



# **EMPLOYMENT TRIBUNALS**

**Claimant:** Ms Y Zalzala

**Respondents:** Fallowfield Library & Community Resource Centre (1)  
One Manchester Limited (2)  
Manchester City Council (3)

**Heard at:** Manchester

**On:** 25 January 2023

**Before:** Employment Judge Phil Allen (sitting alone)

## **REPRESENTATION:**

**Claimant:** In person  
**First Respondent:** Mr R Willis, former Trustee  
**Second Respondent:** Mr P Tomison, counsel  
**Third Respondent:** Ms C Fumagalli, trainee solicitor

# **JUDGMENT**

The judgment of the Tribunal is that:

1. The claimant's claims for age discrimination against all three respondents are dismissed on withdrawal;
2. The claimant's claims for unfair dismissal against the second respondent (One Manchester Limited) and the third respondent (Manchester City Council) are struck out under Rule 37(1)(a) of the Employment Tribunals rules of procedure, because they have no reasonable prospect of success;
3. The claimant's claims against the second respondent (One Manchester Limited) that she was treated less favourably because of religion and belief (direct discrimination) and that she was harassed on grounds of religion or belief by something said by Sue to her on 17 October 2019 are struck out under Rule 37(1)(a) of the Employment Tribunals rules of procedure, because they have no reasonable prospect of success; and

4. The claimant's other claims against the second and third respondent are not struck out.

## **REASONS**

1. At a preliminary hearing held at Manchester Employment Tribunal (in person) on 25 January 2023, the second and third respondents (One Manchester Limited and Manchester City Council) applied to strike out the claimant's claims on the basis that they had no reasonable prospect of success.

2. At the hearing, the claims being brought were clarified, as is recorded in a separate case management order.

3. The second respondent's counsel made submissions that the claims against the second respondent (One Manchester Limited) should be struck out. The third respondent's representative adopted those submissions on behalf of the third respondent (Manchester City Council). The claimant also made submissions about why her claims should not be struck out.

4. I informed the parties of my decision in the strike out applications during the hearing. However, as there was only limited time available, I did not provide the parties with the reasons for my decision at the hearing. This document records the decisions and the reasons for them.

### **The claims**

5. The claimant undertook the role of library volunteer at The Place from 16 February 2014. The Trustees of the first respondent (Fallowfield Library & Community Resource Centre) made a decision about that volunteering on 3 May 2022. The claimant was informed about that decision on 5 May 2022.

6. The claimant had entered two claims at the Employment Tribunal, which had been joined.

7. The claimant's first claim was entered on 31 August 2022. The claimant named all three respondents on the claim form entered. The claimant provided one ACAS Early Conciliation number. That number was for a certificate which named the first respondent (Fallowfield Library & Community Resource Centre) and recorded that Early Conciliation had been undertaken between 29 and 31 August 2022. The claim against the first respondent (Fallowfield Library & Community Resource Centre) was accepted by the Tribunal. The claims against the second and third respondents (One Manchester Limited and Manchester City Council) were rejected because of the absence of any ACAS Early Conciliation certificates for those organisations.

8. The claimant's second claim was entered on 21 October 2022. The claimant again named all three respondents on the claim form. For the first respondent (Fallowfield Library & Community Resource Centre), the claimant relied upon the same ACAS Early Conciliation certificate number as she had for the previous claim.

For each of the second respondent (One Manchester Limited) and the third respondent (Manchester City Council) numbers were provided for ACAS Early Conciliation certificates which named that organisation and which recorded a period of Early Conciliation from 17-19 October 2022.

### Age discrimination

9. In her first claim the claimant had neither ticked the box to show that she was alleging age discrimination, nor did the grounds of claim include anything which asserted age discrimination. In the second claim, the claimant had ticked the age discrimination box. The claimant had, accordingly, brought an age discrimination claim against all three respondents. At the preliminary hearing the claimant could not recall why she had ticked that box on the second claim form. She did not advance any argument that she had been discriminated against because of her age or suffered harassment related to her age.

10. When asked, the claimant stated that she wished to withdraw her claims for age discrimination, and she accepted that the age discrimination claims would be dismissed on withdrawal.

### The Law

11. I have the power to strike out the claims or parts of them, under rule 37(1)(b) of the Employment Tribunal Rules of Procedure 2013. To do so, I must be satisfied that the claim (or the part of it) has no reasonable prospect of success. The respondent needs to persuade me to exercise my discretion to strike out the complaint or part of it. Striking out needs to be a proportionate sanction.

12. It is relatively rare for claims (or parts of them) to be struck out in the Employment Tribunal. The requirement set down in the rules that the claim must be determined to have no reasonable prospect of success, means that it will be relatively unusual for the requirement to be met. However, the general proposition is that no-one gains by truly hopeless cases being pursued to a hearing. Strike out is not prohibited in discrimination or harassment cases, but extra special care must be taken in such cases as it is very rarely appropriate. If the question of whether a claim has a reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate. I must take the Claimant's case at its highest. What I must do has been set out in decisions in cases such as **Cox v Adecco** UKEAT/0339/19 and **Mechkarov v Citibank NA** [2016] ICR 1121 (a case upon which the second respondent's representative relied).

13. In his written submissions and in his oral arguments, the second respondent's representative addressed various matters which I will not repeat in this decision, albeit that I considered all that he said (in writing and orally). He addressed in detail the arguments around the claimant's status and the legal framework for volunteers (citing **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance** [1968] 2 QB 497, **Nethermere (St Neots) Ltd v Gardiner** [1984] ICR 612, **Melhuish v Redbridge Citizens Advice Bureau** [2005] IRLR 419, **South East Sheffield Citizens Advice Bureau v Grayson** [2004] ICR 1138 and **X v Mid Sussex Citizens Advice Bureau** [2013] IRLR 146). He also made submissions

on the law as it applied to strike out applications and deposit orders (citing **Mechkarov v Citibank NA, Ahir v British Airways** [2017] EWCA Civ 1392 and **Hemdan v Ishmail** [2017] ICR 486).

### **Applying the law to this case**

14. For the claims to succeed, the Employment Tribunal must have jurisdiction to determine those claims. That means that the claims must have been entered in the time required. As the claimant was informed about the decision regarding her volunteering on 5 May 2022, to comply with the primary time limit of three months, the claim must have been entered (or ACAS early conciliation) commenced by 5 August 2022. On that basis, all of the claims against all of the respondents were entered outside the primary time limit for the claims.

15. The test for an extension of time in a discrimination or harassment claim is whether or not the claim was entered in such other period as the Employment Tribunal thinks is just and equitable. That is a test in which all the circumstances of the case are considered, including the balance of prejudice between the parties. It cannot be said that the claimant has no reasonable prospect of success under the just and equitable test, taking her case at its highest.

16. The test for the unfair dismissal claims is, however, a more rigid and strict test. The claim can only be accepted outside the primary time limit if it was not reasonably practicable to have entered the claim in time. The claim must also have been entered in such further period as the Tribunal considers reasonable.

17. The claimant relied upon a period of ill health due to her eyes as explaining why the claim was not entered in time. The operation on her eyes took place in March 2022, which may suggest that the claimant may not find it easy to establish that meant that it was not reasonably practicable to enter her claims in the time required, but that will be a matter to be determined on the evidence. Irrespective of whether or not that explains the failure to enter the claim in the primary time limit, that cannot explain the failure to enter the claims for unfair dismissal against the second and third respondents (One Manchester Limited and Manchester City Council) on or after 31 August 2022, because the claimant was able to present her claim against the first respondent (Fallowfield Library & Community Resource Centre) at the Tribunal on that date. The claims against the second and third respondents (One Manchester Limited and Manchester City Council) were not entered at the Tribunal until 21 October 2022 (almost two months later).

18. In those circumstances, there is no reasonable prospect of the claimant successfully arguing that both it was not reasonably practicable for her to have entered her claims for unfair dismissal against the second and third respondent (One Manchester Limited and Manchester City Council) in the time required, and that the claims were entered in such further period as a Tribunal will consider reasonable. The claims for unfair dismissal against the first and second respondent (One Manchester Limited and Manchester City Council) are accordingly struck out.

19. As is explained below, there is some complexity regarding the relationship between the three respondents and whether the second and/or third respondent

(One Manchester Limited and/or Manchester City Council) might be responsible for (that is vicariously liable for) the actions of those at The Place. However, for one of the factual matters relied upon in claims against the second respondent (One Manchester Limited) for allegations that the claimant was treated less favourably because of religion and belief (direct discrimination) and that she was harassed on grounds of religion or belief, the claimant relies upon something said by Sue to the claimant on 17 October 2019. The claimant asserts that Sue was employed by the third respondent (Manchester City Council). There is no reasonable prospect of the claimant succeeding in an allegation that the second respondent (One Manchester Ltd) is vicariously liable for the actions of an employee of the third respondent (Manchester City Council). Those claims are also struck out against the second respondent (One Manchester Ltd) because they have no reasonable prospect of success

20. Save for the claims already addressed, I was not satisfied that the claims brought had no reasonable prospect of success, taking the claims at their highest and taking account of the extra special care which must be taken in claims for discrimination and harassment. Whilst the second respondent's representative put forward various matters in support of his contention that the claims against the second respondent (One Manchester Limited) had no reasonable prospect of success, I did not find that the prospects of success were that low. Accordingly, the applications made were not successful (for the other claims) and the claimant's other claims against the second and third respondents (One Manchester Limited and Manchester City Council) are not struck out.

21. There is a separate deposit order which addressed the respondents' arguments that the claims against them had little reasonable prospect of success.

22. The second respondent's representative emphasised the legal status requirements for the claimant to be able to pursue her claims. She must be held to be an employee of the relevant respondent as defined by section 230(1) of the Employment Rights Act 1996 (in order for her to be able to pursue her unfair dismissal claims) and as defined by section 83 of the Equality Act 2010 (in order to be able to pursue her discrimination claims). The latter is a wider test than the former. He relied upon authorities (**South East Sheffield Citizens Advice Bureau v Grayson** and **X v Mid Sussex Citizens Advice Bureau**) in which it was established that an unpaid volunteer was found not to fit within these categories, and acknowledged that a key question was whether the agreement between the volunteer and the relevant respondent imposed any contractual obligations on the volunteer to do work in exchange for consideration.

23. In one of the documents which she had prepared, the claimant acknowledged a Supreme Court decision and accepted that decided that volunteers were not employees (I have taken that as being a reference to **X v Mid Sussex Citizens Advice Bureau**). She cited the fact that a volunteer might be able to pursue claims under the Health and Safety at Work etc Act 1974 and the Protection from Harassment Act 1997, but I explained to her that did not assist her with the claims before me as I did not have jurisdiction to consider claims under those Acts. The claimant did however assert that she had entered into an agreement which named the second respondent (One Manchester Limited) and had been prepared by an

employee of the second respondent. She asserted that she was employed by all of the respondents. She contended that she would be able to differentiate her circumstances from those addressed in the Supreme Court case, albeit she had not read that case to know how her circumstances differed.

24. Status cases are all fact-sensitive. The Tribunal who conducts the relevant hearing, will need to consider the circumstances and determine whether the claimant and the role she fulfilled satisfied the definitions in either (or both) of the two Acts. The volunteer cases do not determine that a volunteer can never satisfy the relevant definitions. I cannot discount the possibility that the claimant will be able to prove that the circumstances and any agreement(s) which applied to her engagement might mean that she meets the requirements under either or both of the Employment Rights Act 1996 and/or the Equality Act 2010. She is unrepresented. I have therefore concluded that it cannot be said that she has no reasonable prospect of success in establishing that she is employed under one or both of the definitions, taking her case at its highest.

25. A secondary issue is whether the claimant will be able to establish that she is engaged as required by the second or third respondent (One Manchester Limited and Manchester City Council), rather than the first respondent (Fallowfield Library & Community Resource Centre). It would appear to be the case that it is more likely that the relevant engagement existed between the first respondent (Fallowfield Library & Community Resource Centre) and the claimant, than with the second or third respondents (One Manchester Limited or Manchester City Council). That is certainly the respondents' position (albeit they all assert the claimant was not employed by any of them). However, the complexity of the interrelation between the first, second and third respondents make clear determinations without evidence, difficult. Indeed, the very fact that the second respondent's representative wished to refer me to details of documents, highlighted that the issue is of some complexity.

26. I also noted from the clarification of the claims at the hearing that one of the alleged harassers was an employee of the second respondent (One Manchester Limited), or at least was contended to be. One was also an employee of the third respondent (Manchester City Council) or was contended to be. Mr Willis had also been an employee of the second respondent (One Manchester Limited) and there may need to be some consideration of the different roles he fulfilled for different organisations and for whom he was acting on each relevant occasion (and therefore which of the respondents was responsible/potentially liable for his actions). The position is not clear cut. The claimant will have challenges in establishing that the second or third respondent (One Manchester Limited or Manchester City Council) are responsible for (that is vicariously liable for) any of the matters relied upon (save for where the identified discriminator/harasser is employed by that respondent) but it is not sufficiently clear to determine that the claim has no reasonable prospect of success (with the exception of the one set of facts relied upon for the second respondent - One Manchester Limited).

27. Taking the claimant's case at its highest, I do not think that it can be established that she has no reasonable prospect of successfully identifying that she had one of the relevant relationships at any time with the second or third respondent

(One Manchester Limited or Manchester City Council) and/or that either of them were vicariously liable for some of the matters alleged.

28. The claimant also has some challenges in establishing that: the impairment upon which she relies was long-term and therefore meets the definition of disability; and/or that being a Liberal Democrat and not being a member of the Labour party, falls within the meaning of religion or belief as a protected characteristic under the Equality Act 2010. I must be mindful that the claimant has not been professionally represented at the preliminary hearing. I have decided that it cannot be said that the challenges are such that the claimant has no reasonable prospect of success on either of those issues.

Employment Judge Phil Allen

7 February 2023

JUDGMENT AND REASONS  
SENT TO THE PARTIES ON

8 February 2023

FOR THE TRIBUNAL OFFICE

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