EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr J Johnson	**v**	(1) The Oxford Kilburn Youth Trust (2) Matt Perry (3) Tim Evans (4) John Kinder (5) Susan Turner (6) Brian Everett (7) Andrew Brown (8) Stuart McTurk (9) The Worth Foundation Limited trading as Worth Unlimited (10) Diana Kinder (11) Debbie Garden

Heard at: Watford (by CVP) **On**: 5 & 6 January 2023

Before: Employment Judge George

Appearances
Claimant: In person
For the respondents: Ms L Collignon, counsel – appearing pro bono on a public access basis

JUDGMENT

1. The claim of unfair dismissal contrary to s.94 of the Employment Rights Act 1996 is dismissed on withdrawal.

2. The following claims are dismissed under Rule 37(1)(a) of the Employment Tribunals Rules of Procedure 2013 because there are no reasonable prospects of them succeeding (LOI numbers refer to the numbers on the claimant's list of issues of 19 December 2022):

2.1. Claims of direct race discrimination, race related harassment and victimisation based on the alleged acts in LOI numbers 14, 15, 16, and 19;
2.2. Claims of direct race discrimination, race related harassment and victimisation based on the alleged acts in LOI numbers 12 and 13 insofar as those claims are brought against The Worth Foundation Limited (R9) and Debbie Garden (R11);
2.3. For the avoidance of doubt, that means that all claims against the Worth Foundation Limited (R9) and Debbie Garden (R11) are dismissed because they have no reasonable prospects of success.

3. Worth Foundation Limited and Debbie Garden are removed as respondents to the claims.

REASONS

1. The procedural history of these claims is a little complex. After early conciliation the Claimant presented his first claim on 25 March 2022. It was responded to by grounds of response dated 24 May 2022 on behalf of the Respondents to that claim: the OK Youth Trust Limited, Matt Perry, Tim Evans and John Kinder. At the hearing on 5 & 6 January 2023 I changed the name of the first Respondent to the Oxford Kilburn Youth Trust by consent. To avoid confusion, in these reasons refer to the first Respondent throughout as the OK Youth Trust.

2. A second claim was presented on 08 April 2022 against Susan Turner, Brian Everett and Andrew Brown (committee members of the OK Youth Trust) and Stuart McTurk (a co-worker of the Claimant). Those Respondents defended by a grounds of response entered on 06 June 2022.

3. The third claim was presented on 30 May 2022 against “The Worth Foundation Limited trading as Worth Limited”, Diana Kinder (a committee of the OK Youth Trust) and Debbie Garden (a representative of the Worth Foundation). Those Respondents defended by grounds of resistance on behalf of those three Respondents presented on 25 July 2022.

4. Ms Collignon was representing all eleven Respondents.

5. I have had the benefit of documents provided by both the Claimant and the Respondents. The Respondents had put forward a preliminary hearing bundle that ran to 687 pages and page numbers in that are referred to as RB page 1 to 687 in these reasons. They also provided a bundle of relevant caselaw and a skeleton argument drafted by Ms Collignon (hereafter referred to as RSA). The Claimant had put forward a copy of the 87-page document that sets out his comprehensive complaint about the way that he says he was treated during the course of his employment and shortly thereafter. In addition, he had provided a helpful 9-page case summary which he informed

me contained the nub of his argument. It includes a summary of the applicable law.

6. The Claimant also provided 2 PDFs that had embedded within them what appeared to be other relevant documents: one was a PDF document headed 'emails illustrating respondent is being uncooperative" and another a PDF document headed 'emails showing Matt Perry sent me contract that infringes on my human rights' which is a reference to the allegation at LOI 1. The parties have also done their best to collaborate on a draft list of issues and their respective suggestions were included in the Respondents' bundle. I had also been forwarded them separately.

Applicable Law

7. There was no real disagreement between the parties about the applicable law. The Employment Tribunals (Rules of Procedure) 2013 Sch.1 include the following:

> "**37.— Striking out**
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> (1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—
>
> (a) that it is scandalous or vexatious or has no reasonable prospect of success;
>
> (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
>
> (c) for non-compliance with any of these Rules or with an order of the Tribunal;
>
> (d) that it has not been actively pursued;
>
> (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).
>
> (2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.
>
> …

8. As can been seen from the above, the power to strike out a claim on the ground that it is scandalous, vexatious or has no reasonable prospect of success comes from rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013. It is a power to be exercised sparingly and cautiously, particularly where there are allegations of discrimination and unlawful

detriment on grounds such as protected disclosure or health and safety grounds: Chandhok v Tirkey [2015] ICR 527 EAT.

