



EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

“This has been a remote hearing not objected to by the parties. The form of remote hearing was by CVP. A face to face hearing was not held because it was not practicable and no-one requested the same.”

Claimant

Mr Munir Ahmed Malik

V

Respondent

Secretary of State for Justice

PRELIMINARY HEARING

Heard at: Watford (by CVP)

On: 12 January 2022

Before: Employment Judge Bloch QC

Appearances:

For the Claimant: In person

For the Respondent: Mr A Bershadski, Counsel

RESERVED JUDGMENT

1. The claimant's application to amend his claim is refused.
2. The claimant's existing claims are struck out as having no reasonable prospect of success pursuant to Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 Schedule 1.

REASONS

1. At a preliminary hearing by telephone on 30 April 2021 at Watford Employment Judge Bedeau ordered an open preliminary hearing to determine the following issues:

- 1.1 The claimant's application to amend his claims by adding further claims and factual assertions;
 - 1.2 Whether the claimant's depression, stress and anxiety are mental impairments which have substantial, long term adverse effects on normal day to day activities;
 - 1.3 Whether the claimant's planta fasciitis on his right foot; arthritic right foot; fractured right shoulder; and degenerative hips, are physical impairments which have substantial long-term adverse effects on normal day-to-day activities; and
 - 1.4 Any applications by the respondent for a strike out and/or deposit order.
2. As matters turned out only the first and the fourth matters were dealt with in a manner rendering the second and third issues unnecessary to decide.
 3. The Judge summarised the complaints and response as follows:
 - 3.1 By a claim form presented to the Tribunal on 4 May 2020 the claimant made claims of: direct discrimination because of: race; sex; disability; religion or belief; and age. He stated that he had made several applications for various positions principally at a few of Her Majesty's Prisons and had been unsuccessful. His claims fell under s.39 of the Equality Act 2010 and the various protected characteristics relied upon under that Act. He was a Muslim with many medical conditions in respect of which he claimed disability status;
 - 3.2 In the respondent's response (accepted out of time) it was asserted that any acts relied on prior to 2 January 2020 were out of time. It denied that it had discriminated against the claimant and maintained that reasonable adjustments had been made during an assessment which was part of the selection process. It contended that the claimant had not been offered any of the positions he applied for either because he did not achieve the required scores or did not pass the sift stage. Feedback was given to him on his performance. Furthermore, it was not clear precisely how the claimant put his claims and the respondent requested further information. Disability was not admitted. The claimant told the Judge that he had applied unsuccessfully for about 30 jobs and would like to refer to all in his case against the respondent. In his claim form the claimant referred specifically to only six jobs for which he had applied and had been unsuccessful.
 4. The Judge ordered the claimant to make a formal application to amend, setting out in detail the additional particulars upon which he now wished to rely. He ordered in relation to the application to amend that the claimant should set out in writing his application to amend by giving the following particulars in relation to his job applications:
 - 1.1.1 The date on which he made each application he was seeking to rely on;
 - 1.1.2 The jobs he applied for;

- 1.1.3 The outcome of each application;
 - 1.1.4 On what basis or bases he asserted that he had been discriminated and on what grounds, identifying in each case the protected characteristics.
 - 1.1.5 Why the proposed amended claims could not have been set out in the claim form presented on 4 May 2020; and
 - 1.1.6 The prejudice to him if his application was refused.
5. The Judge ordered that the application should be sent to the respondent's representative (copied to the Tribunal) by no later than 4pm on 28 May 2021.
 6. By his email dated 8 June 2021 at 16:59 (after the above time limit of 28 May 2021) the respondent requested amendments to be made to his claim as set out in a schedule attached to his email. In his email he referred to his suffering financial hardship and that he was therefore unable to afford an employment solicitor. Therefore, he had completed his handwritten claim form during lockdown without any legal assistance. He was an ordinary member of the public and not legally qualified. He added that during lockdown all libraries were closed. He had not had typing and printing facilities at home and so completed the ET1 form with basic information and had to provide more details in his statements. He had completed his ET1 by hand with only the important information to avoid his shoulder pain, as he was suffering from multiple health conditions and disability. He had filled in his claim form in the month of May 2020. After that he continued to apply for more similar jobs in the Ministry of Justice and had been waiting for a response from the Employment Tribunal about his claim. He added that on 30 April 2021 after the Case Management Hearing he found his log-in access to online account for the Ministry of Justice database had expired and his application data merged. No further details were provided as to what had occurred between the period of almost a year between presenting the ET1 and the Case Management Hearing on 30 April 2021 – and from when his online access had ceased and when it was started again. He said that after 30 April 2021 his job application data took a long time to 'arrange' with dates and reasons for rejection. Now he had arranged all the information as available in the Ministry of Justice database and in his email account. The claimant submitted that there had been a genuine reason as he had stated above in his email, given the "convoluted nature of the matter". He claimed there would be little prejudice to the respondent in allowing him now to provide the attached 38 job applications in pdf form.
 7. The schedule set out a total of 39 job applications including the six which had already been referred to in his claim form (ET1). In many cases the information provided included a job number, date of role eg "prison officer" and location eg "HMP The Mount". There followed the date of applications with status/reason. For example no. 2 was Application No 201704: Prison Officer – HMP The Mount. The date of the job application was 3 May 2017; under the heading "Review Status" appeared the following information: 13/05/2017 rejected "for test lapsed time". Other reasons provided for other job refusals included "rejected as not selected for Interview" or "rejected after second round Interview" or that he had (in a number of cases) withdrawn his application. In the vast majority of cases there had been no interviews.

