# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Zahir Khan

**Respondent:** Secretary of State for Justice

**Heard at:** by video **on:** 01.11.2023.

**Before:** Employment Judge Mensah

**Appearances**
For the claimant: No appearance
For the respondent: Ms Hodgett (Counsel)

# JUDGMENT

**(PRELIMINARY HEARING (STRIKE OUT)**

1. The claims identified as the "Group 2 claims" (3, 5, 6, 7 & 11) are listed for a Preliminary Hearing (Strike Out) on 30, 31 October & 1 November 2023. In accordance with the order of Judge Jones dated 24.02.2023 I have referred to this hearing as a Preliminary hearing (Strike out). The Claimant has not attended, and I detail the background below. I heard oral submissions from Ms Hodgetts on behalf of the Respondent.

2. The Claimant initially applied for 15 different jobs with the various Respondents over a period commencing in February 2021. Since this first case management hearing I believe this number has increased. He was unsuccessful on each occasion and claims that this was the result of the Respondents failure to make reasonable adjustments to the recruitment process which, he claims, each of them had a duty to do because of the impact of his disability.

3. The claims were case managed together and the first claim against this Respondent commenced under reference 1302664/2021. There are in total five claims against this Respondent identified as the 3rd, 5th, 6th, 7th, and 11th claims. The 5th claim is not before me for the purposes of today's preliminary hearing.

<u>Disabled under the Equality Act 2010</u>


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4. The Respondent before me concedes that the Claimant was disabled by reason of impairments depression, anxiety, and ADHD and in relation with the third and sixth claims only. The Respondent does not accept the Claimant was disabled by reason of OCPD, also at times in this case referred to as APD. The Respondent does not accept it has actual or constructive knowledge of the Claimant being a disabled person in all respects.

5. For the purposes of dealing with the applications made by the Respondent, and as agreed by Ms Hodgetts for the Respondent, I am going to take the Claimant's case at its highest. I am therefore going to treat these issues, as if the Claimant has been able to prove to a Tribunal, he is disabled based on all his claimed impairments and the Respondent had actual or constructive knowledge. The Claimant should understand these are not findings and if his claims proceed, he will still have to get over these issues before a Tribunal hearing.

6. Further, the Claimant has failed to engage with the Respondent in seeking to finalise the list of issues. I understand at least two versions have been provided to the Claimant by the Respondent in the spirit of the overriding objective, as the Respondent has also wanted the list of issues to be resolved. Failing any proper engagement from the Claimant, I am asked by Ms Hodgett to take the Claimant's case at its highest and draw from the details he has given across similar claimed issues with other Respondents, who Ms Hodgett also represents. For the reasons given below, I agree with this approach as it is in accordance with the overriding objective and the very nature of consideration of a strike out application/ deposit order.

<u>Background to Claimant's lack of appearance</u>

7. On the 21st of September 2022 all claims against all Respondents came before Judge Jones who ordered that the most efficient way to dispose of these claims would be to determine first the various Respondents applications to strike out the claims/for a deposit, listing the same for several shorter hearings by taking the claims against a particular Respondent together. The applications before me deal with four of the five claims against the above-named Respondent and whether therefore they should be struck out and or a deposit order should be made. The claims were managed again by Judge Jones on the 24 February 2023. As per the order of Judge Jones dated 24 February 2023 I am tasked to decide,

   *"19.1 whether the claims, or any of them, should be struck out under rule 37 Employment Tribunal (Rules of Procedure) Regulations 2013 on the grounds that it or they have no reasonable prospect of success;*
   *19.2 whether the claims, or any of them, or any specified allegation or argument in them, should be the subject of a deposit order under rule 39 Employment Tribunal (Rules of Procedure) Regulations 2013 on the grounds that it or they have little reasonable prospect of success;*
   *19.3 if a deposit order is to be made, how much should it be?"*


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8. Before Judge Jones at the preliminary hearing of the 24 February 2023 the Claimant did not attend. His reasons were:

   *"3. The claimant was not in attendance at the preliminary hearing and sent his apologies to the Tribunal shortly before the hearing was due to commence. He said he had not slept and was feeling anxious and unwell.*

   *4. The claimant related his symptoms to his unhappiness with the respondent's alleged conduct in relation to the preparation of documents for the hearing. It appeared to the Tribunal that this was in fact a reference to the preparatory steps required for the preliminary hearing in public which is due to take place on 13 & 14 April 2023 in the first group of claims (against the SRA) and not to the preparation of the bundle for this preliminary hearing, which was an informal hearing purely to discuss case management issues*." [underlined for emphasis]

9. The first group preliminary hearing (strike out) went before Judge Choudry on the 13 and 14 April 2023. The Claimant did not attend the hearing. The Judge records the Claimant had sent an email the day before the hearing saying his health prevented his participation, no medical evidence had been filed with the email and the Respondent had explained there was a history of correspondence in which the Claimant had identified the medical problem as chronic tension headaches and had provided some medical evidence regarding this medical issues. In particular, he said he had been prescribed Amitriptyline to mitigate the effects but claimed this had had side effects. Reference was also made to dehydration due to Ramadan. I note what the Judge recorded regarding the Respondent's submissions.