9. In the case of Anyanwu v South Bank University [2001] IRLR 305 HL, the House of Lords emphasised that in discrimination claims the power should only be used in the plainest and most obvious of cases. It is generally not appropriate to strike out a claim where the central facts are in dispute because discrimination cases are so fact sensitive. The same point was made by the Court of Appeal in the protected disclosure case of Ezsias v N Glamorgan NHS Trust [2007] I.C.R. 1126 CA where Maurice Kay LJ said this at paragraph 29

> "It seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing and evaluating the evidence. It was an error of law for the employment tribunal to decide otherwise. In essence that is what Elias J held. I do not consider that he put an unwarranted gloss on the words "no reasonable prospect of success". It would only be in an exceptional case that an application to an employment tribunal will be struck out as having no reasonable prospect of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant were totally and inexplicably inconsistent with the undisputed contemporaneous documentation. The present case does not approach that level."

10. Furthermore, there is a public interest in ensuring that allegations of discrimination are heard and determined after appropriate investigation of the circumstances because of the great scourge that discrimination, whether on grounds of race or other protected characteristic, represents to society. It is relevant to bear in mind that s.136 of the Equality Act 2010 (hereafter referred to as the EQA) provides for a shifting burden of proof. Therefore at this preliminary stage the question is whether the claimant has no reasonable prospect of establishing the essential elements of his claim, taking into account the burden of proof in respect of each of those elements and bearing in mind the danger of reaching such a conclusion where the full evidence has not been heard and explored: see Underhill LJ in Ahir v British Airways Plc [2017] EWCA Civ 1392 para.16.

11. That said, where it is plain that a discrimination claim has no reasonable prospects of success (interpreting that high hurdle in a way that is generous to the claimant), then the tribunal does have and, in a plain and obvious case, may use the power to strike out the claim so that the respondent and the tribunal system are not required to spend any more resources on a claim which is bound to fail: Anyanwu para.39 per Lord Hope. Such an example is given in the quotation from Ezsias.

Discussion and Conclusions

12. The Claimant's list dated 19 December 2022 was numbered in 19 chronologically sequential paragraphs which set out the core allegations that he makes or wishes to make. It is paragraph numbers in that list of issues that I refer to in these reasons when I say LOI number 1 or as the case may be.

13. The issues that have been listed for consideration at this preliminary hearing were set out in Employment Judge Maxwell's Order (RB page 273). That was made at a time where there was only one claim before the Judge. I consolidated that with the two subsequent claims on 16 November 2022 and directed that this hearing should consider the issues listed for hearing by Judge Maxwell in relation to all three claims. Those were (1) clarification of the Claimant's claims (2) whether any should be struck out under rule 37 of the Rules of Procedure 2013 (3) where there should be deposit orders under rule 39 and (4) any consequential case management.

14. During the course of clarification of the Claimant's claims, it became apparent that there was an outstanding application to amend that had been made on 19 December and I therefore heard submissions on that as well. I decided the amendment application first and allowed it in part for reasons which are set out in the Record of Preliminary Hearing which accompanies this Judgment with Reasons. I gave permission to the claimant to add the OK Youth Trust as a respondent to LOI numbers 11,12,13 and 14 but otherwise refused the application. I then went on to give my decision on the application for claims to be struck out and these are the reasons for my decision on that application. A separate order is sent in relation to the deposit application.

15. The claims arise out of the Claimant's employment by the OK Youth Trust as a team leader. This started on 01 February 2022 and ended, according to the OK Youth Trust, on the 28 April 2022 when they terminated his employment with immediate effect. The Claimant stated in claim 3 that his employment ended with effect on 30 April. That dispute is not one I need to resolve at the open preliminary hearing.

16. The Claimant addressed me on each of the list of issues chronologically. The Respondent group the allegations them into six categories. I have found it helpful to consider the allegations in categories but have grouped them in a different way to Ms Collignon.

17. The first group I consider are LOI numbers 1 to 4 which are about a number of different alleged aspects of management by R2 of the Claimant. The second group are LOI numbers 5 to 13. I think similar considerations apply to the merits of those allegations because they all appear to concern the precursor to the Claimant's suspension and the decision to dismiss him. LOI number 14 stands on its own. LOI numbers 15, 16 and 19 can be viewed separately. I refused permission for LOI numbers 17 & 18 to be added by amendment.

