



EMPLOYMENT TRIBUNALS

Claimant: Dr R Heal

Respondent: Birmingham and Solihull Mental Health NHS Foundation Trust

Tribunal: London Central

Date: 31 March 2022

JUDGMENT

- (1) The claimant's claim is struck out under Rule 37 Employment Tribunal Rules of Procedure 2013 because it has no reasonable prospect of success.
- (2) The claimant's claim is also totally without merit.

REASONS

Background

- 1 By a letter dated 7 December 2021 the Tribunal wrote to the claimant to warn him that the tribunal was considering striking out the whole of the claimant's claim because it has no reasonable prospect of success.
- 2 The reasons for the strike out warning were that:
 - (1) *It appears to Employment Judge A James that the issues which arise from the current claim have already been considered extensively at the preliminary hearing in case no 1303049/2018 & others. The hearing took place between 1 to 4 December 2020. The judgment is dated 24 December 2020 ('The PH1 Judgment').*
 - (2) The conclusions in relation to the following issues appear to be particularly relevant.
 - a. *Issue 1 - whether the universities are higher education institutions within the meaning of section 91 Equality Act 2010. In this case, it*

appears to be beyond doubt that the University of Birmingham, to whom applications must be made, is such an institution as well.

- b. Issue 2 - whether the claims concern training or guidance to which the governing body of the respondent universities have powers to afford access within section 56(5) Equality Act 2010. In this case, similar conclusions would appear to be likely in relation to the University of Birmingham. It is to the University that applications must be made, rather than the respondent Trust.*
- c. Issues 6, 7 and 8 – whether the Claimant's claims against the following Respondents are, properly understood, claims about access to or acceptance on an education course within Part 6 EqA 2010 etc, ... In this case, it appears that as in PH1, the claims are about access to or acceptance on an education course within Part 6 EqA 2010. Successful applicants become PhD students. The fact that successful applicants will be placed with the respondent Trust, with whom they will have a contract of employment, does not change the fact that access to that employment must be made through the correct process via the University.*
- d. Issue 22 - whether or not the claims are totally without merit. For the same reasons, the current claim against the respondent appears to be totally without merit. The claim appears to be based on the same totally unfounded arguments. A General Civil Restraint Order has since been issued against the claimant by the High Court of Justice, in reliance on that factual finding.*

(3) Related issues have also now been considered and adjudicated upon in claim number 3332712/2018 – ‘The PH3 Judgment’, dated 13 July 2021. In particular:

- a. Issue (3) - Should any remaining claims be dismissed as out of time?*
- b. Issue (7) - If the claimant did not apply through Clearing House to the Oxford CPP, should his claims be struck out on the grounds that they have no reasonable prospect of success; and*

(4) *The issues considered at PH3 were slightly different in that it was accepted in that claim that an application should be made via The Clearing House, to the Trust, rather than to a University. The issues raised by the current claim under consideration appears to Employment Judge A James to be the same as were considered at PH1, rather than PH3. However, the fact that in the current claim, the claimant has also failed to make an application via the correct process is potentially a further consideration, as is the time limit issue.*

(5) *For the above reasons, what appear to be the same or similar issues have been carefully considered and the claimant's arguments (if any) in relation to them have been comprehensively rejected.*

3 The following directions were issued in relation to the strike out warning:

- (1) **On or before 3 January 2022**, *the claimant must write to the tribunal and to the respondent, setting out his arguments as to why his claim should not be struck out, and in particular, how the issues in this claim can be distinguished from the issues considered in PH1 and PH3. The response should include any response to the argument that, based on the conclusions in the judgment in PH3, the claims were submitted outside the usual three*

month time limit and there is no reasonable prospect of the claimant successfully arguing that it would be just and equitable to extend the time limit. Further, that the claimant has not submitted an application through the correct process and his claim therefore has no reasonable prospect of success for that reason too.

If the claimant wants a hearing in relation to the strike out application, he may request one. In the absence of any request, it will be assumed that he is content for the matter to be considered on the papers. If a hearing is requested, the claimant should say whether, and if so why, he would prefer an in-person hearing (and if so at which venue) or a hearing by video link (CVP).

*(2) **On or before 24 January 2022**, the respondent should write to the tribunal and to the claimant, setting out any arguments in response.*

4 In his email response dated 4 January 2022, the claimant stated that he was currently being provided with legal assistance under the legal aid scheme in respect of the claim. The claimant continues to maintain that the respondent had submitted 'false statements/narrative' that trainee clinical psychologists (TCPs) are not full-time salaried NHS employees, but students on university courses; that his claim was not out of time because the respondent had persistently issued false statements; and that the Trust does not possess any lawful contracts with either Birmingham University or (what the claimant refers to as) 'so-called clearing house'.