   *"(11) At the start of the hearing, Ms Hodgetts confirmed that the respondent continued to object to the hearing being adjourned. She pointed out that the neurologist letter's letter was dated 15 March 2023 and indicated that the claimant had suffered from headaches since 2012, such headaches were predominantly frontal and brief. The neurologist indicated that the claimant experienced sharp and shock like sensations which were brief and left him with a mild headache all day which affected his concentration. The neurologist also indicated that the Amitriptyline had been prescribed 8 weeks prior to the claimant's appointment with the neurologist on 13 March 2023 and that the claimant had noted an improvement in the headache severity and frequency. The neurologist suggested an increase in medication together with sleep hygiene, stress management and relaxation exercises and then discharged the claimant.*

   *(12) Ms Hodgetts took me to the claimant's medical records, and which showed that the claimant had a long-standing history of headaches going back 10 years (e.g. entry for 29 March 2022). Ms Hodgetts submitted that the claimant's medical records showed that there was no link between the claimant's headaches and Ramadan, they were longstanding and the claimant had ignored a medical recommendation to desist fasting and he had made a personal choice to continue to do so.* "

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10. Judge Choudry considered all the evidence and refused the adjournment application. I do not need to recopy the full reasons herein. They are set out in paragraphs 16 and 17. However, it is worth noting the Judge final conclusions,

    *"Taking into account the Presidential Guidance on Vulnerable parties and the overriding objective to deal with cases fairly and justly avoiding delay, so far as compatible with proper consideration of the issues and saving expense I was satisfied that the interests of justice favoured the hearing proceeding particularly as it should have taken place in December 2022 but had not proceeded due to the need to clarify the issues and the fact that the claimant had agreed to the dates of the relisted. I was mindful of the fact that there would be wasted costs if the case was postponed again. Given that the application was one for strike out or a deposit order which is considered on paper and required the Tribunal to take the claimant's case at its highest when making a decision, I was satisfied that the Tribunal could fairly assess the application without the claimant's oral submissions. I was also mindful of the fact that considerable Tribunal resources had already been spent on the claimant's claims and other claims awaiting judgment in the Tribunal system would be affected by a further delay – including other claims made by the claimant which were listed for hearing in November 2023. As such, I determined that the claimant's application for an adjournment should be refused and that the hearing should proceed in the claimant's absence."*

11. As already stated, the applications made by the respondents have been staggered and listed for various dates. Before me the Claimant also did not appear. The Claimant has engaged in numerous emails with the Tribunal. The overall gist of the content as far as I can make out is the Claimant is saying this time he cannot participate in any hearings until he has completed treatment for his mental health. He refers to an appointment regarding the "*restructure of medicine*" on the 30 November 2023, contact with his GP, an appointment with a psychiatrist on the 13 December 2023 for 30 minutes (An appointment letter is filed confirming the same). In an email dated 21 October 2023 he says he has been referred to the pain clinic for headaches and he is not fit to attend the hearing and ends by saying,

    *"That will mean I cannot attend any Hearing save only after treatment improves. Which is expected hopefully after reviews are had in the three domains."*

12. I take his reference to three domains to mean his seeking a change in medication, ADHD and seeing a psychiatrist. Effectively, the Claimant seeks an indefinite postponement to an unspecified date and dependent upon his response to any treatment he may or may not be given.

13. On the 25 October 2023 Judge Wedderspoon refused the postponement request. The Claimant asked for it to be reconsidered the same day and this was refused. I understand the Claimant sought a second reconsideration and eventually, after guidance from the Regional Judge, has filed an appeal to the Employment Appeal Tribunal. This remains extent at the date of this hearing. The Claimant has confirmed by email dated 29 October 2023 he will not attend


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or participate in this hearing. He does not suggest any adjustments would assist him in attending, but flat out refuses to attend on the grounds I have summarised herein.

14. The Claimant had not attended and at the start of day one he had not filed any fresh evidence or made a fresh application for a postponement. It was on this basis I proceeded to deal with the applications.

15. By the start of day two of the hearing, it became clear the Claimant had overnight sent an email to the Respondent and the Tribunal at 7.38pm. In that email he says,

    "*Dear Court, I wanted to inform you that I had managed to book in an appointment with the Dr in the morning. I wanted to discuss headaches which is something I struggle with (I suffer frequently from Tension Headaches). Unfortunately, I did not catch the call at the time as I had attended work. Work pressure, being a humble receptionist, was bearable and so I attended. Attending the Hearing which I was not fit for notwithstanding the headache was something I could not. As expressed, many weeks in advance of this Hearing. I have attached for you record of the scheduled appointment. The reason why I was able to book this appointment in was because of inability to sleep properly coupled with the time change (an extra hour of sleep for working people). Therefore, I was able to get up to try to mitigate my ill health so that the arranged postponement, requested, will have me in a more normal state. A state that will, in some regard, mitigate the massive disparity that exists on footing before the Court. I will be booked in with consultant psychiatrist Dr Ahmed in 6 weeks and my appointment to try to mitigate the ill effects of my learning disability, ADHD, will hopefully be some time soon. Kind regards"*

16. I asked Ms Hodgett to address me on the Respondent's position regarding the impact of this email on the hearing before me. After hearing submissions and considering the email I concluded there was no fresh evidence before me on which I could treat this as a fresh application that had not already been considered before Judge Wedderspoon.

17. Effectively, the Claimant seeks to reargue the same basis for his failure to attend as he did before. I note there remains no medical evidence to show he was not fit to log in and participate in these proceedings. In fact, he now says he was able to work as a receptionist and certainly does not assist this. If anything, the absence of medical evidence coupled with his ability to work, only strengthens the position taken by Judge Wedderspoon and indicates the real reason he did not participate in the hearing is that he had not booked the day off work.

18. However, even if this could amount to a new application, for the reasons I have given I would refuse the application as on the evidence he has not shown he was not able to participate in the hearing, as Judge Choudry says in his judgment,


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"*I was mindful of the fact that there would be wasted costs if the case was postponed again. Given that the application was one for strike out or a deposit order which is considered on paper and required the Tribunal to take the claimant's case at its highest when making a decision, I was satisfied that the Tribunal could fairly assess the application without the claimant's oral submissions. I was also mindful of the fact that considerable Tribunal resources had already been spent on the claimant's claims and other claims awaiting judgment in the Tribunal system would be affected by a further delay – including other claims made by the claimant which were listed for hearing in November 2023. As such, I determined that the claimant's application for an adjournment should be refused and that the hearing should proceed in the claimant's absence.*"

19. I endorse and adopt the same reasoning here, albeit I am even further strengthened by the admission the Claimant was in fact working.

Documents

20. I was presented with a main bundle of 408 pages, an authorities bundle of 388 pages and containing 18 authorities and a skeleton argument on behalf of the Respondent. The Claimant had not lodged any documents for the purposes of these proceedings.