18. I start by considering whether the allegations of race discrimination and/or race related harassment based on LOI 1 to 4 have no reasonable prospect of success. As I say, these concern aspects of management by R2, who was then the Claimant's line manager:

    a. LOI 1 is the allegation that R2 provided a draft contract that included a particular clause, clause 1.2 which, as originally drafted, provided:

> "The organisation reserves the right at its entire discretion to terminate your employment at any time by giving you not less than **one month's** notice in writing. This could occur for operational reasons, or for any other reason that the organisation deems appropriate."

b. The second complaint is about an alleged failure to disclose a previous allegation of race discrimination by former employee.

c. The third, in summary, is that of an alleged delayed response to a request for funds which is contrasted with the quick response said to have been on the request made by phone call by the claimant's white colleague, Mr McTurk.

d. The next is said to be an unreasonable scrutiny of an arts proposal put forward by the claimant.

19. The contract term the subject of LOI 1 is said by the Respondents to be a standard term and therefore that, whatever its merits or demerits as a term, it has no reasonable prospects as a complaint of less favourable treatment or unwanted conduct related to race. They have produced for this hearing other draft contracts and other individuals' contracts. The claimant objected to the term because he says, with some justification, that to the extent that it is appears to set out to give an employer the power to dismiss for any reason regardless of length of service, the fact of it is contrary to UK law regarding employment rights.

20. It is common ground that the respondent immediately removed the proposed clause and the contract in its final form did not include it. The claimant signed it in the revised form.

21. I have read the correspondence about the arts proposal and it seems largely unremarkable. It does not immediately raise questions about the reasonableness of the respondent's approach which they might need to explain. Whether or not as a matter of fact there was a particularly quick response to a request for funds by Mr McTurk is a matter for evidence.

22. As to LOI 2, the respondent says that the reason for the non-disclosure was that the allegation was unfounded. The argument that non-disclosure to applicants generally was a detriment is weak. However, the allegation is that there was non-disclosure to the claimant because where there would have been disclosure to a white applicant.

23. I do bear in mind the way in which the claimant has articulated the connection with race in this matter. He argues that the failure to disclose shows a sensitivity to race on the part of UK Youth Trust. He explained that his perspective is he was seen as a *black* employee, because the respondent, given their position and their role within the community, needed a team leader that reflected the ethnic diversity of the community served by them. The point the claimant seemed to me to be making was that these matters show that he was seen as a black employee not as an employee as an individual. His

perspective should be given full weight. The events of LOI numbers 1 to 4 pre-date R2's stated discovery of the claimant's alleged lack of honesty and his previous history so the points made by the respondent about there being an obvious and well-documented explanation for the actions are inapplicable here.

24. It seems to me that it is impossible to say, partly because of the way the claimant articulated that connection, that there is no basis at all for the claimant's allegations. That also deals with the suggestion from Ms Collignon that these allegations should be found to be scandalous or vexatious and struck out for that reason. That is not an appropriate view of these allegations at all and I dismiss the application insofar as it rests on the argument that the claim is scandalous or vexatious.

25. Furthermore, I am not satisfied that there are no reasonable prospects of the claimant succeeding in showing that he was offered a contract that was more restrictive than a white employee would have been offered, or that there was a delayed response to a request for funds or greater scrutiny of his proposal than was or would be given to a white colleague. This seems to me to be exactly the kind of case where those aspects of management are something that need to be investigated on the facts and about which it cannot simply be said that there are no reasonable prospects of success.

26. The next batch of allegations are brought as allegations of direct race discrimination and/or race related harassment in the alternative. LOI 9 onwards are also brought as victimisation claims based upon the alleged protected act of the claimant's grievance. It is highly likely that the claimant will show that grievance (RB page 463) to have been a protected act. The allegations are:

    a. LOI 5 - the accusation that R2 confronted the claimant with the suggestion that he not been honest on his application form and that might lead to action in that effected his employment,

    b. LOI 6 to 8 – these concern the 22 March 2022 suspension and what the respondents describe as the consequent postponement of consideration of the claimant's grievance (but which the claimant characterises as a refusal to meet with him and ignoring his concerns about R2's behaviour),

    c. LOI 9 and 10 - locking the claimant out of his work email account and removing him from WhatsApp group. The respondents say these were a consequence of suspension and therefore rely on essentially the same arguments for those as they do in relation to LOI 8;

    d. LOI 11 - an alleged refusal to review the suspension by members of the committee;

    e. LOI 12 - dismissal and

f. LOI 13. This can be considered with the above because of the reason why the respondents say why the grievance was not proceeded with when they were investigating alleged concerns about employment history which were urgent because of the possibility of safeguarding issues.

27. The respondent's arguments are articulated in RSA paragraph 26. They say that their evidence will be that a conversation between R2 and an individual from Young Brent Foundation alerted R2 to the likelihood that the claimant had been employed by entities not disclosed to the OK Youth Trust on his application form. In particular, that he had formerly been employed by Young Brent Foundation. The Respondents will say that this alerted R2 to the suspicion that the claimant may not have given a full employment history when applying for his role as team leader.

28. The application form is at RB page 291. In particular, a section on employment history starts at RB page 293. One of the matters relied on by the OK Youth Trust is that the claimant stated (second row down) that from August 1996 to the (then) present day he was engaged with an employer called Platform of Creativity. In their subsequent investigations OK Youth Trust discovered that the limited company of that name was no longer registered. The respondents also draw attention to RB page 296 where the question is asked 'Has there ever been any cause for concern regarding conduct with children or young people or vulnerable adults? Please include any disciplinary action taken by an employer in relation to your behaviour with adults.' The claimant has answered 'no', and there is a box given to provide details if he had answered 'yes'.

29. Moving forward in the chronology, R4 investigated the employment history and his report is at RB page 534. In it he set out in detail and highlighted in colour coding employments that the respondents say have not been disclosed to them. They say that gave them a reasonable grounds to think there had been a lack candour on the part of the claimant. In particular, R4 includes on RB page 535 details from an Employment Tribunal judgment dismissing a claim the claimant had brought against the London Borough of Hackney arising from employment at the Benthal School. I am going to quote the section from paragraph 133 of that Tribunal judgment quoted by R4 (RB page 536):

> "At para 133 the Tribunal made the following finding
>
> Under 14.1.1 we find that the disciplinary was in no respect whatsoever tainted by any considerations of the claimant's gender. We find that the sole reason for the process was the legitimate and reasonable concern of the respondent that the claimant had committed a serious convention of its safeguarding policies possibly for personal gain."

30. R4 goes on in his report to refer to the question in the application form that I have already quoted in para.28 above. He put forward the opinion that the claimant's answer 'no' to that question conflicts with the findings of the Employment Tribunal that he had been dismissed - rightly or wrongly - for

safeguarding concerns. The safeguarding concerns that were referred to in the Employment Tribunal judgment were of taking photographs of school children and the claimant had been dismissed for publishing those without permission. This is the most stark of the examples set out in R4's report.

31. In RSA paragraph 29 the respondents set out their arguments why safeguarding matters are of particular sensitivity and importance to this trust because of the work they do with vulnerable children and young people. This is the basis of their arguments that the evidence that they had discovered provided them not only with a concern but very obvious and stark evidence that there was, first, a potential safeguarding risk concerning a newly appointed member of staff and secondly, a lack of candour, or indeed, dishonesty in his application form. It is that which they argue led to undermining the trust they needed to have in him.

32. That is the respondents' defence to the allegations. I remind myself that I am not at this stage conducting a mini trial. The respondent argues that these matters, particularly their reliance upon findings of an Employment Tribunal which were binding upon the claimant, are so clear that it amounts to the kind of "straightforward and well-documented innocent explanation for what occurred" referred to by Underhill LJ in para.24 of Ahir such that the claims should not be allowed to proceed.

33. The claimant has set out the basis on which he says that, notwithstanding those matters, he considers it likely that he will succeed in showing that the decisions made by the respondent in relation to suspension and dismissal and so on can be inferred to have been tainted by race or unlawful victimisation. His argument focused heavily on the alleged full disclosure that he says he made in interview. The details that he provided in his argument are not set out in any witness statement but I take them into account nonetheless.

34. He said that he made very clear to the respondent in interview that he is a project manager who specialises in going into youth and development organisations and in adding value in what exists in those organisations. That involved him having a unique employment history where, from time to time, he had both acted as a consultant and an employee. His account is that he explained in interview that he can be engaged as a consultant but also, while making recommendations in that capacity, go into the organisation and serve in some (presumably employed) capacity. He stated that he had told the respondents in interview that it was on that basis that he was involved in the Benthal School. The claimant's case is that he made this very clear in interview. Before me he described having an extensive conversion where he brought up that, because of that situation, he had been in conflict with employers and had been in situations where he had to take employers to the Tribunal. He had explained in interview that he had been initially scared of doing so but when he found, that discrimination was commonplace, he thought he had to hold individuals accountable. He said that he had made clear that Platform Creativity had operated partly unregistered and partly as registered and had provided a full explanation as given in interview for that

particular description of him having been involved in organisation over the length of time indeed post-2012.

35. He also went on to say that where he is taking an organisation to the Employment Tribunal he regarded that as being the equivalent to him disciplining them. He stated "if I am taking an organisation to the Employment Tribunal and they come back it is obviously retaliation there is always going to be a push back with false claims" including, he suggested, a push back that he is a safeguarding risk. His argument before me was that he presented it all extensively in interview and that was why he regarded it as shocking that the OK Youth Trust did not disclose the allegation of discrimination that had been made against them.

36. In paragraphs 34 & 35 I have set out the details that the claimant provided in argument about what he had said in interview. He didn't expressly say this in so many words but taken at its height, it sounded as though what he was trying to get across was that he had disclosed in interview that he had been involved in Employment Tribunal claims and had been a subject of false allegations as a result. The inference I draw from that is that he rejects the finding of the Tribunal judgment I set out at para.29 above as having been made on the basis of false and retaliatory accusations by those at the Benthal School. It is binding upon him nonetheless and the respondents, with justification, argue that the fact that the claimant continues to dispute the findings does not make his answers on the application (see para.28 above) accurate.

37. There is some level of factual dispute here about whether the claimant had indeed said all of that at interview. I presume, in his favour, that he would give that evidence in a sworn statement. R2's handwritten notes of the interview have been produced (RB page 301). They do appear to record that something was said about gaps in employment and consultancy status. The claimant was then asked by R2 to provide full details of his employment history in an exchange of emails in February 2022 and in that response he did not provide the details of the employers discovered by R4. Neither did he provide the full detail of what he now says in interview within his written appeal against dismissal (RB page 541 with the relevant section at 555).

38. These were occasions when one might have expected that he would seek to rely upon his account of the interview or to provide further information if he had already made full disclosure in a way that made the respondents' concerns ridiculous in some way. If the matter proceeds to a final hearing, the claimant would likely be asked to explain that.

39. A separate point made by the claimant relies on the exchange of emails prior to appointment embedded in pages 1 and 2 of the claimant's case summary. In essence, he states that the job offer was originally made on 20 December 2021: he had encouraged the respondent to make background checks and gave them more than a month to do so before chasing matters up. They had responded that the background checks were satisfactory.

40. His argument is that the disclosure he made in interview together with the opportunity the respondents had to make background checks should have led them to have enough information. It follows from that, argues the claimant that when they put forward their professed reasons for the actions they took there is significant doubt about them. It is these matters which would be relied on at final hearing as the basis for an argument that the respondents' explanation should be rejected and the inference of discrimination made.

41. The respondents argue that it is highly improbable that the claimant will show that he disclosed enough information in interview as he says. In part, they argue that had he given full disclosure of the matters that Mr Kinder discovered and set out in report, it is unthinkable that the respondent would have recruited him. They also argue that if no individual names of employers were disclosed, background checks would not assist the respondent so the claimant's argument about the time available to do so is specious. The argument has more merit in relation to the previously undisclosed employers. I comment that this could well have produced the information in R4's report about Platform of Creativity.

42. I first conclude that there is clearly a factual dispute about what was disclosed in interview. The claimant's assertion that he made that oral disclosure is improbable given the contents of his application form. It is inconsistent with his email of 24 February 2022 and with the essential improbability of the respondent recruiting him notwithstanding that disclosure. The claimant points to a lack of any investigation meeting to give him an opportunity to put forward his explanation prior to the decision to dismiss. That has some merit as an argument, it does require an answer notwithstanding the claimant's short service.