8. In the claim form at paragraph 4 (type of claim) the claimant stated: “Refusal to accept my applications for employment under guaranteed interview scheme due to my physical disability age, race and male gender and Muslim religion”. That was a reference to the fact that the majority of the applications made were under a scheme for disabled claimants (or at least those who were claiming to be disabled) who were guaranteed an interview.
9. In his claim form at paragraph 8.2 the claimant stated that during the past three years he had applied 30 times online for justice jobs at HMP The Mount Prison, near his home where he had been living for the past 15 years. (His application to amend shows that his job applications were made to many different HMP locations, including the The Mount). He had applied for jobs based on long term illness and disability according to the Ministry of Justice guaranteed interview scheme including a prison officer job and attended a familiarisation visit to the prison. On 3 March 2018 his GP had provided him with a supporting letter for adjustment in the selection process for prison officer jobs but he maintained that the prison’s management treated him unfairly on two occasions and ignored the condition. He then referred to six jobs in particular for which he had applied.
10. During 2019 he applied for business administration vacancy no. 25451 at HMP The Mount (for a sitting job suitable for his current physical disability). (This is job no 22 in the respondent’s summary document referred to below). On 20 May 2019 he attended a face to face interview with Ms Shirley Cousins, “Hub Manager OMU” and Ms Samantha Evans, “Business Hub manager”. His application was refused. On 31 May 2019 after his contact for feedback Ms Shirley Cousins informed him by email that he failed in the interview “due to 13 scores only”. She said that the competency based interviews that they had to use for the purpose of Band 3 interviews could be tricky to answer and his answers had not been in sufficient detail.
11. In January 2020 he had applied for a Hub administrator role vacancy (No 31410). (This is job no 25 in the respondent’s summary document referred to below). This time his interview was based on only four competencies instead of five which had been required in 2019. He said he had been well prepared for the interview. On 4 February 2020 he was interviewed by Samantha Evans and this time he was more prepared so he answered her questions with more details and examples but on that occasion Ms Samantha Evans said that she needed only one example. She rejected his the application. On 22 February 2020 he made a complaint to Her Majesty’s Prison Service head of resources stating that he had suffered less favourable treatment due to his disability, male gender, being 56 years of age, of Asian race, Muslim religion and British Nationality and due to growing Islamophobia in the United Kingdom. So, he requested feedback about his interview score etc. He said that he received a reply from Ms Evans but she did not provide him with the score and advised that he had not answered all the questions.
12. In March 2020 he applied for a low category job of operational support grade vacancy no. 32618 at HMP The Mount prison. (This is job no 30 in the respondent’s summary document referred to below). On 9 March he received an online test to be completed within five days. He requested to extend the test date due to his illness and also ongoing full three weeks’ course from the Job

Centre but HMP management refused to extend the date and rejected his application “without any reason or further information sent to him”.

13. He then applied for the same role at three different prisons, namely vacancy no. ID 33620 for HMP Wormwood, vacancy no. ID 33572 for HMP Bedford and vacancy no. ID 330284 for HMP Bullingdon. (These are jobs nos 31, 32 and 22 in the respondent’s summary document referred to below).
14. The respondents helpfully submitted a summary of the claimant’s applications numbered 1 through to 39, setting out in tabular form, the job number (on amendment application), ie nos 1-39), job reference, job title, application ID, reason for rejection, date of rejection/withdrawal, bundle page and application submission date. The claimant accepted that the information contained in this document was an accurate summary of the underlying documentation.
15. Job applications number 1-24 related to the period of 2017 to 2019 and therefore were as (the respondent contended) on the face of it out of time. Applications number 22-39 included the six applications referred to in the existing ET1. Of that only no. 22 (in 2019) was submitted by the respondent to be out of time. These six applications correlate as follows:
 - 15.1 no. 22: Job reference 25451. Title: business administrator. Application ID 1486428 . Reason for rejection “Reject – Interview 1” Date of rejection/withdrawal 31.5.19. Bundle page 194, application submission date 12 April 2019. (This is the first job application referred to by the respondent in sub-paragraph 4 of his IT1)
 - 15.2 no. 25: Job reference 31410. Title: administrator. Application ID 2003638. Reason for rejection “Reject – Interview 1” Date of rejection/withdrawal 21.2.20. Bundle page 200, application submission date 6 January 2020.
 - 15.3 no. 30: Job reference 32618. Title: Operational support grade. Application ID 2203593. Reason for rejection “Failed to Complete Game Based Assessment”. Date of rejection/withdrawal 11.3.20. Bundle reference 51-52, 205-206, 551, application submission date 1 March 2020.
 - 15.4 no. 31: Job reference 33284. Title: Operational support grade. Application ID 2256708. Reason for rejection “Failed to Complete Game Based Assessment”. Date of rejection/withdrawal: “?Invited to complete 23.3.20”. Bundle page 207, application submission date 19 March 2020.
 - 15.5 no. 32: Job reference 33572. Title: Operational support grade. Application ID 2256734. Reason for rejection “Reject – game based assessment”. Date of rejection/withdrawal 26.3.20. Bundle page 209, application submission date 19 March 2020.
 - 15.6 no. 33: Job reference 33620. Title: Operational support grade. Application ID 2256748. Reason for rejection “Failed to Complete Game Based Assessment”. Date of rejection/withdrawal “? Invited to complete

23.3.20". Bundle page 209-210, application submission date 19 March 2020.

16. Job application no. 25 correlates with ET1, paragraph 6, number 30 correlates with ET1, sub-paragraph 12 and numbers 31-33 correlate with ET1, sub-paragraph 14. Accordingly, the remaining 33 job applications were the job applications which were the subject of the claimant's application to amend his claim.
17. It might be argued (and at one stage the claimant appeared to suggest) that most of the new applications had already been referred to in ET1 when he there stated that he had applied for 30 times online for jobs. However, this was not the way Employment Judge Bedeau saw the matter, so that he ordered the further information referred to above to be provided. There was, as pointed out on behalf of the respondent, no appeal against that order. In any event for good measure I accepted the respondent's submission that broad reference to the 30 applications was not a sufficient reference to the additional applications referred to in the amendment application and I did not regard these as being properly pleaded.
18. The respondent pointed out a number of respects in which the particulars set out in the amendment application did not comply with the order of Employment Judge Bedeau. The most significant of the omissions was the failure on the part of the claimant to set out a response to the key question "on what basis or bases does he assert he has been discriminated and on what grounds, identifying in each case the protected characteristics".
19. The claimant made clear to me that his omission in this regard was not in error. He was simply unable in any particular case or in all the cases to identify which particular protected characteristic relied upon by him had caused or contributed to the failure of his application or applications.
20. The schedule produced by the respondent shows various reasons for rejection of the claimant's job applications. The common reason is: "Failed to Complete" eg application numbers 1-3 and (after January 2020) numbers 29 and 34 and "Failed to Complete Game Based Assessment" (nos. 30, 31 and 33); another reason given is "Application withdrawn" (nos. 10, 11, 13, 14, 23, 24 and (after January 2020) nos. 27 and 37; "Reject – Screening" (where the claimant failed to get through to the interview stage): 4, 5, 8, 9, 12, 17, 21, 26, 28, 35, 36 and 39; "Reject - Interview 1" (nos. 22 and 25); "Reject – Interview 2": 6, and 16, (none after January 2020); and other reasons such as "Positions no longer available" (no. 7); "Interview 1- no show" (no.15); "Failed to Book" (no. 18); "Reject – online test" (no. 20) and "Reject-Game Based Assessment" (nos . 32 and 38).
21. The claimant's case was quite simply that he could not have been rejected for so many jobs with the Ministry of Justice without the discrimination on grounds of his disability, male gender, age (56 years), Asian race, Muslim religion, or British Nationality, but he could not say which form of protected characteristic it was that resulted in any particular job application rejection. He did however suggest that once one had failed one application, data was held by the respondent and resulted in further failures. That said, he did obtain an interview on a number of