21. I understand there had been a discussion with Judge Jones on the 24 February 2023 about documents, but the order did not specifically address further evidence for this second group hearing. The Appellant had filed an unpaginated supplemental bundle with no index, for the first group proceedings running to 392 pages.

22. In relation to these proceedings, he was asked by the Respondent's solicitors on the 6th of October 2023 if he had any documents he wished to be included in the bundle for this hearing. The Respondents on the same occasion also provided the main bundle for the hearing that is before me. On the 8th of October 2023 the Claimant e-mailed the Tribunal and within his e-mail he sought a postponement and further confirmed that he would not cooperate with the Respondents for the purposes of bundle preparation because he would not respond to the Respondents e-mail of the 6th of October 2023. Therefore, the Claimant has specifically refused to cooperate with bundle preparation for the hearing and has not indicated to me he wished the evidence he filed in the first group hearing to be considered in this hearing. I have therefore confined my consideration to the bundles prepared for this hearing as it would not be proportionate to start looking at bundles prepared for hearings involving other Respondents in a case like this unless placed specifically before me by a party.

The Law

23. (19) Rule 2 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") provides:


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*"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."*

<u>Strike Out</u>

24. (20) Rule 37 of the Rules provides that:

    *"(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds— (a) that it is scandalous or vexatious or has no reasonable prospect of success…*"

25. When this matter went before Judge Choudry, she set out the well-recognised legal position regarding strike out and deposit. The authorities apply equally to this hearing and so there is by virtue of that some repetition. In the House of Lords in ***Anyanwu v South Bank Students Union and South Bank University [2001] IRLR 305*** it was confirmed that strike out is not normally appropriate where there are substantial disputes of fact, most notably in fact-sensitive discrimination claims. It is trite that it is only the clearest cases where a discrimination claim should be struck out. As per the case of ***Mechkaroy v Citibank NA [2016] ICR 1211 and Ezsias v North Glamorgan NHS Trust [2007] ICR 1126,*** a strike out is not appropriate where there is a crucial core of disputed facts that are not susceptible to determination otherwise than by hearing and evaluating the evidence.

26. In ***Ahir v British Airways plc [2017] EWCA Civ 1392*** Underhill LJ stated that: *"Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospects of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context….Nevertheless it remains the case that the hurdle is high, and specifically that it is higher than*


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*the test for the making of a deposit order, which is that there should be "little reasonable prospects of success*".

Deposit orders

27. (25) Rule 39 of the Rules contains the power to make a deposit order. This provides:

*"(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party ("the paying party") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*
*(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*
*(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order. (4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21. (5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—*
*(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and*
*(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded.*
*(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order."*

28. A deposit order is available early on in proceedings where the claim/s are shown to have little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs ultimately if the claim fails, see ***Hemdan v Ishmail and Another [2017] ICR 486 27***. Underhill LJ in the case of ***Ahir v British Airways Plc [2017] EWCA Civ 1392*** that:

"*16. Nevertheless, it remains the case that the hurdle is high, and specifically that it is higher than the test for the making of a deposit order, which is that there should be 'little reasonable prospect of success'. ... [However,] Where there is on the face of it a straightforward and well documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that the explanation is not the true explanation for*


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*what happened without the claimant being able to advance some cogent basis for that being so*."

Failure to make reasonable adjustments.

29. Section 20 of the Equality Act 2010 provides:

*"Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
*(2)The duty comprises the following three requirements.*
*(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage".*

*(29) Section 21 of the Equality Act 2010 provides:*
*"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
*(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person".*

*(30) Section 39 of the Equality Act provides:*
*"(1) An employer (A) must not discriminate against a person (B)—*
*(a) in the arrangements A makes for deciding to whom to offer employment;*
*(b) as to the terms on which A offers B employment;*
*(c) by not offering B employment*".

EHRC Code of Practice ("Code")

30. The Code is not legally binding, but the Tribunal must consider any part of the Code that is relevant to any questions arising in the proceedings.

31. Paragraph 6.16 of the Code states:

*"The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular provision, criterion, practice or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly – and unlike direct or indirect discrimination – under the duty to make adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's".*

32. Paragraph 6.28 of the Code sets out the factors that might be considered in determining whether a step is reasonable:

*"• whether taking any particular steps would be effective in preventing the substantial disadvantage;*
*• the practicability of the step;*


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*• the financial and other costs of making the adjustment and the extent of any disruption caused;*
*• the extent of the employer's financial or other resources;*
*• the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and*
*• the type and size of the employer."*

PCP

33. A PCP is a provision, criterion or practice that puts a disabled person at a substantial disadvantage in relation to a non-disabled person. If a PCP is applied and places the disabled person at that substantial disadvantage, then the prospective employer or employer must take reasonable steps to ensure the disabled person is not disadvantaged because of the PCP.

34. The Claimant must prove the PCP was applied to him and caused a substantial disadvantage, ***Bethnal Green & Shoreditch Educational Trust -v- Dippenaar UKEAT/0064/17***. The Claimant must also show not only that the duty to make reasonable adjustments has arisen, but also to identify a reasonable adjustment that could have been made as per Elias P in ***Project Management Institute -v- Latif [2007] IRLR 579.*** The question of whether the proposed steps were reasonable must be determined objectively by the Tribunal as per ***Smooth -v- Churchills Stairlifts plc [2006] ICR 524***.

35. Further it is correct to say a Tribunal must be satisfied that the disadvantage would not equally arise in the case of someone without the Claimant's disability, see ***Newcastle upon Tyne Hospitals NHS Trust v Bagley UKEAT/0417/11*** although the Claimant does not need to show that disadvantage arises because of his disability: ***Sheikholeslami v University of Edinburgh UKEAT/0014/17***.

36. The question of whether and to what extent the step would be effective to avoid the disadvantage is an important one to weigh in the balance: ***Secretary of State for Work & Pensions (Job Centre Plus) v Higgins [2014] ICR, EAT***.