43. I bear in mind that section 136 EQA provides for a shift in the burden of truth. All the claimant has to show are facts from which, in absence of any other explanation, the Tribunal might infer that he has been subjected to unlawful treatment. In my view there is an arguable prospect, given all of the above points, that at a final hearing the respondent may have to prove through cogent evidence that the suspension and dismissal and other actions associated with those steps were not victimisation or discrimination but done because of their genuine concerns. For these reasons I do not conclude that there are no reasonable prospects of the claimant succeeding in LOI numbers 5 to 13. That would require me to be satisfied there are no reasonable prospects of the respondents showing cogent eviddcne aht they would not have taken a more lenient approach with a white employee and I am not so satisfied.

44. There remains, then, LOI number 14 where the allegation is that of ignoring the appeal. This seems to me something the claimant is not likely to show occurred as a matter of fact. By the email at RB page 615, R3 asked the claimant to write with comments on the decision to dismiss within 7 days so he could reconsider it. It seems to me that there are no reasonable prospects of the claimant establishing the underlying fact that R3 or anyone at the OK Youth Trust ignored the appeal. He may not have been happy with the

decision but the allegations that ignoring the appeal and, therefore, there are no reasonable prospects of that particular allegation being made out.

45. Finally, I move on to LOI numbers 15, 16 and 19. This concerns the question of the claim against The Worth Foundation Limited (R9) and against Debbie Garden (R11), a representative of Worth. I refer to but do not repeat the explanation of the connection between the OK Youth Trust and Worth in paras.34 to 37 and 49 of the Record of Preliminary Hearing where I set out my reasons for rejecting the amendment application in relation to Worth. There is no contract with Worth, in order for there to be claim with reasonable prospects of success, the claimant has to show there are reasonable prospects of bringing Worth within either the Part 5 of the Equality Act 2010 (which covers discrimination in work and occupation) or the additional jurisdictional sections in Part 8.

46. Had the claimant been complaining of the conduct of Debbie Garden of Worth in her capacity as an interviewer in the recruitment process by R1, I could see that it would be arguable that Worth or she, were agents under s.110 EQA. But that is not the accusation: these are claims brought within claim 3 and arise from actions post-dating the issue of claim 2 on 8 April 2022. The accusation the claimant makes in LOI number 19, in particular, is that Ms Garden and, therefore, Worth did not volunteer knowledge of the previous full disclosure the claimant claims he made in the December interview. He alleges that they failed to do so when they would have disclosed it had it been a white employee in materially the same circumstances or because the claimant had brought a grievance against OK Youth Trust.

47. When one articulates the allegation in that way it is obvious that the allegation has no reasonable prospects of success. First, it is implausible (but not impossible) that the claimant made that alleged full disclosure. However, the reason I conclude that the claim has no reasonable prospects is that as a prospective witness to an investigation that had not happened, Garden (and therefore Worth) were not acting as an agent of OK Youth Trust. I simply cannot see any rational basis on which the claimant can argue, in relation to the alleged acts he complains about within claim 3, that Worth or Garden were acting as agents of the only entity against whom he has a primary complaint under Part 5 EQA, namely OK Youth Trust.

48. It seems to me that there are no reasonable prospects of the claimant succeeding against Worth or R11 in relation actions alleged against them under any of LOI numbers 12 through to 16 or 19 and those are all of the matters alleged against them in claim 3. There is no viable claim against those two respondents, and they will be dismissed from these proceedings.

49. That leaves LOI numbers 15, 16 and 19 as against Diana Kinder, the committee member under s.110 EQA as an employee or agent of R1 who were, in this instances, said to be acting through the committee. I refused the application to amend the claim to add the OK Youth Trust as a respondent to those allegations and they have been dismissed as against Worth and Garden.

50. The nub of LOI numbers 15 and 16 is a complaint about the OK Youth Trust (acting through the committee) allowing direct contact about the appeal and about the return of belongings from Mr Evans (R3) and Mr Kinder (R4) to the claimant. LOI number 19 is about not volunteering information (as it was in respect of the claim as against R9 and R11).

51. In addition to the concerns I have already expressed about the merits of LOI Number 19 and about the merits in general, the idea that committee members subjected the claimant to race discrimination or victimisation by authorising Mr Evans who was subjected to the grievance to contact him about a possible appeal or authorising Mr Kinder to recover belongings after the claimant had been dismissed I consider to be utterly fanciful. The idea that Diana Kinder in not volunteering some knowledge that she said to have had did so for any unlawful reason and I also consider to be utterly fanciful. Those specific allegations have no reasonable prospects of success so are dismissed in their entirety.

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Employment Judge George

Date: …6 March 2023………………..

Sent to the parties on: 6/3/2023

NG
For the Tribunal Office