5 A response was not received from the respondent's solicitors by 24 January 2022.

6 In a further letter sent by the Employment Tribunal on 8 February 2022, the following further directions were made:

*(1) The claimant is directed to confirm **by 22 February 2022**, whether he has received any legal advice from Bristol Law Centre and if not, when he expects the legal advice to be available. Does the claimant want to add to what is set out below?*

*(2) The respondent is directed to provide a response to the claimant's email below **by 22 February 2022**. A reply does not appear to have been received so far.*

7 In a response dated 15 February 2022, the respondent's solicitors apologised for the delay in responding, which was due to the email and letter being received during annual leave and subsequently overlooked. It was asserted on the respondent's behalf that the claimant had failed to provide a substantive response to the issues raised by the Employment Tribunal in the strike out warning letter.

8 In his response dated 22 February 2022, the claimant confirms that Bristol Law Centre is engaged to provide legal services to him. He has not confirmed when legal advice will be available to him. He made further representations as follows:

(1) The claimant refers to the order of EJ Wolfenden made at Birmingham Employment Tribunal, prior to the transfer of the case to London Central Employment Tribunal. Any outstanding orders were stayed however, by a direction to that effect in the strike out warning letter sent by London Central Employment Tribunal on 7 December 2021. Any non-compliance with any of the orders prior to that date is irrelevant to the issues raised

by the strike out warning letter, following the transfer of the claim to London Central Employment Tribunal.

(2) The claimant continues to assert that:

- a. No 'course' in clinical psychology exists at the University of Birmingham.
- b. The legal status of NHS TCPs is NHS employees; not university students; they are not on 'training agreements'.
- c. NHS TCPs do not attend the University of Birmingham.
- d. There is no legal requirement for NHS TCPs to attend University of Birmingham nor hold any alleged 'degree certificate' from Birmingham University in order to be eligible for HCPC Registration as Clinical Psychologists.
- e. The Governing Body of University of Birmingham does not possess the power to grant or refuse employment within BSMHFT.
- f. Birmingham University does not train NHS employees. NHS employees undertake all training as part of their contract of employment with BSMHFT.
- g. BSMHFT has the status of employer as defined s.83(4) Equality Act 2010.
- h. The job of TCP is a job of work as per the legal ruling issued by HMRC, and as stated/proven by other authorities.

9 Yet again, the claimant requests that the claim be transferred to Bristol. That and similar transfer requests in other claims have already been responded to and rejected on a number of occasions. The same arguments will not be repeated again.

10 The claimant has pointed out that the judgments following PH1 and PH3 are subject to appeal. Whilst that is accepted as a matter of fact, unless and until the appeals are successful, the judgments stand.

11 No further representations have been received since 22 February, and the tribunal is now in a position to determine the strike out issue. Since neither party has requested a hearing, the issue has been determined on the basis of the written representations received.

Conclusions

12 In relation to PH1 issues 1 and 2, set out above, the claimant continues to re-run the same arguments which were rejected at PH1. For the same reasons as set out in the judgment in PH1, those arguments are rejected. The same conclusions are bound to be arrived at in relation to this claim against the respondent Trust.

13 As to issue 6, 7 and 8, the claimant argues that Trainee Clinical Psychologists (TCPs) are employees of the Trust, not students. The claimant argues that TCPs cannot be both students and employees. The same arguments were considered and rejected at PH1. Contrary to the claimant's assertion, there is no reason in employment law why TCPs cannot be both students of the University, at the same time as being employees of the Trust. Further, as a result of these arrangements, those TCPs who are successful in their training, are also awarded a PhD; as well as being eligible, as a result of their combined study and training, to apply for

registration with the HCPC. It appears that only the claimant objects to that state of affairs.

- 14 As for issue 22, the same arguments apply. As a result of the findings that the claims were totally without merit, a general civil restraint order (GCRO) has been made. The claimant's current claims against the respondent Trust are also, for the same reasons, totally without merit.
- 15 As for PH3 issue (7), the claimant does not dispute that he has never made an application via the correct process. Instead, he has applied directly to the respondent Trust. For that further reason, the claimant's claim has no reasonable prospect of success. In the circumstances, it is not necessary to consider the question of time limits.

Conclusion

- 16 For all of the above reasons, the claimant's claim is struck out. The claim is also totally without merit.

Employment Judge A James
31 March 2022

JUDGMENT SENT TO THE
PARTIES ON:
.31/03/2022

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