37. In ***Paulley v FirstGroup plc [2014] EWCA Civ 1573***, CA, per Lewison LJ at [44], adding at [45]:

"This is not a threshold test. The prospects of success in achieving the desired objective are to be weighed in the balance against the cost and difficulty of making the adjustment."

38. It was perfectly proper to strike out a claim of a failure to make reasonable adjustments where on the undisputed evidence there were no reasonable adjustments that could have been made to enable C to return to work; per HHJ McMullen QC [17, 19, 22], see ***Conway v Community Options Ltd UK EAT/0034/12.***

39. In assessment/job application cases it would not be reasonable to require an employer to remove a PCP that, if removed, would deprive the assessment of

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its value. In the ***Government Legal Service v Brookes UKEAT/0302/16*** [36-40], per Kerr J; ruling that the ET had been entitled to find that decision-making skills could be assessed by short narrative answers rather than multi-choice answers; that the Tribunal had correctly distinguished Lowe; and that the Tribunal had been entitled to find that balancing the disadvantage against the steps required to implement a different written (i.e. narrative answer) test, it would be a reasonable adjustment.

40. Ms Hodgetts also referred me to a number of authorities in this regard including: ***Burke v College of Law & SRA UKEAT/0301/10*** and on appeal ***Burke v College of Law & SRA [2012] EWCA Civ 37; Lowe v Cabinet Office ET 2202187/10, Wade v Sheffield Hallam University UKEAT/0194/12:*** it was not reasonable to deploy a disabled person into a post for which she failed to meet the essential requirements; per HHJ McMullen QC [19-20]; and ***Government Legal Service v Brookes UKEAT/0302/16*** [36-40], per Kerr J; ruling that the ET had been entitled to find that decision-making skills could be assessed by short narrative answers rather than multi-choice answers; that the Tribunal had correctly distinguished Lowe; and that the Tribunal had been entitled to find that balancing the disadvantage against the steps required to implement a different written (i.e. narrative answer) test, it would be a reasonable adjustment.

41. A failure to consult does not of itself constitute a failure to make reasonable adjustments: ***Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664*** [71-72].

<u>Taking the Claimant's case at its highest, the PCP's</u>

42. Taking the Claimant's claims from his claim form, the case management hearing records he did attend and engaged in, and the evidence in the bundle, and taking them at their highest, the PCP's have been fairly identified as follows:

- PCP: providing a period of assessed work experience rather than assessing C against the competencies of the post by way of written application demonstrating experience.
- PCP: ignoring grammatical errors.
- PCP: it is assumed, not imposing a word limit.
- PCP: lowering the minimum threshold further.
- PCP: engaging in post-application correspondence.

43. The Respondent advertised roles and assessed them on a written application by reference to competencies or behaviours. For ease of reference, I refer to them as behaviours as this is how they are identified in the application form and guidance. The behaviours vary, but across these roles are:

- "Changing and Improving"
- "Seeing the Bigger picture"
- "Communicating and influencing"

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- "Working Together"
- "Managing a Quality Service"
- "Making effective decisions".

44. In terms of these claims the sixth, seventh and eleventh claims were only marked against one of the behaviours due to the volume of applications. So, the sixth claim was marked against "*making effective decisions*" only, the seventh claim against "*Changing and improving*" only and the eleventh claim against "*Managing a quality service*" only.

45. In terms of the scoring criteria the Respondent sends out guidance and for the purposes of my decision perhaps it is worthy to set them out herein.

*"Scoring Matrix*
*Please score the candidates using the following scoring guidelines:*
*1 - Not Demonstrated - No positive evidence of the behaviour*
*2 - Minimal Demonstration - Limited positive evidence of the behaviour*
*3 - Moderate Demonstration - Moderate positive evidence of the behaviour*
*4 - Acceptable Demonstration - Adequate positive evidence of the behaviour*
*5 - Good Demonstration - Substantial positive evidence of the behaviour*
*6 - Strong Demonstration - Substantial, positive evidence of the behaviour and includes some evidence of exceeding expectations*
*7 - Outstanding Demonstration - Evidence provided wholly exceeds expectation at this level"*

46. The Claimant scored 1 or 2 in all but one of the behaviours relevant for the purposes of these applications. That is, he scored below what was deemed to be an adequate demonstration of the skills required for the role. The minimum requirement in most cases was set as a score of 4, albeit in at least one of the applications, non-disabled candidates were required to meet a minimum score of 6. I address the details herein.

47. The Claimant made multiple job applications through the application form procedure within a relatively short period of time. Keeping to consideration of the procedure for this Respondent I can see he applied as follows:

(a) 3rd Claim: job application 20/2/21
(b) 5th Claim: 19/2/21
(c) 6th Claim: 14/2/21
(d) 7th Claim: 5/2/21
(e) 11th Claim: 17/4/21

48. I note that when making these applications close together, he appears to have used the same examples and even copied the same answers, to demonstrate different behaviours for different applications despite the fact the roles he applied for where varied in seniority. I return to this again below.

## <u>The issues and claims:</u>


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The third claim

49. The relevant issues for this hearing:

*3. A PCP of:*
*(a) Requiring applicants to complete a written application?*
*(b) by reference to already acquired experience;*

*4. Did that PCP put the Claimant at comparative substantial disadvantage compared to applicants without his disability/disabilities?*

*5. Did the Respondent have actual or constructive knowledge of that disadvantage?*

*6. If so, was the following a step that it is reasonable for the Respondent to have to take to avoid that disadvantage:*

*(a) Assessment through a period of work experience*

*7. If so, it is accepted that the Respondent did not take that step.*

**National Probation Service Health & Safety Senior Administrative officer**

50. The Claimant applied for the role of a National Probation Service Health & Safety Senior Administrative officer on the 20 February 2021. The role as advertised is exhibited at pages 156-161. The role is described as a "a co-ordination and senior administrative role in the Divisional office, Function/ Cluster local offices." It requires the individual to carry out corporate support office/based activities to support the Divisional and operational teams. It requires interface across various management hubs and teams, reporting requirements and perhaps more centrally.

