on which the Claimant says that materials on "unconscious bias training" can be relevant to an allegation of direct discrimination on the part of an actually biased recruitment manager". The same applies to the documents to which the Claimant refers here."

36. I considered that that paragraph provided cogent reasons for the Respondent's objection to disclosing research information on "the failure of its processed to mitigate racial bias against colleagues within its recruitment practices", even if such information existed. FOI requests are indeed separate from Employment Tribunal proceedings. HHJ Barklem had already indicated that materials on unconscious bias training were unlikely to be relevant to an allegation of direct discrimination. It was reasonable for the Respondent to contend that generalised findings about the outcomes of recruitment processes were not relevant to a direct discrimination claim. The Claimant had not brought an indirect discrimination claim, to which such materials would be much more obviously relevant.

F - Recusal Application

37. The Tribunal did not postpone the Final Hearing. It agreed with the Respondent's contention that it was inappropriate to do so. The Claimant's application for recusal of any Judge who refused his case management applications was clearly premature and unreasonable. There could be no basis for seeking recusal until the relevant Judge had made the relevant decision and given reasons for doing so. The Respondent's solicitor acted entirely properly in pointing this out.

____ _27 January 2022__
Employment Judge Brown

Sent to the parties on:

28/01/2022

For the Tribunal: