Case No: 2200502.2023

EMPLOYMENT TRIBUNALS

Claimant: Mr J Penalva

Respondent: Tes Global Limited

Heard at: London Central Employment Tribunal by CVP, in public.

On: 5 September 2023

Before: Employment Judge Wisby (Sitting Alone)

Representation

Claimant: Not in attendance

Respondents: Mr R Ryan (Counsel)

RESERVED JUDGMENT FROM RECONSIDERATION HEARING AND PRELIMINARY HEARING

1. The Claimant does not allege that he was a worker or employee of the Respondent. The Tribunal does not have the jurisdiction to consider a complaint by the Claimant under the sections of the Employment Rights Act 1996 inserted by the Public Interests Disclosure Act 1998.

2. The Claimant does not allege that he was a worker or employee of the Respondent nor an applicant for a role with the Respondent. The Tribunal accordingly does not have jurisdiction to consider claims from the Claimant against the Respondent under sections 39, 40 and 41 of Part 5 of the Equality Act 2010.

3. The Respondent is an employment service provider as defined by s56(d) Equality Act 2020 and accordingly the Tribunal does have jurisdiction to consider the Claimant's complaint under section 55 Equality Act 2010.

4. The claim is struck out under Rule 37((1)(b) on the basis that the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious.

HEARING SUMMARY AND REASONS

1. On the basis that the Claimant did not attend the hearing, is concerned about bias and an oral judgment was not given, a full background for clarity has been set out below.

Background

2. On 19 May 2023 the Claimant's claim was struck out for the reasons set out in the Judgment of that date.

3. On 20 May 20023 the Claimant applied for the Judgment dated 19 May 2023 to be reconsidered. The application was as follows:

"APPLICATION FOR RECONSIDERATION OF THE JUDGEMENT

I am hereby respectfully requesting this Tribunal to reconsider the judgement it issued yesterday on the following grounds:

a) I have explained to the judge that the Respondent is an active, essential and crucial member of the hiring process of my job applications for a number of positions as Headteacher (an anothers) in a series of international schools. Therefore, this Tribunal has jurisdiction to hear this case.

b) The case is that, during the hiring process, I have been an object of discrimination after reporting malpractice (Public Interest Disclosure). Therefore, this is a clear-cut case of discrimination in the hiring process.

c) In the judgement, the judge Wisby has issued an inconsistent judgement. The judge has blatantly followed the Respondent's statement, even when it's based on false evidence and no good reasons. Likewise, the judge has ignored the Claimant's statement and, oddly enough, distorted and concealed his main points.

Further inconsistencies in the Judgement. In Reasons of the Judgement point 5, the judge says: "The Claimant lives in Turkey". Such a statement is false. That mistake is due to the fact that the judge has blatantly followed the Respondent's applications. On 4th March 2023, I sent to the Tribunal my postal address. Such note has fallen into oblivion because the judge has blatantly followed the Respondent's applications. Thus, in 11th February 2023, the Respondent wrote that the Claimant lives in Turkey. In the ET3 (point 13), the Respondent insists on the fact that the Claimant lives in Turkey.

There are further particular on the Respondent's attitude and unlawful behaviour to be considered. Since the very beginning, the Respondent has considered him/herself as the one who speaks 'in the name of the law and of justice' and has displayed a patronizing behaviour and a disrespectful, humiliating conduct towards the Claimant. On that basis, the Respondent denies the Claimant any Rights to bring his claim to the Tribunal. Following such an attitude, over the course of the interview, the judge Wisby displayed a

patronizing attitude towards me – yet it was not aggressive, as the Respondent's. She referred a number of times to the fact that I am not a lawyer nor English is my first language, and she treated me as I was stupid because of that, namely: because I am not a lawyer and English is not my first language (i.e., because I am of a different nationality).

Plus, further inconsistencies in the management of this case. During the procedure of this case, the judge Glennie has favoured the Respondent (of British nationality and a power institution in London) and has systematically followed the Respondent's applications, avoiding the Claimant's applications.

Based on the above mentioned grounds, I am respectfully appealing the judgement this judge has delivered. I am respectfully requesting:

a. The judgement to be annulled.
b. The judge/s of this case to be recused for lack of impartiality.
c. Ordering a new Hearing to consider this case.
d. The video-recording and/or audio-recording of the Hearing by the Court, a recording that should be provided to both the Claimant and Respondent by the Court. This is a necessary requirement for a fair Hearing.

I am also informint the Tribunal that on Monday I will submit my appeal to this judgement to the Employment Appeal Tribunal."

4. After initial consideration of the reconsideration application the following was sent by the Tribunal to the parties:

"Following the Claimant's application dated 20 May 2023 and an initial consideration, since the Claimant does not allege that he was a worker or employee of the Respondent, nor a candidate for a role working for the Respondent, Employment Judge Wisby's provisional view is that there is no reasonable prospect of the decision being revoked in respect of the Employment Tribunal's' jurisdiction to consider a complaint by the Claimant under the sections inserted into the Employment Rights Act 1996 by the Public Interests Disclosure Act 1998. On the same basis Employment Judge Wisby is of the same provisional view in respect of the Tribunal's jurisdiction to consider claims from the Claimant under sections 39, 40 and 41 of Part 5 of the Equality Act 2010.

Employment Judge Wisby however, does provisionally consider that the Claimant's application dated 20 May 2023 should proceed in order to consider whether the Tribunal has jurisdiction to consider the Claimant's complaints of discrimination because of religion or belief under section 55 Equality Act 2010. The Respondent submitted that the Claimant does not have standing to advance a claim under Part 5 of the Equality Act 2010 but whether the Respondent is an Employment service-provider, as set out in section 55 and section 56 Equality Act 2020, was not specifically referred to at the hearing.

Where the Claimant lives has no bearing on the decision taken at the hearing on 19 May 2022, as the Tribunal did not go on to consider territorial jurisdiction.

The ET1 stated the Claimant's address as being in Turkey but since it is disputed by the Claimant that he lives in Turkey, Employment Judge Wisby can remove that sentence from the Judgment that was issued on that day.

Employment Judge Wisby, having considered the application made by the Claimant for her to recuse herself does not grant that request. The reference made to the Claimant not being a lawyer and English not being the Claimant's first language was in the context of asking the Claimant if he understood the explanation given for the decision and whether the Claimant had any questions about that decision or needed any clarification about what had been said. This was not inappropriate conduct. Any reconsideration hearing will be carried out by Employment Judge Wisby in accordance with the Employment Tribunal Rules of Procedure on reconsideration of Judgments.

Employment Judge Wisby agrees with the position set out to the Claimant by Employment Judge Glennie on the recording of tribunal hearings."

5. Both parties were asked to write to the Tribunal setting out their views on whether the application could be determined without a hearing.

6. On 23 May 2023 the Respondent responded to the Claimant's reconsideration application (in correspondence crossing over with the response sent above by the Tribunal) as follows:

"The Respondent objects to the Claimant's application for reconsideration of the Tribunal's judgment of 19 May. As Employment Judge Wisby explained to the Claimant at the preliminary hearing, the Claimant simply does not have standing to bring a claim against the Respondent in the Employment Tribunal. It was, therefore, entirely appropriate, and in accordance with the overriding objective, for the Claimant's claim to be struck out on the basis that it has no reasonable prospects of success. It is not in the interests of justice (per rule 70 of the ET rules) to reconsider that decision.

The Claimant's application is misconceived and the Respondent respectfully submits that the Claimant's application should be rejected.

The Respondent takes exception to the Claimant's comments below about the conduct of the Respondent and/or its representative in the course of these proceedings. The Respondent is entitled to defend itself against the Claimant's claim and it has acted professionally and appropriately in doing so.

We would like to highlight that the Respondent's representative received the attached email on 19 May. It contains abusive language similar to language the Claimant used in his emails to the Respondent's staff, as referred to in the Respondent's grounds of resistance. The email was sent either as the preliminary hearing was drawing to a close, or immediately after it concluded. Although the email was sent from a different email address to the Claimant's, we are concerned that the email may have been sent either by the Claimant, or someone else at the instruction of the Claimant, given the language used in the email and the timing of it. All of the rights of the Respondent and its representative in this regard are expressly reserved."

7. The attached email was as follows:

"From: Mas Massadu
Sent: 19 May 2023 14:43
To: Ryan Stringer

EXTERNAL

Hi Ryan
You are just eating the balls of your client to get money.
A eating-ball attorney."

8. The Claimant responded to that correspondence the same day as follows:

"I.

Replying to the Respondent's email (below): the Respondent is tampering and slandering the Claimant. This is in accord with the despotic and authoritarian behaviour they display. This new evidence will be included in my final report of this case, which will out in the media.

II.

Further to my previous email where I apply for a reconsideration, I am also including the following text, which was submitted in my appeal to the EAT:

Further particular on the Respondent's attitude and unlawful behaviour

8. Since the very beginning, the Respondent has considered him/herself as the one who speaks 'in the name of the law and of justice' and has displayed a patronizing behaviour and a disrespectful, denigrating conduct towards the Claimant. It offers no evidence; it only denigrates the Claimant. On that basis, the Respondent denies the Claimant any Rights to bring his claim to the Tribunal. For instance, see File 3, which is the first communication the Respondent sent to the Tribunal. It displays such an attitude and, furthermore, it's full of inconsistencies: it says that for the Preliminary Hearing I would need permission to give evidence from abroad, which is incorrect. Etc. See also ET3: it displays such an attitude and it's full of false statements.

*9. On 12th May 2023, one week before the Preliminary Hearing, the Respondent sent to the judge a Bundle of documents to be considered in this Hearing (**File 4**). Following that email, I replied to the ET and the Respondent that "For the Preliminary Hearing there is no need for a Bundle, as there is no Case Management Order yet". (**File 5**).*
Furthermore, such a Bundle is a partial, biased selection of documents submitted to the ET, playing in favour of its maker (i.e., the Respondent). The thing is that, funny enough, during the course of the Hearing, the judge blatantly followed such a Bundle as if it was 'the authority'.

*10. On 19th May 2023, two hours before the Hearing, the Respondent sent an email to the Tribunal (**File 6**). Following this email, I wrote back to the Tribunal (**Files 7-8**):*

> *I am replying to the email that the Respondent has just sent.*
>
> *First. The Respondent has sent this email in less than two hours before the Preliminary Hearing. In that email, the Respondent has added new files to the case and has requested the Tribunal to be included in the Preliminary Hearing. It gives no time to the Claimant to react. This shows an unlawful attitude and will.*
>
> *Second. The Respondent has included two cases. Both of them are not firm. Both of them have been appealed to the EAT. In both cases, the judges of the case incurs perversion of justice - and have been reported. Therefore, those files are irrelevant.*
>
> *Third. In any case, those cases have nothing to do with the case this Tribunal is considering. Therefore, the intention of the Respondent of trying to make them relevant to this case is wicked. It reveals an unlawful attitude and will.*
>
> *Therefore, I reject the Respondent's application and request the ET not to consider it.*
>
> *I am adding to my previous email:*
>
> *The Respondent has sent this email in less than two hours before the Preliminary Hearing. Yet the files they have attached are irrelevant to this case, the Respondent is telling the Claimant that his claim has no prospects of success. I take that email and a coaction to pressure me to withdraw my claim. That is an illegal action. This behaviour of coaction that the Respondent displays is more proper of a mafia organization than of an educational one. This behaviour is in line with the despotic attitude and authoritarian style that the Respondent has used in my case since the very beginning.*

11. At the end of the Hearing, the judge said:

> *Judge Wisby asks to the Respondent: "Mr Ryan, **I read your application**. Is there anything-, You have a brief, very brief opportunity to make any further point? Otherwise, I would take it-"*
>
> *Respondent, Ryan Stringer: "The Claimant's personality [referring to the Claimant's statements during this Hearing] confirms that the claim must be struck out. [This sentence has been said in a disrespectful manner]. I understand you are considering the full grounds I have set out. If you are going to consider the progress on the ground of the scandalous behaviour I have lots of things to say. But I understand you are only going to look to the jurisdiction aspect. Is that correct?*
>
> *Judge Wisby: "Yes".*
>
> *Respondent: "On that basis, I have nothing to add. Thanks".*
>
> *Judge Wisby: "Thanks".*

This fact shows that the Respondent displays a denigrating behaviour towards me and that the judge Wisby allows such denigration, and even thanks the Respondent for that – which is wonderful and very educational.

In this regard, over the course of the interview, the judge Wisby displayed a patronizing attitude towards me – yet it was not aggressive, as the Respondent's. The judge Wisby referred a number of times to the fact that English is not my first language, and for that reason, and embedding a great degree of aplomb and self-confidence, she treated me as I was stupid because of that, namely: because English is not my first language (i.e., because I am of a different nationality).

III.

Furthermore:

6. Regarding what the judge Wisby says, namely: that the Respondent said that my account in TES was deactivated in October 2021 (Reasons 7; the judge insisted on this matter in the minute 28 of the Hearing), the facts are as follows:

*(i) T**his statement by the Respondent shows that I was blacklisted. This is clear-cut evidence of discrimination**.*

(ii) I didn't know when my account in TES was deactivated. The Respondent didn't communicate that action to me. In the Hearing, the Respondent didn't offer any evidence.

*(iii) I explain to the judge that, in any case, that information – namely, that my account could have been deactivated in October 2021 – is irrelevant for a reason to striking-out my claim because the fact is that **I haven been applying for jobs position from that moment to the present time, and I am still being discriminated against by the Respondent**. Even this very week, I have been discriminated against in the hiring process of some international school due to the blacklisting the Respondent has made. **Therefore, the discrimination still goes on**.*

*7. Further inconsistencies in the Judgement. In Reasons of the Judgement point 5, the judge says: "The Claimant lives in Turkey". Such a statement is false. That mistake is due to the fact that the judge has blatantly followed the Respondent's applications. On 4th March 2023, I sent to the Tribunal my postal address (see **File 2** attached). Such note has fallen into oblivion because the judge has blatantly followed the Respondent's applications. Thus, in 11th February 2023, the Respondent wrote that the Claimant lives in Turkey (**File 3**). In the ET3 (point 13), the Respondent insists on the fact that the Claimant lives in Turkey.*

IV. The basic point

a) The Respondent is an active, essential and crucial member of the <u>hiring process for a job position</u> for a number of positions as Headteacher (and others) of national and

international schools. Therefore, according to the regulations in the UK, this Tribunal has jurisdiction to hear this case.

b) The case is that, during the hiring process, I have been an object of discrimination after reporting malpractice (Public Interest Disclosure). Therefore, this is a clear-cut case of discrimination in the hiring process for a job position.

c) In the judgement, the judge Wisby has issued an inconsistent judgement. The judge has blatantly followed the Respondent's statement, even when it's based on false evidence and no good reasons. Likewise, the judge has ignored the Claimant's statement and, oddly enough, distorted and concealed his main points.

V. Based on the above mentioned grounds, including the email of reconsideration I sent previously, I am respectfully requesting:

a. *The judgement (issued on 19th May 2023) to be annulled.*
b. *The judge/s of this case to be recused for lack of impartiality.*
c. *Ordering a new Hearing to consider this case.*
d. *The video-recording and/or audio-recording of the Hearing by the Court, a recording that should be provided to both the Claimant and Respondent by the Court. Alternatively, the Tribunal can allow the Claimant the audio-recording. In any case, this is a necessary requirement for a fair Hearing*."

9. On 24 May 2023 the Claimant responded to the Tribunal's letter of 23 May 2023, the relevant parts for the purpose of today's hearing are as follows:

"Jurisdiction

1. This Tribunal has jurisdiction to hear this case under section 55 and 56 of the Equality Act 2010. The Respondent is an Employment Service-provider. The Respondent is an active, essential and crucial member of the hiring process for a job position for a number of positions as Headteacher (and others) of national and international schools. The case is that, during the hiring process of hundreds of applications, I have been an object of discrimination because of my belief in the idea of meritocracy, which is a philosophy belief, and 'qualifying disclosure' (protected in section 43B, Employment Rights 1996). Therefore, this Tribunal has jurisdiction for this case under Equality Act 2010, 55-56, and Employment Rights 1996, 43B.

Evidence

2. Reason 7 of the judgement shows that the Respondent agrees that my account in TES was deactivated in October 2021. ***This statement by the Respondent shows that I was blacklisted. This is clear-cut evidence****. I didn't know when my account in TES was deactivated. The Respondent didn't communicate that action to me. In any case, that information – namely, that my account could have been deactivated in October 2021 – is irrelevant for a reason to striking-out my claim because the fact is that I haven been applying for jobs position from that moment to the present time, and I am still being discriminated against by the Respondent. Even this very week, I have been discriminated*

against in the hiring process of some international school due to the blacklisting the Respondent has made. ***Therefore, the discrimination still goes on.***

Further inconsistencies of the judgement

3. In Reasons of the Judgement point 5, the judge says: "The Claimant lives in Turkey". Such a statement is false. That mistake is due to the fact that the judge has followed the Respondent's applications. On 4th March 2023, I sent to the Tribunal my postal address. Such note has fallen into oblivion because the judge has followed the Respondent's applications, not the Claimant's. Thus, in 11th February 2023, the Respondent wrote that the Claimant lives in Turkey. In the ET3 (point 13), the Respondent insists on the fact that the Claimant lives in Turkey."

"10. As I was perceiving during the course of the process that the Tribunal was favouring the Respondent, I made an application to the Tribunal requesting the Hearing to be recorded, as a sign of transparency, which is in favour of justice. However, my application has been denied. I have been challenging that Order a number of times, and all my applications have been systematically denied. In my view, the denial of recording the Hearing is consequential: it brings obscurity to the process, lacking transparency, which grants lack of impartiality and allows a despotic power. This is contrary to justice.

Further particular on the Respondent's attitude and unlawful behaviour

11. Since the very beginning, the Respondent has considered him/herself as the one who speaks 'in the name of the law and of justice' and has displayed a patronizing behaviour and a disrespectful, denigrating conduct towards the Claimant. It offers no evidence; it only denigrates the Claimant. On that basis, the Respondent denies the Claimant any Rights to bring his claim to the Tribunal. For instance, see the first communication the Respondent sent to the Tribunal. It displays such an attitude and, furthermore, it's full of inconsistencies: it says that for the Preliminary Hearing I would need permission to give evidence from abroad, which is incorrect. Etc. See also ET3: it displays such an attitude and it's full of false statements.

12. On 12th May 2023, one week before the Preliminary Hearing, the Respondent sent to the judge a Bundle of documents to be considered in this Hearing. Following that email, I replied to the ET and the Respondent that "For the Preliminary Hearing there is no need for a Bundle, as there is no Case Management Order yet". Furthermore, such a Bundle is a partial, biased selection of documents submitted to the ET, playing in favour of its maker (i.e., the Respondent).

13. On 19th May 2023, two hours before the Hearing, the Respondent sent an email to the Tribunal. Following this email, I wrote back to the Tribunal:

I am replying to the email that the Respondent has just sent.

First. The Respondent has sent this email in less than two hours before the Preliminary Hearing. In that email, the Respondent has added new files to the case and has requested the Tribunal to be included in the Preliminary Hearing. It gives no time to the Claimant to react. This shows an unlawful attitude and will.

Second. The Respondent has included two cases. Both of them are not firm. Both of them have been appealed to the EAT. In both cases, the judges of the case incurs perversion of justice - and have been reported. Therefore, those files are irrelevant.

Third. In any case, those cases have nothing to do with the case this Tribunal is considering. Therefore, the intention of the Respondent of trying to make them relevant to this case is wicked. It reveals an unlawful attitude and will.

Therefore, I reject the Respondent's application and request the ET not to consider it.

I am adding to my previous email:

The Respondent has sent this email in less than two hours before the Preliminary Hearing. Yet the files they have attached are irrelevant to this case, the Respondent is telling the Claimant that his claim has no prospects of success. I take that email and a coaction [coercion] to pressure me to withdraw my claim. That is an illegal action. This behaviour of coaction that the Respondent displays is more proper of a mafia organization than of an educational one. This behaviour is in line with the despotic attitude and authoritarian style that the Respondent has used in my case since the very beginning.

14. At the end of the Hearing, the judge said:

*Judge Wisby asks to the Respondent: "Mr Ryan, **I read your application**. Is there anything-, You have a brief, very brief opportunity to make any further point? Otherwise, I would take it-"*

Respondent, Ryan Stringer: "The Claimant's personality [referring to the Claimant's statements during this Hearing] confirms that the claim must be struck out. [This sentence has been said in a disrespectful manner]. I understand you are considering the full grounds I have set out. If you are going to consider the progress on the ground of the scandalous behaviour I have lots of things to say. But I understand you are only going to look to the jurisdiction aspect. Is that correct?

Judge Wisby: "Yes".

Respondent: "On that basis, I have nothing to add. Thanks".

Judge Wisby: "Thanks".

This fact shows that the Respondent displays a denigrating behaviour towards me and that the judge Wisby allows such denigration, and even thanks the Respondent for that – which is wonderful and very educational.

15. On 23rd May 2023, the Respondent sent to the Tribunal an email where the Respondent slandered the Claimant. Such an attitude is in accord with the despotic and authoritarian behaviour the Respondent is displaying since the very beginning with the highest degree of aplomb.

The Respondent says he received an insulting email on 19th May 2023, and attributes it to the Claimant. Oddly enough, the Respondent didn't report that (supposed) email to the Tribunal on 19th May. The Respondent is reporting on 23rd May, precisely after I appealed this case to the EAT and submitted my application to this Tribunal for a reconsideration of the judgement. Only after this, the Respondent is 'producing' false evidence in order to slander me, in accord with the denigrating attitude towards me that the Respondent shows. Such a despotic and authoritarian behaviour. I firmly believe that the Respondent feels free and happiest to do so because TES, being a powerful institution in London, has felt fully favoured and granted by the judges of this case. Thus, now that the Claimant has submitted his reconsideration, the Respondent feels free to slander the Claimant, to push the judge to the right direction.

Conclusions

16. These facts reveal:

a. *The Respondent has displayed a despotic, authoritarian, unlawful behaviour, very well documented.*
b. *During the procedure of this case, the judge Glennie has favoured the Respondent (of British nationality and a power institution in London) and has systematically followed the Respondent's applications, which were based on no good reasons, avoiding the Claimant's applications, which were based on consistent, fair reasons.*
c. *In the judgement, the judge Wisby has issued an inconsistent judgement.*
d. *This Tribunal has jurisdiction to hear this case under section 55 and 56 of the Equality Act 2010. The Respondent is an Employment Service-provider. The Respondent is an active, essential and crucial member of the hiring process for a job position for a number of positions as Headteacher (and others) of national and international schools. The case is that, during the hiring process of hundreds of applications, I have been an object of discrimination for my belief in the idea of meritocracy, which is a philosophy belief, and a 'qualifying disclosure' (protected in section 43B, Employment Rights 1996). Therefore, this Tribunal has jurisdiction for this case under Equality Act 2010, 55-56, and Employment Rights 1996, 43B.*

Application / request to the Tribunal:

17. Based on the above mentioned grounds, I am respectfully appealing the judgement this judge has delivered. I am respectfully requesting:

a. *The judgement (issued on 19th May 2023) to be reconsidered.*
b. *The judge/s of this case to be recused for lack of impartiality.*
c. *Ordering a new Hearing to consider this case."*
d. *The video-recording and/or audio-recording of the Hearing by the Court, a recording that should be provided to both the Claimant and Respondent by the Court. Alternatively, the Tribunal can allow the Claimant the audio-recording. In any case, this is a necessary requirement for a fair Hearing."*

10. On 2 June 2023 the Respondent replied as follows:

"*We refer to the Tribunal's letter of 23 May 2023.*
Whether the Respondent is an employment service-provider, within the meaning of sections 55 and 56 of the Equality Act 2010 (EQA), was not specifically referred to at the preliminary hearing because it had not been pleaded by the Claimant. Nevertheless, the Respondent denies that it acted as an employment service-provider in its dealings with the Claimant, for the reasons set out below.
The Respondent's business is the provision of software-enabled services to support teachers and schools to build education solutions. As an ancillary part of its business, the Respondent advertises vacancies on its website (www.tes.com) for teaching and education jobs with schools, education institutions and other third party organisations around the world. The applications that the Claimant made via the Respondent's website to the International School of Tunis in Tunisia and Tutors International (as referred to in the Respondent's grounds of resistance) went directly to those organisations for consideration. The Respondent's website was merely a platform for the Claimant to make those applications to those organisations.
The Respondent submits that, from the explanatory notes to s.55 and 56 EQA, and the EHRC Employment Code, it is clear that the employment service-provider provisions are intended to

apply to organisations whose business is to proactively find employment for persons, or supply employers with persons to do work. Indeed, in the definition of an "employment service" in the EHRC Employment Code (section 11.59), the Code specifically refers to "employment agencies and headhunters" and "employment businesses". The Respondent is not an employment agency or employment business, it acted in no such capacity in relation to the Claimant and it offers no services falling within the scope of s.55 and 56 EQA. As a result, the Respondent does not believe that s.55 and 56 EQA apply.

Even if, which is denied, it is held that the Respondent did act as an employment service-provider in its dealings with the Claimant, the Respondent submits that the Claimant's claim has no reasonable prospects of success because (as summarised in its grounds of resistance):

- *The reason why the Respondent deactivated the Claimant's account on the Respondent's website was because the Claimant had sent a number of highly offensive and abusive emails to the Respondent's employees. The Claimant has failed to set out any basis whatsoever as to how the deactivation of his account amounted to an unlawful discriminatory act on the grounds of or in relation to his religion or purported belief. The Claimant accuses the Respondent of "malpractice and corruption" and "fraud" and says that his aim is to "reform the process of talent selection in education in the UK" and the UK's education system "lacks transparency and systematically violates meritocracy and incurs a blatant nepotism, which is bringing the quality of education down". The Respondent obviously denies the Claimant's allegations, but even taking the allegations at face value, it is submitted that the core of the Claimant's claim is so outlandish and far-fetched that it cannot be said to have reasonable prospects of success.*
- *The Claimant's account was deactivated in October 2021. Accordingly, the Claimant's claim (to the extent that the Claimant has a valid claim to bring) is significantly out of time. On 19 May 2023, the Respondent provided copies of two Employment Tribunal judgments relating to other cases involving the Claimant. Those claims pre-date the Claimant's claim against the Respondent and demonstrate that the Claimant is aware of the time limits that apply to Employment Tribunal claims (and specifically discrimination claims).*
- *As the Claimant resides outside the UK (as far as the Respondent is aware the Claimant now lives in Spain, having formerly lived in Turkey) and his claim arises from or relates to applications for employment to schools / organisations situated outside the UK, the Respondent submits that the Claimant's claim does not fall within the territorial scope of the EQA.*

For all of the reasons above, the Respondent submits that it is not in the interests of justice (per rule 70 of the Employment Tribunal rules) to reconsider the decision to strike out the Claimant's claim. The Claimant's claim is misconceived and has no reasonable prospects of success and it was entirely appropriate, and in accordance with the overriding objective, for it to be struck out.

The Respondent noted that, in the Claimant's email to the Tribunal of 23 May, the Claimant appears to quote verbatim an exchange between Employment Judge Wisby and the Respondent's counsel (Richard Ryan) at the preliminary hearing held on 19 May. The Claimant also appears to refer to a specific comment being made by EJ Wisby at "minute 28 of the hearing". On the face of it, this strongly suggests that the Claimant may have covertly recorded the preliminary hearing in order for him to be able to recall the events of the preliminary hearing with such specificity. As the Tribunal will recall, the Claimant previously applied for the preliminary hearing to be recorded, which was rejected by the Tribunal. The Tribunal warned the Claimant (in its letter of 6 April) that recording a Tribunal hearing without permission would be an offence under the Contempt of Court Act 1981. If the Claimant has covertly recorded the hearing, the Respondent submits that this would be further grounds on which to strike out the Claimant's claim, namely scandalous, unreasonable or vexatious conduct of the proceedings under Rule 37(1)(b) of the ET Rules.

Furthermore, as we raised in our email to the Tribunal on 23 May, the Respondent's representative received a highly offensive and abusive email on 19 May which, given the language used in the email and the timing of it, we strongly suspect was sent either by the Claimant, or someone else at the instruction of the Claimant. If that is the case, the Respondent submits that this would be a further ground for strike out under Rule 37(1)(b) of the ET Rules.

The Respondent submits that these are further material reasons as to why the strike-out judgment should not be reconsidered. All of the Respondent's rights in relation to the Claimant's conduct of the proceedings are expressly reserved.

We consider that it is plain that the strike-out should stand and the Claimant's claim should not be allowed to proceed for all of the reasons stated above. The Respondent is therefore satisfied

that the Claimant's application can be determined without a hearing. However, the Respondent would be content to attend a hearing if it is considered necessary in the interests of justice."

11. The Claimant replied on 2 June 2023 as follows:

"*Once again, the Respondent is slandering me.*

The Respondent is accusing me of crimes when he says that I sent him offensive emails. The Respondent shows no evidence. Therefore, the Respondent is slandering me.

Moreover, the Respondent is accusing me of a crime when he says that I recorded the Hearing. The Respondent shows no evidence. Therefore, the Respondent is slandering me.

These facts show, once more, the despotic nature of the Respondent, a vexatious attitude, which is systematic, and a perverse will."

12. On 14 June 2023 the guidance note for parties on deposit orders was sent to the parties together with a Notice of Reconsideration Hearing, which stated as follows:

"The Judgment issued on 19 May 2023 will be reconsidered by Employment Judge Wisby at a public preliminary hearing held by Video (CVP) on 5 September 2023, commencing at 10 am or as soon thereafter on that day as the Tribunal can hear it.

It has been given a time allocation of 1 day. If you feel that this is insufficient, please inform us in writing within 7 days of the date of this letter.

The meaning of a public preliminary hearing has been set out previously by EJ Glennie in his letter of 6 April 2023, as has the position on the video or audio recording of hearings. No non generic basis for recording the hearing has been presented since the decision taken by EJ Glennie. The reconsideration hearing will not therefore be recorded, and permission is not granted for the parties to video or audio record the hearing.

At the reconsideration hearing, the judgment may be confirmed, varied or revoked. In order that the parties can properly prepare for the hearing, it should be noted that as part of the reconsideration process Employment Judge Wisby will consider:

1. Whether the tribunal has jurisdiction to hear the claim as a result of section 55 and 56 Equality Act 2010, in particular (but not limited to) by reference to section 56(d) Equality Act 2010 and the Claimant's submission that an individual needs an account with the Respondent in order to apply for certain roles advertised on its website.

2. Whether the claim (or part of it) should be struck out at this stage of the proceedings on the basis that the claim has not been brought within the applicable time limits.

3. Whether the claim (or part of it) should be struck out at this stage of the proceedings on the basis that the Tribunal does not have territorial jurisdiction to hear the claim.

4. Whether the claim (or part of it) should be struck out because it is scandalous or vexatious.

5. Whether the claim should be struck out on the basis that it has no reasonable prospect of success. In particular, but not limited to, the Respondent's position that: The reason why the Respondent deactivated the Claimant's account on the Respondent's website was because the Claimant had sent a number of highly offensive and abusive emails to the Respondent's employees. The Claimant has failed to set out any basis whatsoever as to how the deactivation of his account amounted to an unlawful discriminatory act on the grounds of or in relation to his religion or purported belief. The Claimant accuses the Respondent of "malpractice and corruption" and "fraud" and says that his aim is to "reform the process of talent selection in education in the UK" and the UK's education system "lacks transparency and systematically violates meritocracy and incurs a blatant nepotism, which is bringing the quality of education down". The Respondent obviously denies the Claimant's allegations, but even taking the allegations at face value, it is submitted that the core of the Claimant's claim is so outlandish and far-fetched that it cannot be said to have reasonable prospects of success.

6. Whether the claim or response (or part of the claim or response) should be struck out because the manner in which the proceedings have been conducted by or on behalf of the Claimant or Respondent has been scandalous, unreasonable or vexatious. As part of this the Tribunal will consider: the allegation that the Respondent's representative received a highly offensive and abusive email on 19 May that was sent by or on behalf of the Claimant; the allegations raised by the Claimant about the Respondent's behaviour in these proceedings; and, the allegation that the Claimant either video or audio recorded the preliminary hearing on 19 May 2023.

If the 19 May 2023 Judgment is revoked, Employment Judge Wisby will proceed to consider whether a deposit order under rule 39 of the Employment Tribunal Rules of Procedure should be made on the basis that any specific allegation or argument in the claim has little reasonable prospects of success.

In considering whether to make a deposit order the tribunal shall make reasonable enquiries into the paying parties ability to pay the deposit and have regards to any such information when deciding the amount of any deposit ordered. Accordingly, in case the tribunal considers that a deposit order may be appropriate to make, the Claimant should be prepared to provide information to the tribunal at the preliminary hearing of his financial situation.

Case management orders may be made at the conclusion of the preliminary hearing.

For clarification, the list of matters to be considered is to aide the parties hearing preparation. It does not imply any particular outcome."

13. On 14 June 2023 the Claimant responded to the Notice of Hearing as follows:

"*Application to **challenge** the Order of Reconsideration of the Hearing that the judge has issued today, 14th June 2023, and to **recuse** this judge for lack of impartiality.*

***Grounds of law**: paragraph 12 (bias) and paragraph 3.10 (perversity) of the Practice Direction EAT 2018. The judge is partially applying the ET Rules of Procedure 2013. The judge wants to examine if my application can succeed previously to set a Case Management Order to let the Claimant display evidence. The judge is unashamedly playing in favour of the Respondent. The Respondent's strategy is to strike-out my application to prevent the Claimant from offering evidence of his claim. To that end, the Respondent is using two tactics: first, to oppose any single claim I make, offering no evidence in return. Second, to denigrate the Claimant's personality. Such a vexatious attitude and such a perversion of justice. The thing is that, funny enough, the judge is blatantly following, obeying the Respondent's command. Facts show that the judge is systematically playing in favour of the Respondent, accepting their applications, even when they offer no good reasons, and, at the same time, denying my applications, when they are based on good, consistent reasons and solid evidence. The judge is blatantly playing in favour of the Respondent, who is of British nationality and a powerful institution in London.*

1. I have previously submitted to the Tribunal a series of applications challenging the judge's decisions in so far as they are based on no good reasons and they all play, systematically, in favour of the Respondent. The judge is accepting the Respondent's applications, even when they offer no good reasons, and, at the same time, denying my applications, when they are based on good, consistent reasons and solid evidence. This is a note of lack of impartiality and bias.

2. On 20th May 2023, I applied for a reconsideration of the judgement. The judgement was inconsistent and biased.

3. On 21st May 2023, I appealed the judgement to the EAT and recused this judge for lack of impartiality. The judge has blatantly followed the Respondent's statement, even when it's based on false evidence and no good reasons. Likewise, the judge has ignored the Claimant's statement and, oddly enough, distorted and concealed his main points. This is a note of lack of impartiality and bias.

4. Today, 14th June 2023, the judge has issued an Order of Reconsideration of the Hearing. The judge is partially, despotically applying the ET Rules of Procedure 2013. The judge wants to examine if my application can succeed previously to set a Case Management Order to let the Claimant display evidence. Such a perversion of justice.

5. The Order of 14th June 2023 plays in favour of the Respondent, once more. The Respondent's strategy is to strike-out my application to prevent the Claimant from offering evidence of his claim. To that end, the Respondent is using two tactics: first, opposing to any single fact I claim, offering no evidence in return. Second, denigrating the Claimant's personality. Such a vexatious attitude and such a perversion of justice. The thing is that, funny enough, the judge is blatantly following, obeying the Respondent's command. The judge is unashamedly playing in favour of the Respondent. This is a clear-cut sign of lack of impartiality, bias and even perversity.

6. Ignoring the ET Rule Procedure 2013, the judge is not ordering a Preliminary Hearing to set a Case Management Order to allow the Claimant to show his statement and evidence. This is despotism and a perversion of justice.

7. The Respondent, following the above mentioned strategy, is denigrating and slandering the Claimant. The judge, oddly enough, is following and accepting the Respondent's strategy point by point. For instance, the judge is accepting the application of the Respondent saying that I have sent him offensive emails and, at the same time, the judge is ignoring my application reporting constant slander by the Respondent, which is a clear-cut sign of vexatious and perverse behaviour. The judge is blatantly partial, in favour of the fellow citizen from London, and a powerful institution in the UK. This is a sign of lack of impartiality and bias. This is despotism. This is a perversion of justice.

8. The judge blatantly assumes that my application is vexatious and has little prospects of success, because the Respondent says so. On that assumption, the judge doesn't Order a CMO to let the Claimant provide his statement and evidence. This is a perversion of justice. This attitude plays in favour of the Respondent, who is British and a powerful institution in the UK.

9. On the assumption that my claim will not succeed in this Tribunal, the judge is Ordering a deposit.

10. The judge is also opposing the application by the Claimant for the Hearing to be audio-recorded. Not allowing recording the Hearing doesn't play in favour of justice. On the contrary, it grants a despotic behaviour by officials in this Administration."

14. On 28 June 2023 the Claimant sent a further email as follows:

"*Issue: Application to challenge the Order this Tribunal has issued on 28th June 2023 related to the Reconsideration of the Judgement issued on 19th May 2023.*

Reasons:

1. The judge is ignoring the application that the Claimant sent to this Tribunal on 14th June 2023 to challenge the Order of Reconsideration of the Hearing and to recuse this judge for lack of impartiality. With the Order issued on 28th June 2023, the judge keeps incurring lack of impartiality, bias and perversion of justice.

2. The Tribunal is ignoring the Complaint – for lack of impartiality, bias and perversion of justice – that the Claimant sent to this Tribunal on 14th June 2023.

3. This case has already been appealed to the Employment Appeal Tribunal."

15. On 11 July 2023 the Claimant made an application (not copied to the Respondent) to request the online publication of the judgement to be withdrawn with immediate effect as follows:

"Grounds: Rule 50 ET Rules of Procedure 2013 and others. Paragraphs 3.10 (perversity) and bias (12) of the Practice Direction EAT 2018.

1. The judgement has been reconsidered. Therefore, the online publication should be withdrawn.

2. Furthermore, the judgement has been appealed to the Employment Appeal Tribunal. The judgement is not firm. Therefore, the online publication should be withdrawn.

3. The Employment judge Wisby has displayed a clear lack of impartiality and bias by favouring the Respondent, who is a powerful institution in the UK, of British nationality. This bias undermines the integrity of the judicial process and compromises the fairness of the proceedings.

4. The judge Wisby's failure to consider relevant evidence demonstrates a disregard for important facts and undermines the validity of the judgment. This failure to properly evaluate the evidence raises concerns about the judge's objectivity and adherence to the principles of justice.

5. The judge Wisby's rejection of my claim, without issuing a Case Management Order to provide evidence, is based on an incorrect interpretation of the Regulations. This fact raises questions about the judge's competence and understanding of the applicable legal framework. This error in judgment has significant implications for the fairness and legality of the proceedings.

6. Evidence presented in my appeal to the EAT indicates a perversion of justice in the handling of the case. This fact undermines the integrity of the entire process and erodes public trust in the judicial system.

7. The publication of the judgment containing sensitive personal information and confidential details constitutes a breach of privacy and confidentiality. This violation raises serious concerns about the protection of individual rights and the proper handling of confidential information within the judicial system.

8. The inclusion of defamatory statements and false information in the published judgment poses a significant threat to my personal and professional reputation. Such inaccuracies and damaging remarks not only misrepresent the facts but also mislead the public and perpetuate harm to my character and standing in the community.

9. With the publication of such a judgement, which is the result of a perversion of justice, the judge is jeopardizing my professional life. Such an act of tyranny, made in the name of the Crown."

16. On 9 August 203 the Tribunal received the following application (not copied to the Respondent):

"I am referring to the online publication of the judgement of this case.

I am hereby submitting my application to anonymise the judgement. I am requesting my name to be removed or changed.

Reasons: I have provided my reasons for this application in a series of emails (see attached). Furthermore, this Tribunal has been informed that the

judgement has been appealed to the EAT and the EAT has issued a case number (see attached).”

17. The Respondent lodged a bundle with Tribunal on 24 August 2023. The Tribunal was informed by the Respondent’s representative that correspondence was sent to the Claimant about the contents of the bundle but that the Claimant did not respond to that correspondence.

18. The Claimant did not join at the start of the hearing on 5 September 2023.

19. The Tribunal Clerk brought the following email sent by the Claimant on 05 September 2023 at 00:42 to the Tribunal’s attention:

    “To the Tribunal

    I remind this Tribunal that this case has been appealed to the EAT and the EAT has notified this Tribunal about it. In addition, the Order for the next PreHearing has been challenged and the judge has been recused. With this new PreHearing, this Tribunal digs down in its prevarication and perversion of justice in order to support the British TES company. This is how the public institutions in the UK are supporting this new wave of neocolonialism.

    Jose Penalva “

20. The Claimant has not provided the Tribunal service with a telephone number for him in connection with this claim, it was not possible therefore for the Clerk to call the Claimant.

21. At 10:03 the following email was sent to the Claimant:

    “*Dear Mr Penalva*

    The hearing listed for today has not been postponed and the Employment Judge has not been recused. The fact that you have appealed to the EAT does not impact the hearing proceeding today.

    Please therefore join the hearing via the hearing instructions that have been sent to you.

    If you choose not to attend the hearing may proceed in your absence.”

22. No response was received. A chaser email was therefore sent at 10:40 as follows:

    > *“Dear Mr Penalva,*
    >
    > *Employment Judge Wisby has instructed me to write to you as follows*
    >
    > *Please confirm as matter of urgency whether you will be attending the hearing or not.”*

    Once again no response was received. The Tribunal Clerk continued to check the London Central Tribunal inbox throughout the hearing and reported that no

further emails had been received from the Claimant.

Proceeding in the Claimant's absence

23. The Claimant was plainly aware of the hearing. The email sent at 00:52 was not a specific postponement request by the Claimant but I treated it as one. I concluded that the contents of the email did not set out valid grounds for postponement. The Claimant failed to attend the start of the hearing. The hearing was delayed for over 40 minutes to see if the Claimant would attend following the emails to the Claimant from the Tribunal, he did not.

24. The Respondent submitted that the hearing should proceed in the Claimant's absence. The Claimant, as the Respondent pointed out had experience of this action being taken in different employment tribunal case, case number 2500896/2022, which was heard in the Claimant's absence, when according to the Judgment in that case he failed to attend the listed hearing and a postponement request made by him (based on the fact that the Claimant had appealed to the EAT and he considered the Employment Judge hearing the case was not impartial) was not granted.

25. I decided proceeding with the hearing in the Claimant's absence was more appropriate in the circumstances than simply dismissing the Claim under Rule 47. I decided that postponing the hearing, even with a costs award, was not in line with the overriding objective. Consideration has to be given to other tribunal service users, whose cases are waiting to be heard and tribunal hearing time comes at a cost to the public, as well as to the Respondent. In reaching this conclusion I took into account that there was no suggestion from the Claimant that even if I did postpone the hearing he would attend at the postponed time and on balance, given the reasons he had provided for not appearing, it seemed more likely than not that he would not attend a reconvened hearing. Regular checks of the Tribunal inbox were made to see if there was any update from the Claimant. The Claimant, however, did not join the hearing at any point. One observer attended the hearing, that member of the public stated she had no connection to the Claimant or the Respondent. The Claimant had been told he could provide written representations ahead of the hearing; during the hearing I took into account the contents of the various emails the Claimant had sent into the Tribunal.

Claimant's written applications dated: 14 and 28 June 2023, 11 July 2023 and 8 August 2023

26. The first matter addressed at the hearing was the Claimant's applications dated: 14 and 28 June 2023, 11 July 2023 and 8 August 2023.

27. To the extent that the Claimant's correspondence dated 14 and 28 June 2023 amounts to an application under rule 72 of the Rules of Procedure for reconsideration of the decision to hold a reconsideration hearing and not to rescue myself. I considered that application under rule 72(1) and refused it on the grounds that there was no reasonable prospect of the decision being varied or revoked. As the Employment Judge that made the original decision the Reconsideration Hearing should be held by me. The Notice of Hearing did not

set out that a Deposit Order had been made nor accept the Respondent's submissions. It specifically stated: "For clarification, the list of matters to be considered is to aid the parties hearing preparation. It does not imply any particular outcome". Paragraph 6 of the Notice of Reconsideration Hearing also set out that one of the applications to be heard is the Claimant's application that the response should be struck out [emphasis added]: "**Whether the** claim or **response** (**or part of the** claim or **response**) **should be struck out because the manner in which the proceedings have been conducted by or on behalf of the** Claimant or **Respondent has been scandalous, unreasonable or vexatious**. As part of this the Tribunal will consider: the allegation that the Respondent's representative received a highly offensive and abusive email on 19 May that was sent by or on behalf of the Claimant; **the allegations raised by the Claimant about the Respondent's behaviour in these proceedings**; and, the allegation that the Claimant either video or audio recorded the preliminary hearing on 19 May 2023."

28. In respect of the applications dated 11 July and 8 August regarding the request to remove the previous Judgment from the website and to anonymise the Claimant's name. Having considered those applications, they were not granted.

29. Open justice is a key principle in Tribunal proceedings that can only be derogated from in limited circumstances. A Tribunal must give full weight to the principle of open justice and the Convention right to freedom of expression when considering making an order under Rule 50. The Claimant's general statements regarding potential embarrassment and general concerns about personal and professional reputation are not valid grounds by themselves for such a derogation, nor is the fact that the Claimant has appealed to the EAT. For any derogation clear and cogent evidence of the impact of refusing the application needs to be identified, upon which the Tribunal can base its decision that the balance has shifted away from the full application of the principle of open justice. No such evidence has been produced in this case. If, via the reconsideration process, there are errors identified with the Judgment dated 19 May 2023 that has been put on the Employment Tribunal decisions database, those will be identified and explained in the Reconsideration Judgment which will also be added to that database. The Claimant has appealed to the EAT. If that appeal proceeds and the EAT upholds the Claimant's appeal in whole or in part, that will also be a public judgment (unless the EAT orders otherwise).

Reconsideration of Judgment dated 19 May 2023

30. The Claimant's ET1 ticks the box for religion or belief discrimination and states: "*I have been victimised and blacklisted in TES platform - the Respondent has blacklisted me and excluded me from a number of jobs applications*" and "*For this reason, I have been victimised and blacklisted in TES platform: the Respondent has blacklisted me and excluded me from a number of job applications, over the course of months, being the last one last week.*"

31. In the Claimant's reconsideration application, he set out that "*the Respondent is an active, essential and crucial member of the hiring process of my job applications for a number of positions as Headteacher (an anothers) in a series of international schools. Therefore, this Tribunal has jurisdiction to hear this case*."

32. The Claimant's reconsideration application led me to consider whether the Tribunal does have jurisdiction to consider the Claimant's claim of discrimination/victimisation under section 55 and 56 of the Equality Act 2010.

33. The Respondent's ET3 states:

33.1. "2 *As part of its business, the Respondent also advertises vacancies on its website (www.tes.com) for teaching and education roles with schools, education institutions and other third party organisations around the world*."

33.2. "*3 On 9 May 2021, the Claimant sent an email to the Respondent in which he complained about the response he had received from the International School of Tunis in Tunisia ("IST") to an application that the Claimant had made to the IST for a vacant role. The IST's vacancy had been advertised on the Respondent's website*."

33.3. " *10 On 12 October 2021, the Respondent emailed the Claimant to confirm that it considered the Claimant's email of 7 October to be offensive, abusive and inappropriate and it had therefore decided to deactivate the Claimant's account on its website (tes.com) and block the Claimant from re-registering, in accordance with the Respondent's terms and conditions of use of its website*."

33.4. "*12. The Claimant's account remains deactivated and his email address (the same email address cited in the ET1 claim form) remains blocked on the Respondent's website*."

33.5. "*13.1 the Claimant has never been employed by, or applied for employment with, the Respondent. As set out above, the roles that the Claimant applied for were with third party organisations. The Respondent simply advertised the roles on its website. Accordingly, the Claimant does not have standing to pursue a claim against the Respondent under Part 5 (Work) of the Equality Act 2010 ("EqA")." And,*

33.6. *"13.2 to the extent that the Claimant is purportedly pursuing a claim against the Respondent under Part 3 (Services and Public Functions) of the EqA, the Employment Tribunal does not have jurisdiction to hear the claim, per section 114(1)(a) of the EqA*."

34. Section 55 Equality Act 2010 sets out:

55 Employment service-providers

(1) A person (an "employment service-provider") concerned with the provision of an employment service must not discriminate against a person—

(a) in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;

(b) as to the terms on which the service-provider offers to provide the service to the person;

(c) by not offering to provide the service to the person.

(2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—

(a) as to the terms on which A provides the service to B;

(b) by not providing the service to B;

(c) by terminating the provision of the service to B;

(d) by subjecting B to any other detriment.

(3) An employment service-provider must not, in relation to the provision of an employment service, harass—

(a) a person who asks the service-provider to provide the service;

(b) a person for whom the service-provider provides the service.

(4) An employment service-provider (A) must not victimise a person (B)—

(a) in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;

(b) as to the terms on which A offers to provide the service to B;

(c) by not offering to provide the service to B.

(5) An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B)—

(a) as to the terms on which A provides the service to B;

(b) by not providing the service to B;

(c) by terminating the provision of the service to B;

(d) by subjecting B to any other detriment.

…….

35. Section 56(2) Equality Act 2010 states "*The provision of an employment service includes:… (d) The provision of a service for finding employment for persons; (e) the provision of a service for supplying employers with person to do work*…"

36. The Respondent expressed concerns at the hearing, that in raising the issue of section 55 and 56 of the Equality Act 2010 I had stepped inappropriately over the line of acceptable assistance by an Employment Judge to litigant in person. I have considered this point. I accept that the duty to ensure the parties are on an equal footing can be a difficult line to walk. I am satisfied however, that on this occasion, the action taken by me to try to ensure the correct legal label is placed on the narrative of the Claimant's ET1, after the box was ticked for religion or belief discrimination and then accordingly raising whether the Tribunal has jurisdiction to hear that claim was appropriate action to take. The Respondent of course has the right of appeal in respect of this point.

37. The Respondent's position in respect of s55 and s 56 of the Equality Act is, as set out by its representative at the hearing is, in summary:

37.1. It denies that it acted as an employment service-provider in its dealings with the Claimant, on the basis that the Respondent advertises vacancies on its website for teaching and education jobs with schools, education institutions and other third party organisations around the world.

37.2. The applications that the Claimant made via the Respondent's website to the International School of Tunis in Tunisia and Tutors International (as referred to in the Respondent's grounds of resistance) went directly to those organisations for consideration.

37.3. The Respondent's website was merely a platform for the Claimant to make those applications to those organisations.

37.4. The Respondent does not filter applications or put candidates forward for roles and plays no part in the recruitment decision.

37.5. The Claimant could apply directly to the organisations advertising roles on the website and that it was analogous to looking at adverts in a

newspaper where the newspaper plays no role in the recruitment process.

37.6. From the explanatory notes to s.55 and 56 Equality Act 2010, and the EHRC Employment Code, it is clear that the employment service-provider provisions are intended to apply to organisations whose business is to proactively find employment for persons, or supply employers with persons to do work.

37.7. The Respondent is not an employment agency or employment business, it acted in no such capacity in relation to the Claimant and it offers no services falling within the scope.

38. The EHRC Employment Code (section 11.59), states:

> **What are employment services?**
>
> 'Employment service' includes:
> • the provision of or making arrangements for the provision of vocational training, that is, training for employment and work experience;
> • the provision of or making arrangements for the provision of vocational guidance, such as careers guidance;
> • services for finding people employment, such as employment agencies and headhunters. It also includes the services provided by, for example, Jobcentre Plus, the Sector Skills Council and intermediary agencies that provide basic training and work experience opportunities such as the Adult Advancement and Careers Service and other schemes that assist people to find employment businesses;
> • services for supplying employers with people to do work, such as those provided by employment".

39. I was taken to page 123 of the bundle showing a job advert for a school in Tunisia which states applications were to be sent directly to the school that placed the advert by 15 July 2023. A second advert at pages 127 and 128 of the bundle for a private tutor role in Florida shows buttons for "apply now" "save" and "share". It was not apparent what would happen if you clicked the "apply now" button.

40. The extracts from the terms and conditions screen shots at pages 130 and 131 of the bundle state: "We may terminate your access to the website and/or use of the Services, with or without notice and without liability to you or any third party".

41. "Services" is defined in the following section: "These General Terms and Conditions (the "General Terms") govern your use of the websites on which they appear at www.tes.com (the Website/s) and our provision of various online services and resources via those Websites ("the Services")."

42. Under the subtitle: 'Registration by you and your online Tes account', it says: "*Certain aspects of the Services may reguire you to register and provide information about yourself. You agree to: (a) provide accurate and complete information about yourself as prompted by the relevant registration form and (b) maintain and promptly update this information (by using the appropriate forms on our Websites or emailing us at help@tes.com). We may terminate your account and any or all rights that you have been granted to make use of our Websites, if any information you provide is inaccurate, false, or incomplete*."

43. A screen shot of the account registration page at page 133 where it states you can register for free shows tabs for “my jobs”, “job alerts” and “my CV” and “Career preferences” amongst other tabs. There is a section where you can complete “My CV” which states: “save time when applying for jobs by completing your online CV”.

44. The Respondent in its ET3 states:

> *“10. On 12 October 2021, the Respondent emailed the Claimant to confirm that it considered the Claimant’s email of 7 October to be offensive, abusive and inappropriate and it had therefore decided to deactivate the Claimant’s account on its website (tes.com) and block the Claimant from re-registering, in accordance with the Respondent’s terms and conditions of use of its website.”*
>
> And
>
> *“12 The Claimant’s account remains deactivated and his email address (the same email address cited in the ET1 claim form) remains blocked on the Respondent’s website.”*

45. Based on the information before me today I am satisfied that the Respondent does not supply employers with persons to do work. The question that is more taxing is whether the options available to the Claimant, by having an account registered on the Respondent’s website, means that the Respondent is “providing a service for finding employment for persons”.

46. The EHRC Employment Code (“the Code”) refers to employment agencies and headhunters but those are cited as examples and the Code does not set out a finite list of examples. The Respondent’s website screen shot shows that having an account on the website provides options to help a person seeking work in that search, by being able to prepare and store an online CV for applying for roles on the website, collating job adverts and setting up job alerts. If having an account on the website provided no enhanced functionality, then it seems to me there would be no point in an individual having an account and deactivating the account would have had no impact on the Claimant. It seems unlikely that the Claimant would have brought his claim if he had still been able to apply for all roles advertised on the Respondent’s website that he had wanted to without an account. The Respondent in its ET3 raised the ability to bring claims in respect of services under Part 3 of the Equality Act and did not in its ET3 suggest that no services were being provided by the Respondent, just that any purported claim could not be heard in the Employment Tribunal.

47. On the basis of the information before me today I accept that the Respondent does not screen candidates for organisations that are recruiting but I do find that the Respondent’s website hosts job adverts and that an account with the Respondent helps an individual in their search for jobs that they may be interested in applying for and provides a means to apply of those roles, even if applications can also in some instances be sent directly to the organisation with the vacancy. Considering the language used in section 56(d) Equality Act 2010 I have concluded, on balance, that the Respondent does provide “a service for finding employment for persons” and that the use of the Respondent’s website with an account to search for jobs is not akin to using a newspaper with adverts in it.

48. Since I have found the Respondent's "ancillary business" does fall with the interpretation section of s56(d) Equality Act 2010, the Respondent is an employment service provider and is bound by the provisions set out section 55 Equality Act 2010. Accordingly, I am satisfied that the Tribunal does have jurisdiction to consider a claim by the Claimant that he has been victimised and blacklisted" under that section and it is not appropriate for me to dismiss the Claim on the basis that the Tribunal has no jurisdiction to hear the complaints raised.

49. Having considered further the Judgment made on 19 May 2023 I consider that it should be varied to state:

    49.1. The Claimant does not allege that he was a worker or employee of the Respondent. The Tribunal does not have the jurisdiction to consider a complaint by the Claimant under the section of the Employment Rights Act 1996 inserted by the Public Interests Disclosure Act 1998.

    49.2. The Claimant does not allege that he was a worker or employee of the Respondent nor an applicant for a role with the Respondent. The Tribunal accordingly does not have jurisdiction to consider claims from the Claimant against the Respondent under sections 39, 40 and 41 of Part 5 of the Equality Act 2010.

    49.3. The Respondent is an employment service provider as defined by s56(d) Equality Act 2010 and accordingly the Tribunal does have jurisdiction to consider the Claimant's complaint under section 55 Equality Act 2010.

Whether the claim (or part of it) should be struck out at this stage of the proceedings on the basis that the claim has not been brought within the applicable time limits.

50. Having found that the Respondent is an employment service provider. On the basis that the Claimant states in his ET1 that he was excluded from a number of job applications over the course of months, "being the last one last week" and that the Respondent accepts that: "*The Claimant's account remains deactivated and his email address (the same email address cited in the ET1 claim form) remains blocked on the Respondent's website".* I am not satisfied that the claim (or part of it) should be struck out at this stage of the proceedings on the basis that the claim has not been brought within the applicable time limits.

51. I do not accept the Respondent's position that the claim is out of time because the Claimant's account was deactivated in October 2021. That may have been the initial act but if it were found to be correct that the Claimant was excluded from applying for a number of job applications advertised on the Respondent's website as a result of not having an account on the website over the course of months, the last example being the week before the ET1 was submitted, then the continuation of the block of the Claimant's email address and ability to have an account on the Respondent's website (as accepted by the Respondent) would mean that there could be a course of conduct over a period of time, ending the week before the ET1, resulting in the claim having been brought in time.

Whether the claim (or part of it) should be struck out at this stage of the proceedings on the basis that the Tribunal does not have territorial jurisdiction to hear the claim.

52. I accept that the Claimant provided the Tribunal with a new postal address in Spain on 4 March 2023, replacing the address in Turkey he had competed in his ET1 and stated that the Spanish address was his residence. I was incorrect to suggest that I could remove refence to the Claimant living in Turkey from the previous Judgment; I should have made it clear instead the information could be clarified on reconsideration – which I have, as set out above.

53. Since it is the actions of the Respondent that would be under consideration rather than the actions of the organisations that the Claimant applied for jobs with, and the Respondent accepted at the hearing that its business is based in and run from the UK, I am not satisfied that the claim (or part of it) should be struck out at this stage of the proceedings on the basis that the Tribunal does not have territorial jurisdiction to hear the claim.

Whether the claim (or part of it) should be struck out because it is scandalous or vexatious or has little reasonable prospects of success.

54. 'Scandalous' in this context does not have the lay meaning of "shocking" rather it means the claim is a misuse of the privilege of legal process in order to vilify others or that the claim gives gratuitous insult to the court. A 'vexatious' claim has been described as one that is not pursued with the expectation of success but to harass the other side or out of some improper motive.

55. The Respondent raised the fact that the Claimant has raised two previous claims that it is aware of: Cases number 2500896/2022 (a sex, race and philosophical belief claim that was dismissed) and 3200757/2022 (which appears to have been a breach of contract claim that was dismissed). The fact that one of the parties has previously been involved in litigation, even over substantially the same issues does not, without more, justify a Tribunal striking out a further claim as an abuse of process.

56. I have not been persuaded that the claim can be properly described as scandalous or vexatious in the context of the meaning of those words for the purposes of Rule 37(1)(a).

57. In respect of strike out on the basis of no reasonable prospects of success, guidance has been given to Employment Tribunals that includes, in summary:

    57.1. Strike out is not prohibited in discrimination or whistleblowing cases; but special care must be taken in such cases as it is very rarely appropriate;
    57.2. If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;
    57.3. The Claimant's case must ordinarily be taken at its highest;
    57.4. It is necessary to consider, in reasonable detail, what the claims and issues are;
    57.5. In the case of a litigant in person, the claim should not be ascertained only by requiring the Claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including

additional information) and any key documents in which the Claimant sets out the case; and

57.6. If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

58. Having considered the factors above, I do not consider that it is appropriate to strike the claim out on the basis that it has no reasonable prospects of success.

Whether the claim or response (or part of the claim or response) should be struck out because the manner in which the proceedings have been conducted by or on behalf of the Claimant or Respondent has been scandalous, unreasonable or vexatious

59. 'Scandalous' in this context has been held not to be a synonym for "shocking". Whilst not a set definition, it includes two narrower meanings; the misuse of the privilege of legal process in order to vilify others and giving gratuitous insult to the court. Unreasonable behaviour is behaviour beyond, for example: difficult, querulous or generally uncooperative behaviour. Vexatious behaviour includes behaviour that amounts to an abuse of process.

<u>Email to Respondent dated 19 May 2023</u>

60. I accept that an email was sent to the Respondent's solicitor on 19 May 2023 @ 14:43 stating: "*Hi Ryan You are just eating the balls of your client to get money. A eating-ball attorney*" and that the timing of this email was just as the preliminary hearing that day was ending, judgment having just been given orally to strike the Claimant's claim out.

61. The email was not from the email account that the Claimant has provided to the Tribunal, nor in the Claimant name, nevertheless the timing of the email to the Respondent's solicitors email address (that the Claimant had knowledge of) at the end of the hearing when his claim was struck out and the similarity in language and unusual phraseology used in the emails that appear in the bundle from the email address used by the Claimant for the Tribunal proceedings to the Respondent, such as: "*Yes, please, delete the account, while you keep licking the balls of the corrupted people who are paying you*"; and, "*In other words, TES, you, Tracy, are licking the balls of the people that belong to this British power, and licking the balls from behind*", has led me to conclude that the email was in fact sent by the Claimant in response to his claim being struck out.

62. The Claimant in response accused the Respondent's solicitor of "*tampering*" and "*slandering the Claimant*". The Claimant also raised the timing of the report of the offensive email to the Tribunal. On the basis that the Claimant's claim had just been struck out I do not find it surprising that the Respondent did not write straight to the Tribunal about this matter.

63. The Claimant in correspondence to the Tribunal accused the Respondent of producing "*false evidence*", in order to slander him.

64. I find that the email sent to the Respondent's solicitor on 19 May @ 14:43 meets the threshold of unreasonable behaviour in the proceedings by the Claimant - it was a deliberate act undertaken just as Judgment had been given, that was offensive, abusive and inappropriate. In those circumstances the fact that the Claimant, subsequently in these proceedings accused the Respondent's solicitor (who has duties to the Tribunal) of producing false evidence is also, I find scandalous and unreasonable behaviour in the proceedings.

Respondent's behaviour in the proceedings

65. I considered the Claimant's written representations about the Respondent's behaviour in the proceedings. Having been present at both hearings and having considered the written correspondence sent to the Tribunal by the Respondent I do not find that the Respondent, the Respondent's solicitor or the Respondent's barrister have conducted the proceedings in a scandalous, unreasonable or vexatious way.

Video or audio recorded the preliminary hearing on 19 May 2023

66. On 18 April 2023 a notice of preliminary hearing was sent to the parties, listing the preliminary hearing on 19 May 2023. On 6th April 2023 the Claimant emailed the Tribunal as follows: "*I'd like to respectfully request to the Tribunal that the Tribunal video-record or audio-record the Preliminary Hearing and the final Hearing and, then, provide a copy of it to both sides. I believe it's the right thing to do in terms of transparency and fairness and it's in favour of justice. Respectfully Jose Penalva (Claimant)".*

67. Employment Judge Glennie responded on 6 April 2023 as follows: "*The Tribunal does not currently have any facilities for the recording of hearings. For the avoidance of doubt, it is an offence under the Contempt of Court Act 1981 for a person to make a recording of a Tribunal hearing without the Tribunal's permission.".*

68. The Claimant replied to the Tribunal the same day as follows:

    "*I have respectfully requested to the Tribunal that the Tribunal video-record or audio-record the Preliminary Hearing and the final Hearing and, then, provide a copy of it to both sides. I believe it's the right thing to do in terms of transparency and fairness and it's in favour of justice.*

    The Judge Glennie has replied that the Tribunal does not currently have any facilities for the recording of hearings. Additionally, Judge Glennie has reminded that it is an offence under the Contempt of Court Act 1981 for a person to make a recording of a Tribunal hearing without the Tribunal's permission.

    I am hereby requesting to the Tribunal permission to make a recording of the Hearing, on ground of transparency, fairness and playing in favour of justice."

    The contents of this email were sent again on 18 April 2023.

69. On 26 April 2023 the following was sent to the parties by the Tribunal:

    "Employment Judge Glennie has treated the Claimant's email dated 9 April

2023 as an application under rule 72 of the Rules of Procedure for reconsideration of the decision to convert the preliminary hearing to one to be held in public, to enable the Respondent's application to strike out the claim to be considered. Employment Judge Glennie has considered that application under rule 72(1) and has refused it on the grounds that there is no reasonable prospect of the decision being varied or revoked. In particular, Employment Judge Glennie observes that the decision means only that the application will be considered, and does not imply any particular outcome. The Claimant will have the opportunity at the hearing to advance his arguments as to why the claim should not be struck out. With regard to the application for permission to record the hearing, the Claimant has not advanced any reason why this should be permitted that is specific to him or this case, and permission is not therefore granted. The application may, however, be renewed if there is a reason for it which goes beyond generic reasons that might apply to any hearing."

70. The Claimant replied to the Tribunal as follows: "*I am, once again, challenging the Order the judge Glennie has issued today – see below – whereby the judge rejects my application for permission for recording the Hearing. The judge Glennie adds that this decision could be reconsidered upon offering grounds for this specific case. Next, I am offering grounds. I respect this Tribunal, but – with all due respect – I don't trust it due to the current tendency of official in this legal system: there is solid evidence that judges in the Employment Tribunal in the UK have unashamedly played in favour of the party who is of British nationality and powerful institutions in the area, as universities, which implies lack of impartiality and it incurs perversion of justice. This situation indicates that there is a considerable risk that the judicial system in the UK is playing in favour of the British citizens and their institutions, which is discrimination. To avoid that risk and help defend my Rights, I request transparency in the process. For this reason, I request permission to audio/videotape the Preliminary Hearing and the Hearing. On these grounds, I consider my request is in favour of justice*."

71. At the start of the Hearing, no additional specific reason for the request for a recording having been made specific to the Claimant or these particular proceedings (as opposed to the Claimant's points about the legal system generally), the parties were informed by the Clerk and me that audio or video recording the hearing had not been granted, was not permitted and that audio or video recording the hearing is an offence under the Contempt of Court Act 1981. The log in screens for the CVP hearing also have clear wording that states it is a criminal offence for anyone to record or transmit all or any part of the hearing.

72. The Claimant's email of 23 May 2023 contains the following section in a separate text box:

"Judge Wisby asks to the Respondent: "Mr Ryan, I read your application. Is there anything- , You have a brief, very brief opportunity to make any further point? Otherwise, I would take it-"

Respondent, Ryan Stringer: "The Claimant's personality [referring to the Claimant's statements during this Hearing] confirms that the claim must be struck out. [This sentence has been said in a disrespectful manner]. I understand you are considering the full grounds I have set out. If you are going to consider the progress on the ground of the scandalous

behaviour I have lots of things to say. But I understand you are only going to look to the jurisdiction aspect. Is that correct?

Judge Wisby: "Yes".

Respondent: "On that basis, I have nothing to add. Thanks".

Judge Wisby: "Thanks"."

Additionally, it states [emphasis added in bold] "*Regarding what the judge Wisby says, namely: that the Respondent said that my account in TES was deactivated in October 2021 (Reasons 7;* ***the judge insisted on this matter in the minute 28 of the Hearing****), the facts are as follows*".

73. I note as an aside in case number 2500896/2022 the Claimant had, without the prior permission or knowledge of the respondent in that case, recorded the job interview he had attended.

74. Following the Respondent's correspondence regarding strike out, dated 2 June 2023, the Claimant replied as follows: "*Moreover, the Respondent is accusing me of a crime when he says that I recorded the Hearing. The Respondent shows no evidence. Therefore, the Respondent is slandering me*."

75. I am satisfied as a result of the style and content of the written extract of the hearing as set out in paragraph 71, and the reference to the precise minute of the hearing that I am said to have insisted on something, that the Claimant did, despite his application to record the hearing being refused (at first instance and on reconsideration by Employment Judge Glennie) and by me at the beginning of the hearing and the many clear and specific instructions given to him not to record the hearing (including information that to do so is a criminal offence), as a minimum audio record the preliminary hearing on 19 May 2023, and that the section set out in paragraph 71 is a transcript from the audio of that recording.

76. In light of my findings, I am satisfied that the Claimant has conducted the proceedings in a scandalous, vexatious and/or unreasonable way. The Claimant sent an abusive email to the Respondent's solicitor, he has by his correspondence to the Tribunal tried to vilify the Respondent's solicitor by accusing him of creating false evidence. By recording the preliminary hearing in direct contravention of all of the explicit and clear instructions not to audio or video record the hearing and warnings over how serious that act is, he has given gratuitous insult to the Tribunal.

77. The next steps to be taken are to consider whether, in light of the findings above, a fair hearing is still possible and whether strike out is appropriate or whether a lesser remedy might be more proportionate.

78. In respect of abusive correspondence, robust case management with clear warnings about the potential of strike out as a consequence of repeating such behaviour could allow a fair hearing to proceed. If such abusive action were to be repeated a further application for strike out could be heard. It would be evident if the behaviour was repeated, as correspondence etc would be received by the Respondent or its representatives.

79. In relation to knowingly and falsely accusing the Respondent's solicitor of creating false evidence. I consider that the Claimant's actions have undermined: (i) his credibility; and (ii) that he is acting in good faith, but I consider that the proceedings could continue and a fair hearing still be held by the Tribunal actively and impartially weighing up any evidence presented in the case.

80. In relation to the illicit recording of the preliminary hearing however, the Claimant ignored the clear and unequivocal instructions given to him - an instruction not to record the hearing and how serous that matter was, that was repeated many times orally, in correspondence and which appears on screen when you log into the CVP hearing rooms.

81. The overriding objective in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, sets out:

> " 2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—
>
> (a) ensuring that the parties are on an equal footing;
>
> (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
>
> (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
>
> (d) avoiding delay, so far as compatible with proper consideration of the issues; and
>
> (e) saving expense.
>
> A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal"

82. I have considered the above carefully, in particular that dealing with cases fairly and justly includes, so far as practicable— ensuring that the parties are on an equal footing. Additionally, a fair hearing includes ensuring one party does not have an improper benefit over another party. Illicitly recoding hearings gives one party such an improper benefit. It results in the parties not being on an equal footing. I do not consider a fair hearing can be held if one party is obtaining an illicit advantage over another party. In respect of proportionality, I bear in mind that strike out is a draconian sanction that should be used sparingly (particularly in discrimination cases) and not as a means of punishment. I acknowledge that as far as possible triable cases should be heard on their merits unless there is a very good reason not to do so. I acknowledge that the Tribunal is expected to have (and does indeed have) broad shoulders in relation to the behaviour of parties and individuals who come before it. Dealing with a wide range of litigants and approaches to litigation is standard. The decision I have reached does not relate to accusations made against the Tribunal service generally, me as an individual Judge or other Judges – those matters are not relevant to this question and can be put to one side. I have considered whether as an alternative to strike out robust case management directions could be deployed in some way, as a more proportionate measure, to allow the proceedings to continue but have concluded for the reasons that follow they cannot:

    82.1. In light of the actions, I have found that the Claimant has taken, I have no confidence that any orders, directions and instructions issued by the Tribunal regarding recordings of hearings by the Claimant will be complied with (nor that the Claimant would confess to the failure to comply with those orders, directions and instructions).

    82.2. Unlike the situation with a potential repetition of abusive emails, the

potential for further illicit recordings in this case cannot, in my view, be addressed and managed by proactive warnings about the consequences of repeated conduct. In respect of abusive behaviour, a repeat of the behaviour would be obvious (as something abusive would be received) and this could then be addressed by considering whether the repetition of that abusive behaviour should result in strike out or some other sanction. The illicit recording of Tribunal hearings is a very serious matter; it would not be a criminal offence otherwise. In respect of a fair hearing, the advantage the Claimant obtains through illicitly recording the hearing, when the Respondent does not, would hidden from the Tribunal. I do not consider that it would be appropriate to simply 'turn a blind eye' to this behaviour. Since the action of illicitly recording is covert, postponing hearings will not assist with this. The issue is not about the timing of compliance with case management orders, where an extension could be given and an 'unless order' utilised. A costs award in the Respondent's favour would not address the issue. This is not a situation where part of the claim could be struck out to deal with the issue and the remainder could then continue to a fair hearing.

In these circumstances and considering the overriding objective of dealing with cases fairly and justly, I consider striking out the claim, because the manner in which the proceedings have been conducted by the Claimant has been scandalous, unreasonable or vexatious, is the appropriate action to take.

83. Reaching the conclusion that strike out is the appropriate decision has not been an easy process and is not a decision that has been taken lightly.

Whether a deposit order under rule 39 of the Employment Tribunal Rules of Procedure should be made on the basis that any specific allegation or argument in the claim has little reasonable prospects of success.

84. In light of the decision to strike out, as set out above, there is no need for me to make a Deposit Order but it is worth recording that had I not made the decision to strike out the Claim, I would have made a Deposit Order under Rule 39 that the Claimant must pay a deposit of £1000 as a condition of advancing a Claim under section 55 Equality Act, in brief summary, for the reasons set out below.
    84.1. The Claimant's stated philosophical belief (meritocracy and good practice) has little reasonable prospects of meeting the required threshold for protection under the Equality Act 2010, as set out in Granger Plc and Others v Nicholson 2010 ICR 360. Although not the basis for my decision and not binding on any other Tribunal, I note in case number 2500896/2022 it was held that the Claimant's belief in meritocracy does not satisfy the Grainger test of establishing a philosophical belief that satisfies the definition in section 10 of the Equality Act 2010.
    84.2. The Claimant has little reasonable prospects of showing that the Respondent's actions were less favourable treatment or a detriment, even if the Claimant's belief did qualify as a protected philosophical belief. I have reached this conclusion after considering the contents and chronology of the emails between the Claimant and the Respondent in the bundle from October 2021, which strongly indicate that the decision to deactivate the Claimant's website account and block the Claimant's email address was unrelated to the Claimant's beliefs or any protected act (if one is suggested) but was taken after the Respondent received from the Claimant, an email from the Claimant stating "*In other words, TES, you, Tracy, are licking the*

balls of the people that belong to this British power, and licking the balls from behind", which the Respondent found offensive, abusive and inappropriate.

84.3. The Claimant was informed that he should be prepared to provide information to the Tribunal at the preliminary hearing about his financial situation but did not take the opportunity to do so.

Employment Judge Wisby

Date 02.10.23

JUDGMENT & REASONS SENT TO THE PARTIES ON

03/10/2023

FOR THE TRIBUNAL OFFICE