*"The jobholder will support the Business Manager to ensure effective compliance with Health, Safety and Fire Regulations, acting as Single Point of Contact / Estates Liaison Officer for the buildings from which they operate. In line with NPS policies and procedures, the job holder must at all times demonstrate a commitment to equality and inclusion and an understanding of their relevance to the work they do. The post holder must adhere to all policies in respect of the sensitive/confidential nature of the information handled whilst working in this position."*

51. The Responsibilities activities and duties are headlined as "*Management support", "Health, safety & Fire", "effectively manage and develop staff", "use communication effectively", "Enhance your own performance" and "use information to take critical decisions.*"

52. The Vacancy Manager comments on this role, from 2021 were:


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"*the minimum threshold was for non-GIS applicants, and the minimum threshold for Guaranteed Interview Scheme applicants for this post? For both it was a minimum of 4.*"

53. The advert for the post refers to the '*GIS*' or Guaranteed Interview Scheme and explains those that meet the minimum threshold will be offered an interview. The Respondent received 41 applications. Of those 5 where shortlisted for interview. None of those with disclosed disabilities were shortlisted but one who preferred not to say whether they were disabled was.

54. I have also been referred to a section in the form that says as follows:

    "*In the event that we receive a large volume of applications we reserve the right to conduct the sift based on one lead behaviour. The chosen lead behaviour for this campaign is Seeing the Big Picture."*

55. The ability of the Respondent to decide to only assess the applications by reference to one lead behaviour is a theme running through all these applications. In this application it was not exercised, and I assume this is because only 41 applications were received and so this did not meet the "large volume" threshold. I have been referred to the Claimant's application form for this post and the scoring form. This shows the Claimant scored a total of 2 points in each behaviour out of a total of 7 points available for each. He was scored against four behaviours in this exercise. Ms Hodgetts in her written skeleton has set out the Respondents position on each of the answers:

    *"(c) C's scores:*

    *(1) Changing and Improving: 2. C describes improving his learning style at university in order to pass his exams, in three ways: learning selectively, looking at past papers, and secluding himself in the library. This is a weak example of changing and improving, not least because it does not demonstrate anything beyond adopting common sense learning techniques, it lacks concrete detail as to the improvement produced, and it lacks objective measurables.*

    *(2) Seeing the Big Picture: 2. C describes withdrawing a Tribunal claim because pursuing it was having an effect on his mental health. Again, this is a weak example: it does not demonstrate anything beyond taking into account (as all litigants must) the pressure of conducting Tribunal litigation in deciding whether to pursue it, and in presenting such a simplistic situation, fails to present any complex evaluation of the smaller detail as against the big picture.*

    *(3) Communicating and Influencing: 2. C describes hearing that mail had been received, allegedly with the saliva of an employee of the mailing company on it, "in an act of hate". C complained to the mailing organisation, and received an apology and an offer of free service. Again, this is a weak example: it is not a sophisticated example of having to persuade in relation to a complex issue: there was a standard commercial response to a customer complaint.*

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*(4) Working Together: 2. C describes setting up a stall with a colleague and obtaining food and drink. Again, this is weak: the project is simple; there are no difficulties or conflicts described; and in turn, no description of any challenge arising in the course of 'working together' that was overcome by a particular approach of C's.*"

56. Further advanced by Ms Hodgett is the Claimant "h*as obtained a fair amount of experiences. He obtained his law degree (LLB) in 2015 and subsequently an LLM, entailing a dissertation [EJ Camp Judgment §47]. He has engaged in the voluntary sector and labour market for several years. C clearly has a number of experiences that he could deploy in job applications - including completion of his degrees, and various periods of employment [Camp Judgment, §47], 6th Claim job application "details of current employment" (from August 2018 to date in February 2021). Certain of C's answers in the SRA applications [Choudhry Judgment §48] demonstrate that he can advance certain experiences to satisfy competencies*"

57. Ms Hodgetts argued before me that the Claimant could not demonstrate he did not have relevant experience he could have drawn upon to provide better examples of the behaviours for the relevant role. I have been referred to Judge Choudrys judgment where it is recorded,

    "*I am satisfied from the claimant's 5 applications before me that the claimant does have experiences from his studies, his volunteering experience and from his work experience from which he could demonstrate competencies…"*

58. Those conclusions were with reference to the roles Judge Choudry was concerned with, but the Claimant's experience is the same and he appears to have made decisions as to which of his experiences to use in the application form. In the form for this role, he refers to his current job at an Islamic Outreach Project as a Coordinator, previous roles at Sports Direct as a Sales Assistant, a role as an assistant to a litigation executive in a solicitor's office, a role in a consultant assisting a legal advisor, an Operations assistant for an Exhibition company, and a safety steward for G4S.

59. There is a complete absence of any real basis to say the Claimant's ill-health has prevented him from being able to acquire experience beyond the examples he has chosen to give in this application. I am satisfied on the information before me the Claimant has no reasonable prospect of being able to demonstrate his health prevented him from being able to acquire the experiences beyond those he has selected for his application.

60. Furthermore, he has no reasonable prospect of being able to show he has not acquired the experiences to meet the *behaviours* for this role, beyond the same disadvantage people without his disability would have. I accept there is no reasonable prospect of him showing the requirement to complete a written application placed him at a significant disadvantage when compared with non-disabled applicants. I return to this again below.

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61. I accept Ms Hodgetts submission that these applications require individuals to give their time and care to choose examples that meet the behaviours for the specific role. As I go through these various applications, I have noted the Claimant appears to have used the same examples and sometimes even copied his answers across different answers to different behaviours and for very different roles. This appears consistent with the low scores he was awarded and undermines his assertion he was at a substantial disadvantage because his health.

Work experience assessment

62. The Claimant seeks assessed work experience. The way he has brought his case regarding this role is that he says in his claim form,

“*Not giving me, who could not (but for disabilities), struggling to demonstrate the competencies in the written application process, a chance to do so via another mode of assessment like a work experience opportunity.”*

63. I take this to mean he has acquired the experience but is saying he cannot demonstrate this by way of application form. The alternative would be he was asking for a temporary job to give him the experience he was lacking, and this is an even worse position than the one I assume he has taken, and which puts his case at its highest.

64. Effectively, the Claimant appears to want the Respondent to take him on for an unspecified period which might be between two weeks and three months depending on what is being assessed, undertaking a role with similar tasks, for which he is seeking employment, so he undertakes the task and demonstrates he meets the behaviour.

65. I agree with Ms Hodgett, this is completely out with how the law defined a reasonable adjustment. There is no reasonable prospect of the Claimant demonstrating to a Tribunal that it would be a reasonable adjustment. This isn’t just a different way of making an application as set out in the case of ***Government Legal Service v Brookes UKEAT/0302/16 [36-40]***, it would involve the Claimant and the Respondent dedicating significant time and resources and I accept there is no reasonable prospect of this aspect succeeding.

66. The Claimant does not address whether he would expect to be paid during this period or would expect candidates to work for free. As Ms Hodgetts also pointed out, the role involves dealing with sensitive data, the supervision required would be significant and might well render the experience futile but would certainly filter down the experience. I find the Claimant has no reasonable prospect of satisfying a Tribunal this would be a reasonable adjustment. Given all the above I also find he would have no reasonable prospect of showing this adjustment would make any difference to his application for this role.

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67. A further difficulty with the case advanced in the Claimant does not show the Respondent had knowledge of the asserted disadvantage. I have already found his claim has no reasonable prospect as above but for completeness I agree with Ms Hodgett, when you look at his application the Appellant does not specify his disability and does not suggest work experience is an adjustment he requires (page 172). Instead for the purposes of the application stage of assessment he suggests relaxing the scoring and "*pardoning*" grammatical errors. These are not the adjustments he contends for in his claim.

Grammatical errors

68. At this stage it is probably helpful to address the issue of grammar. At various points in the applications for roles with this Respondent the Claimant has mentioned grammar. I cannot identify any evidence to indicate the Claimant's score was in fact impacted by grammar. Ms Hodgetts could not identify any grammatical errors and the Claimant has not identified any. I am therefore satisfied the Claimant has no reasonable prospect of showing grammatical errors placed him at a material disadvantage. I note he has been able to complete his law degree and an LLM and I consider it highly likely he is computer literate. On the evidence there is no reasonable prospect of this adjustments being a substantial disadvantage and no basis to say it is even linked to his impairments.

Relaxing scores

69. In terms of relaxing the scores it seems also relevant to address that here. Ms Hodgetts has taken me to the Respondent's Disability Confident Scheme. The scheme is designed to guarantee disabled candidates who meet the minimum threshold to go on to interview no matter how good the non-disabled candidates scores are. So, for example, for applications for the role of administrative officer, which is claim 6 in this tranche, 555 applications were received and the minimum threshold for non-disabled candidates was raised to 6 or above. For disabled candidates it was 4 or above.

70. For all the other roles including this one, the minimum score is 4. I agree in principle if the minimum score correlates to the essential skills required for the role, then the Respondent is entitled to require all candidates to meet that minimum threshold. This is confirmed in various cases detailed above, see ***Burke v College of Law & SRA UKEAT/0301/10*** and on appeal ***Burke v College of Law & SRA [2012] EWCA Civ 37; Lowe v Cabinet Office ET 2202187/10, Wade v Sheffield Hallam University UKEAT/0194/12***: it was not reasonable to deploy a disabled person into a post for which she failed to meet the essential requirements; per HHJ McMullen QC [19-20]; and ***Government Legal Service v Brookes UKEAT/0302/16*** [36-40], per Kerr J.

71. I accept in this role and for all the reasons already cited, there is no reasonable prospect of the Claimant showing the Respondent was under a duty to reduce the minimum threshold for him.


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Post application correspondence

72. In terms of failing to engage in post application correspondence I assume the Claimant is complaining he was prevented from securing reasonable adjustments as a substantial disadvantage. I find there is no reasonable prospect the Claimant can show that the PCP gave rise to relevant comparative substantial disadvantage, as a job applicant or at all or that it arose when his application was rejected. The form gives a clear opportunity for individuals to set out what they believe are reasonable adjustments and the guidance is also set out in the advertisement. There is a telephone number and valid email for all applicants to make enquiries regarding adjustments prior to making their application.

73. As already set out above, a failure to consult does not of itself constitute a failure to make reasonable adjustments: ***Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664*** [71-72]. I accept the Claimant has no reasonable prospect of showing this asserted disadvantage was one that a person without his disabilities who had a practice of making multiple job applications "without marshalling his experiences properly", would not experience the same.

The sixth claim

74. The relevant issues are:

*"17. Did the Respondent have a PCP of:*
*(a) Requiring applicants to complete a written application*
*(b) Requiring applicants to demonstrate competencies by reference to experiences*
*18. Did that PCP put the Claimant at comparative substantial disadvantage compared to applicants without his disability/disabilities? [Claimant to identify precisely what the substantial disadvantage was]*
*19. Did the Respondent have actual or constructive knowledge of that disadvantage?*
*20. If so, was the following a step that it is reasonable for the Respondent to have to take to avoid that disadvantage:*
*(a) Assessment through a period of work experience*
*(b) Removing requirement to demonstrate competencies by reference to experiences*
*21. If so, it is accepted that the Respondent did not take that step."*

**Administrative Officer**

75. The Claimant applied for the role of an Administrative Officer on the 14 February 2021. The Respondent received 953 applications. Of those 12 were shortlisted for interview. 3 of the 36 candidates who applied and had declared disabilities were shortlisted for interview. As I have already addressed above, this was the role where the Respondent had in fact increased the assessment stage for non-disabled candidates to 6 and so the Claimant was already at an


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advantage in having to only meet the minimum threshold of 4 compared with non-disabled candidates.