occasions and on other occasion his failure seems to have been self-induced as a result of failing to complete the application or withdrawing it. Further, it is apparent from the schedule that he applied for a wide range of positions originally focusing on prison officer roles and then business administrator roles. In 2019 and particularly after January 2020 he seems to have focused on administrator operational support grade roles. It appears (as he accepted) that rejection on screening particularly in relation to game bases assessment was often an automatic process without human intervention, the rejection being automatic if certain criteria were not satisfied.

Application to amend the claim

22. The claimant's reasons for amendment were those shortly set out in his application to amend referred to above. In addition, the claimant produced a witness statement but this (understandably) related to the disability issue and not the amendment application.

23. The respondent resisted the amendments referring to Guidance Note No. 1 of the Presidential Guidance – General Case Management. Factors included:

23.1 The nature of the amendment ie whether it is a minor matter or a substantial amendment.

23.2 Whether the claim was sought to be added is out of time.

23.3 The timing and manner of the application.

24. The respondent in addition referred to the well-known case of Selkent Bus Company Ltd v Moore [1996] ICR 836 where the Employment Appeal Tribunal stated at page 12 at paragraph 4:

“Whenever the discretion to grant an amendment is invoked, the Tribunal should take into account *all* the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.”

25. The Employment Appeal Tribunal (at paragraph 5) then referred to what the relevant circumstances might be. It was impossible and undesirable to attempt to list them exhaustively but set out some circumstances that it regarded as certainly relevant. The Tribunal then set out three points referred to above in the Presidential Guidance.

26. I also drew the attention of the parties to the Appeal Tribunal case of Gillette v Bridge 86 Ltd UK EAT/0051/17/DM where Mr Justice Soole stated under his “Conclusions”:

“Nor do I accept [his] submission that an Employment Judge considering an application to amend can only take account of the merit if she considers that the proposed new claim is bound to fail as a matter of law. Whether at the initial paper stage or at a hearing with representation from the parties I consider that the Employment Tribunal must be entitled to consider whether the proposed claim has reasonable prospects of success. If a presented claim could be struck out on that basis, it would be inconsistent and anomalous if an application to amend could not be refused on the same basis. Nor do I accept that as a matter of principle the Employment Tribunal must

never take account of its assessment of the merits of the claim. Selkent refers to “all the circumstances” and Olayemi is an example where the prospects of success “did not appear good” and were taken into account.”

27. I was also referred to the case of Chandhok v Turkey [2015] ICR 527 EAT where Langstaff P referred to the case of Ayanawu v South Bank Student Union [2001] ICR 391 (at paragraph 24 - in which Lord Steyn referred to the fact-sensitivity of discrimination claims and the high public interest of examining such claims on their merits) and stated :

This stops short of blanket ban on strike out applications succeeding in discrimination claims. There may still be occasions when a claim can be properly struck out - where for instance there is a time bar to jurisdiction and no evidence is advanced that it would be just and equitable to extend time; or where on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic which (per Mummery LJ in Madarassy v Nomura International plc [2007] ICR 86, para 56 ‘only indicate a possibility of discrimination. There are not, without more, sufficient material from which a Tribunal “could conclude” that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.’

Or claims may have been brought so repetitively concerning the same essential circumstances that a further claim (or response) is an abuse.”

28. As regards the timing point the respondent also referred to the well known Employment Appeal case of Gallilee v Commissioner for the Metropolis [2018]. In this case the Employment Tribunal held the doctrine “of relation back” could not apply to Tribunal proceedings so that amendments if allowed would not date back to the date of presentation of the ET1. Accordingly, the question of whether those amendments are out of time can be dealt with at the full merits hearing. That said, the respondent submitted that this decision did not mean that out of time points had to be reserved to the full merits hearing when an appropriate case could be dealt with at the time of the amendment application.

29. The respondent submitted that the amendment should not be allowed for the following reasons:

”1. There had been a failure to address as part of the amendment application the matters which the ET ordered the claimant to address. As a result the claims sought to be introduced by the amendment were unacceptably vague. In particular the claimant had entirely failed to specify on what basis he alleged that he was discriminated against on each occasion that he applied for a job;

2. The majority of the amended claims were out of time;

3. The amendments are on their face bound to fail.

30. In my judgment the amendments sought to be made were significant. They were not in the nature of typographical or clerical amendments. The claimant’s ET1 made allegations in respect of six job applications (nos. 22, 25, 30, 31, 32 and 33). The claimant now sought to add a further 33 job applications increasing the total list to 39.

31. Further, the majority of the proposed new claims were made outside the primary limitation period (Nos. 1-22 and 23-24): under s.123(1)(a) of the Equality Act 2010 claims in respect of breaches of the Act must be brought within three months starting with the date to which the complaint relates. The claimant contacted ACAS on 1 April 2020 and received the certificate on 2 April 2020. It was not clear whether the ET1 was issued within one month of the ACAS Certificate being received but, assuming it was, only claims relating to acts on or after 2nd January 2020 were in time. Therefore 23 of the jobs listed in the amended complaint were out of time.
32. The respondent further submitted that the claimant had not at any stage alleged that the claim related to: “conduct extending over a period” within the meaning of s.123(3)(a) of the Equality Act. In any event such submission would be bound to fail given that the claim related to separate applications for a variety of different jobs at a variety of locations over a period of some three and a half years. Moreover, the claimant had not at any stage sought to rely on the power to extend time where it was “just and equitable” to do so under s.123(1)(b) of the act. The respondent submitted that such an extension would in any event not be just and equitable for the following reasons:
 - 32.1 The claimant sought to extend time for a very prolonged period: he was rejected from the first job to which the amended claim related on 13 May 2017 ie that claim was almost three years out of time. Many of the other claims were significantly out of time by a matter of years.
 - 32.2 The claim related to a large variety of jobs at a large number of places. There would be significant prejudice to the respondent in having to investigate such stale claims from so many places.
 - 32.3 The claimant had not provided any reasons for why he did not bring any of these claims sooner. The respondent had raised the time point in its response dated 13 November 2020. The claimant had had almost a year to furnish the Tribunal with any such reasons.
33. Being unrepresented the claimant had some difficulty dealing with these submissions. That said, most of them in my judgment, were fairly obvious on their face and could not have been resisted even if the claimant had been represented. I had regard to the respondent’s solicitor’s letter of 21 June 2021 in which most of these points resisting the application to amend had been made to the claimant so that they could not now take him by surprise.
34. I accepted the respondent’s submissions regarding the timing points. The suggestion that there was some connection between the two job application refusals involving Samantha Evans and thereafter with other job application refusals was wholly speculative. To be fair the claimant did not pursue this point with any enthusiasm and there was no real contention of conduct extending over a period which (as submitted by the respondent) would on its face have been very difficult given the wide range of jobs, different premises and long time span involved.

35. I also accepted the respondent's submissions regarding any equitable extension of time. I had regard that the points quoted above from the claimant's email of 8 June 2021 seeking to explain the lateness of the amendment application. That said, it was very difficult (as submitted by the respondent) to understand why the application had taken more than a year to be made. The claim form was filed in May 2020 and it seemed that the main stimulus for the amendments being brought later was that the claimant had found his log-in access to the online account for the Ministry of Justice database at a late stage. I did not find the typing and printing facilities of the claimant at home or the Covid pandemic, nor his shoulder pain and other alleged disabilities a proper explanation, or a least a sufficient explanation, for the long delay which had occurred in presenting the application to amend. These difficulties had not stood in the way of his providing this information in 2021 and no explanation was given as to what had changed to make this possible. The claimant was unable to add anything substantial to the points which he made in this email regarding lateness of the amendments. Such explanation as he provided regarding difficulty of accessing data seemed to relate to the period after 30 April 2021 – and may have been directed more towards explaining the failure to submit the amendment application within the time limit set by the Judge at the hearing on that date rather than the period of delay up to that date. In any event (looking at the position overall) I regarded the claimant's explanations as quite insufficient and vague in regard to the delay since May 2020.
36. I did not accept that there would be little prejudice to the respondent in allowing the claimant to proceed with the amendment, for the reasons submitted by the respondent set out above. In my judgment it would be likely to be prejudicial to the respondent at this stage to have to make enquiries going back several years at different locations as submitted.
37. Whilst naturally inherently prejudicial to the claimant in not being able to pursue his claims, that is inherent in any amendment application and whilst significant there was not much, if anything, that the claimant was able to add to his point.
38. Of even greater significance, in my judgment, I regarded the proposed claim as as exceedingly weak. I did so, notwithstanding being fully aware of the difficulties which may face a claimant in proving discrimination. In this case there was nothing beyond the failure for numerous applications for numerous different kinds of jobs at different locations in the Ministry of Justice as well as existence of the protected characteristics relied upon. The more the case proceeded the more it became clear that the complaint of discrimination was entirely speculative, the claimant using a "scatter gun" technique, by referring to any possible protected characteristics that he could think of as being the basis for the rejection of his applications. Even taking into account the reversal of the burden of proof for which provision exists in discrimination cases, I could not see how the claimant had any real prospect of proceeding beyond the first stage of demonstrating sufficient material from which a Tribunal "could conclude" that on the balance of probabilities the respondent had committed an unlawful act of discrimination.
39. I shall refer to this in a little more detail below but in my judgment the fact that the claims if amended would be subject to be struck out as having no reasonable

prospect of success provided an additional powerful reason for not allowing the amendment.

40. For all those reasons I rejected the application to amend.

APPLICATION TO STRIKE OUT THE CLAIM OR PARTS OF THE CLAIM

41. I have already referred to this aspect in some detail above. In my judgment not only the amendments proposed but also the existing claims have no reasonable prospects of success.
42. I reminded myself (as set out above) of the many authorities which refer to the difficulties of a claimant in proving discrimination and the undesirability in most cases of striking out claims of discrimination. That said, as indicated in Chandhok v Turkey there is no absolute bar on striking out such cases. I regard this case as a clear example of one where a claimant asserts merely a difference of treatment and a difference of protected characteristic and that this is relied on without more to show the possibility of discrimination. The claimant has had a considerable amount of time to consider his position, the respondent setting out in detail its application for a Strike Out or Deposit Order in its letter of 21 June 2021. Apart from the assertion of a difference of treatment and a difference of protected characteristic, the only other point relied on by the claimant was the number of occasions on which his applications failed. Only two of these appear to involve the same person, Samantha Evans. The claimant put forward no basis for assuming that she rejected or was part of the rejection of his two applications on the grounds of any protected characteristic. There would have been nothing to support any such allegation had it been made. The claimant seemed to place particular focus on the word “justice” in the title Ministry of Justice and refused to believe that he did not and could not receive “justice” from the respondent. Beyond that there was very little upon which he could rely.
43. At sub-paragraph 14 of paragraph 8.2 of the ET1 he made a specific point in his application (no. 30 on the list – “Failed to Complete Game Based Assessment”- see paragraph 12 above) that in March 2020 he had been rejected “without any reason or further information sent to me”. He also maintained to me and repeated adamantly that he had made his application in time. However, this was contradicted by the underlying documents which showed that the claimant, who had been busy with training at the time, had asked for an extension of time within which to complete the online application. This had been refused by the respondent on equal opportunities grounds, the time-limit applying to all applicants. It was clear from his own documents that two days after the deadline the respondent was still in the process of submitting his application. Accordingly, his assertion that he had completed the application in time was fatally undermined by his own communications to the respondent.
44. While it would be tempting for me to take the lesser step of ordering a deposit to be paid under Rule 39 of the Employment Tribunal Rules on the basis that the claims had “little” prospects of success in my judgment, in this case that would

not be the right course. It would not be appropriate to allow this case to continue to a full merits trial when I have concluded that there is no reasonable prospect of success in regard to any of the claimant's complaints.

45. Further, for the reasons submitted by the respondent I could not see any basis for regarding the conduct of the respondent as amounting to "conduct extending over a period" within the meaning of s.123(3)(a) of the Equality Act 2010. Nor was there sufficient basis for an equitable extension of time (had one been sought in terms). Therefore on this additional ground, I struck out one existing claim (No. 22 – see paragraph 15 above) for the post of business administrator which was rejected after "interview 1" on 31 May 2019.
46. Accordingly as I struck out all the claims and refused the amendment sought.
47. It was accordingly unnecessary to deal with the issue of disability discrimination (which there would in any event have been insufficient time to deal with on the day).

Employment Judge Bloch QC

Signed: 18 February 2022

Sent to the parties on:

23/2/2022

For the Tribunal:

N Gotecha