76. The Role does not involve the more senior role as the Senior Administrative role above, but it did require the Claimant to demonstrate he could, amongst other things,

    *"Preparing papers and files for court, tribunals, hearings and meetings, Producing court/tribunal documents, General photocopying and filing, Creating and updating records on in-house computer system and data input, Post opening and dispatch., Booking, preparing and organising meeting rooms, supporting training courses and other group activities, Preparing meeting agenda, joining instructions, handouts etc."*

77. Given the volume of applications the Respondent elected as per the details I have set out above, to only assess applications by virtue of one behaviour and that was "Making effective decisions." I note the Claimant's answer to this behaviour is almost identical to the answer he gave to the behaviour "Changing and Improving" for the NPT role. So effectively, he explains what he did at university to improve his learning tech as mentioned above. The Claimant scored 3 in this exercise. The effect of choosing to use the same example when trying to meet a different behaviour is apparent. I find the Claimant has no reasonable prospect of showing the written application placed him at a substantial disadvantage compared with non-disabled candidates. The reality of the evidence before me is he made poor choices when choosing examples and as already set out above, he appears to have had a wealth of experience he could have drawn from instead but has chosen not to. Furthermore, as only one behaviour was marked, he did not even have to show a wealth of experience as he only needed to give one good example that demonstrated it, or perhaps two within word count.

78. In the application form when asked if he required any adjustments due to identifying as disabled. I note he said,

    *"I feel that the best adjustment, given the circumstances I am in during the application form and relevantly before it, is to allow me to have a work experience opportunity to demonstrate the skills necessary for the role. So that I could prove my suitability or not. You are welcome to read the application to see if it enables me at least to pass the first stage. However, I imagine that at some point I will have to undergo the said adjustment, possibly the interview stage (as a means to avoid it). The reason for this is complex."*

79. For the same reasons already given in the third claim, I do not accept the work experience adjustment has any reasonable prospect of success.

80. Ms Hodgetts refers to the fact that of the 953 candidates, 12 (0.001%) candidates progressed to interview; 36 candidates declared a disability; of whom, 3 (0.08%) progressed to interview. I accept Ms Hodgetts submissions, the Claimant "*cannot show that he could not display an array of experiences (i)*

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*at all (ii) because of ill-health. He can show an array of experiences; and to the extent that there is a limit - which is all relative - he cannot show that this is in comparison to someone without his disabilities (as opposed to being socio-economic: see Camp Judgment* §§50-51*; or related to how he chooses to spend his available time)."*

81. I accept he has no reasonable prospect of showing his health prevented him from being able to give examples that would meet the competencies from his own experiences. This seems one of those situations where he has simply made poor choices and repeated the same poor choices by replicating the same answers across multiple applications.

Word count

82. It is probably worth addressing the word count issue here. Whilst again not raised in all claims and not in all applications there is reference to the word count. The written forms indicate the answers should be no more than 250 words. I accept Ms Hodgetts submission that such a requirement allows candidates to demonstrate an ability to collate information and present it in a succinct manner. This is an essential skill across all the roles the Claimant had applied for whatever the behaviours being judged. Firstly, whilst Ms Hodgett has not carried out a word count on all the answers given across all the applications, she did a test, and the Claimant appears to have been able to provide his answer within the 250-word count. Second, having looked at his answers I agree they appear overly focused on setting the background, rather than evidencing the behaviour. I accept there is no reasonable prospect of the Claimant being able to show he faced a substantial disadvantage compared with non-disabled candidates or that his health prevented him from being able to answer within 250 words.

The seventh claim

83. The issues as material to this hearing:

*"24. Did the Respondent have a PCP of:*
*(a) Requiring applicants to complete written application form*
*(b) Requiring applicants to demonstrate competencies by reference to experiences*
*(c) Requiring applicants to achieve a standard of grammatical correctness (d) Requiring applicants to achieve a particular mark to progress in the application process*
*25. Did that PCP put the Claimant at comparative substantial disadvantage compared to applicants without his disability/disabilities? [Claimant to identify precisely what the substantial disadvantage was]*
*26. Did the Respondent have actual or constructive knowledge of that disadvantage?*
*27. If so, was the following a step that it is reasonable for the Respondent to have to take to avoid that disadvantage:*


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*(a) Assessment through a period of work experience (b) Ignoring grammatical errors*
*(c) Allowing Claimant to use same experience multiple times*
*28. It is accepted that the Respondent did not take step (a). Did the Respondent fail to take steps (b) and (c)?"*

**Team Leader at the County Court**

84. The Claimant applied for the role of Team Leader of the County Court. The Respondent received 106 applications. Of those applications 10 declared a disability and 3 preferred not to say. 6 of the 36 shortlisted had a declared disability and none of those who preferred not to say were shortlisted. The role is detailed in the advertisement at page 295. For the purposes of his judgment, it is sufficient for me to refer to the key purpose of the role and note this is a lead role with management responsibilities,

    "The key purpose of the role is to • *Manage and plan the workload of a team which provides administrative support and excellent customer service to all stakeholders, judiciary, and management. • Lead and manage a team of staff, ensuring that its members are organised, and fully skilled to meet their work objectives, using Lean TIBs, SOPs and other continuous improvement tools. • To assist in the delivery of performance against targets*."

85. The minimum standard for the assessment stage was 4. In this case the Claimant referred to other litigation in his application. There is a dispute as to when he applied for this role as he appears to say it was the 10 February 2021 and the Respondent says it was the 5 February 2021. Nothing turns on the date other than I note both dates are before the deadline of the 12 February 2021. The only relevance in my mind as to this is the Claimant would have had time to correct any errors in his application before expiry of the deadline and instead seems to have embarked on email correspondence referring to errors, he says he made in the application form. He was told on the 25 February 2021 he had not been successful and embarked on further emails on the 9 March 2021 then asking for adjustments.

86. I repeat herein what I have already said about the PCPs in the above claims. The same applies to this claim. This is also another application which was marked against one competency. In this case "*Making effective decisions*." I therefore repeat again what I have said above regarding the fact the Claimant was not required to disapply a wealth of experience in this application. His answer refers to his experience at the Islamic centre but makes no mention of effective decisions that would demonstrate his management of people. In fact, it is very focused on his decision to get involved with the centre. The score of 2 does not appear misplaced given the answer missed the point.

87. The breakdown in this claim is 106 candidates applied, 36% progressed to interview (38 candidates including disabled candidates) and of the 10 declared disabled candidates who applied, 6 progressed to interview. That being 60% of disabled candidates progressed to interview stage. The statistics appear to

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show the successful disabled candidates were proportionately greater than the non-disabled candidates.

88. I repeat here what I said in the other claims regarding assessment through a period of work experience and ignoring grammatical errors. The same applies. There is no reasonable prospect of the Claimant showing he was at a substantial disadvantage compared with non-disabled candidates or that his health prevented him from demonstrating the experience. There are no identified grammatical errors or evidence the same reduced his score. His answer appears on its face, simply a poor choice.

<u>Same experience multiple times</u>

89. Turning to allowing the Claimant to use the same experience multiple times, I have struggled to follow this adjustment. There is no evidence as such that this was a requirement or PCP. I assume, taking it at its highest, he means within the same application. In this application only one behaviour was marked and so this does not apply. If he is suggesting the same experience across different roles, he has applied for, I find he has no reasonable prospect of being able to show he faced a substantial disadvantage, never mind showing, which I consider fanciful, the same person applied some disadvantage because they recognised, he had applied for a different role and given the same example. I repeat what I have said in the third claim herein with reference to post application correspondence.

<u>The eleventh Claim</u>

90. The issues in this hearing:

*"31. Did the Respondent have a PCP of:*
*(a) Requiring applicants to undertake a written application*
*(b) Requiring applicants to demonstrate competencies by reference to experiences*
*32. Did that PCP put the Claimant at comparative substantial disadvantage compared to applicants without his disability/disabilities? [Claimant to identify precisely what the substantial disadvantage was]*
*33. Did the Respondent have actual or constructive knowledge of that disadvantage?*
*34. If so, was the following a step that it is reasonable for the Respondent to have to take to avoid that disadvantage:*
*(a) Assessment through a period of work experience*
*(b) Removing requirement to demonstrate competencies by reference to experiences*
*35. If so, it is accepted that the Respondent did not take that step."*

**<u>Administrative officer</u>**

91. The Claimant applied for an Administrative Officer role on the 17 April 2021. His application was refused on the 10 May 2021. He sent post refusal


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correspondence from the 21 May 2021. The Respondent received 579 applications. Of those applications 37 had a declared disability and 12 would prefer not to say. 8 of those who declared their disability and 5 of those who would prefer not to say were shortlisted.

92. The role is described in the advert and has similarities to the previous administrative role, see page 227. For this judgment, it is sufficient to simply outline the key responsibilities.

*"• Preparing papers and files for court. • Collection of financial impositions imposed by the court. • Enforcement of financial impositions using designated Fines Officer Powers. • General photocopying and filing. • Creating and updating records on in-house computer system and data input. • Post opening and dispatch. • Booking, preparing, and organising meeting rooms, supporting training courses and other group activities. • Preparing meeting agenda, joining instructions, handouts etc."*

93. As Ms Hodgett helpfully sets out, the claim form the Claimant says,

*"(a) This was one out of several previously to it, and that C was mentally exhausted at the time due to his mental impairments and had severe cognitive issues;*
*(b) He made mention of mental impairments and how they affected him;*
*(c) In the reasonable adjustments section, he noted that he had little work experience or life experiences that were relevant (essentially because he was ill for a majority of time); he would appreciate it if HR could aid by talking with him directly so that he could explain the matter to them in more detail; and due to his inability to speak directly and articulate himself, he would be happy if they could communicate with him in writing."*

94. In the application form he asked for work experience for the first time across all the applications before me. In complete contrast to his assertion, he was better placed to be assessed during work experience he says.

*"I would advise that HR directly contact me to discuss a way forward in my situation. And I can, if you would like me to, happily provide medical records to validate my ill health. Please do not hesitate to ask. I would also advise that any contact be had in written form because I am best able to articulate my thoughts, at this current moment in time, via written correspondence (be it email or letter)."*

95. His assertion he is better articulating his thoughts is contrary to his claim to suffer a substantial disadvantage in being asked to complete a written application. He was scored across only one behaviour in this application, "*Managing a Quality Service.*" I note he used the same example of how he adapted his learning strategies at university that he had given in the other claims as set out above. He was scored 1. He has clearly not even considered the job specifications when answering this. For all the reasons already set out


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above, the Claimant has no reasonable prospect of showing he faced a substantial disadvantage in completing a written application form and by reference to one behaviour, because of his health when compared to non-disabled candidates. I repeat what I have said already about this in the other claims. This claim is contradictory in terms of what he says regarding best method of communicating, he was again only marked against one behaviour, there is no evidence grammar, or the word count are material in this case.

Conclusions

96. In considering the Respondent's application for strike out I have taken the claimant's claim at its highest. I have reminded myself that it is only in the clearest of cases that a discrimination claim be struck out and I find these claims fall within that category for all the reasons given. These claims as before me and on the evidence, I have seen have no reasonable prospect of success. In those circumstances, I do not need to consider a deposit order.

Case Management of existing claims (Note)

97. Ms Hodgett confirmed I was not required to address any case management after my judgment, as it was going to be addressed at the next hearing on the 10 November 2023.

*Judge's Mensah*

01.11.2023
(corrected 8.11.2023)

**Useful information**

1. All judgments and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

2. The Employment Tribunals Rules of Procedure are here: *https://www.gov.uk/government/publications/employment-tribunal-procedure-rules*

3. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: *https://www.gov.uk/appeal-employment-appeal-tribunal*


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