EMPLOYMENT TRIBUNALS

Claimant: Mr D Hughes

Respondent: Allen Lane Limited

RECORD OF A PRELIMINARY HEARING

Heard at: Birmingham in private by CVP **On:** 3 November 2023 and reserved to 2 January 2024

Before: Employment Judge Hindmarch

Appearances
For the claimant: In person
For the respondent: Mr Shellum – Counsel

RESERVED JUDGMENT ON A PUBLIC PRELIMINARY HEARING

1. The Respondent's application for strike out under Rule 37 (1) is granted and the claim is struck out.

2. The Claimant's application for strike out under Rule 31 (1) is refused.

REASONS

3. This Public Preliminary Hearing came before me by CVP on 3 November 2023. The Claimant was a litigant in person and the Respondent was represented by Counsel, Mr Shellum.

4. The hearing was listed by Notice of Hearing and following a Case Management Preliminary Hearing to consider: -

   a) The Respondent's application to strike out the claim under Rule 37 (1) (a) on the basis it has no reasonable prospects of success or, alternatively, for a deposit order.
   b) The Claimant's application for strike out of the response under Rule 37 (1) (b) on the basis that the manner in which the proceedings had been

conducted by on or behalf of the Respondent has been scandalous, unreasonable or vexatious.

5. I had a bundle of pages running to 487 pages. Page number references herein are to the pages in the bundle. The Claimant's strike out application was heard first, and he made oral submissions in respect of this. I then heard the Respondent's application, which had been expanded to cover grounds not just under Rule 37 (1) (a) but also Rule 37 (b) and (c). Mr Shellum had prepared written submissions which he spoke to, and he also addressed me on the alternative application for a deposit order Rule 39. I said that I would reserve my decision given the large bundle, the fact there were cross applications and the fact written reasons were likely to be requested in any event.

6. By an ET1 filed on 7 April 2023, the Claimant brought a complaint of direct age discrimination. The Respondent is a recruitment agency. The Respondent had been instructed by the Medicines and Healthcare products Regulatory Agency (MHRA) to assist with recruitment for a role of Head of Devices – Compliance and Audit. The Claimant had made an application for the role and had been unsuccessful.

7. In the ET1, the Claimant stated "the lady who the Respondent put in charge of selecting profiles to make the short list has no qualifications training or experience in medical devices and could not pinpoint a qualified candidate. Further she admitted having made errors and mistakes with the Claimants CV."

8. It was common ground this person was Stephanie Robinson. The Claimant said of her in the ET1 "the lady in charge of the selecting candidates has no qualifications and is at most a glorified dinner lady with high heels," He went on "the lady read the Claimants age on the internet and decided she did not want to put the Claimant forward for the short list and that the short listed candidates were much younger" and "in review of Ms SR qualifications she has no university qualifications and no qualifications in medical devices."

9. Further in the ET1 the Claimant stated, "Although asked to rectify such mistakes by a single inexpensive letter to MHRA the Respondent stubbornly refused to amend and rectify despite the several pleas of the Claimant."

10. Mr Alex Lowe of Mills and Reeve LLP was instructed to act as the Respondent's solicitor. The ET3 was filed in time. It confirmed the Respondent's role was to advertise the MHRA vacancy and that the Respondent was provided with a candidate pack by the MHRA. Candidates were asked to complete a Diversity Monitoring Form. The Claimant gave his age in this form as in the range 55 – 59. This was incorrect as the Claimant is 69 years old. The Respondent said it received 31 applications for the role, including that of the Claimant. All applications were provided to the MHRA, and it was the Respondent's case that whilst Stephanie Robinson provided some commentary and scoring for each candidate, it was the MHRA which conducted the short-listing exercise and interview process. Three candidates were selected for an interview. Of those, one candidate's age range was 55 – 59 and the two others were aged 40 – 44. The Claimant was not selected.

11. It was the Respondent that informed any candidates who had not been selected of this, including the Claimant. This led to the Claimant requesting feedback and Stephanie Robinson providing this. The Claimant made a written complaint to the Respondent and further feedback was provided to him. In the initial feedback, Stephanie Robinson referred to the Claimant having referenced a role at Estee Lauder rather than the vacant role at MHRA. In her email she states 'Unfortunately you were not successful in this role for a couple of reasons:

    1) You reference a completely different role in your CV (QARA at Estee Lauder). This role is Head of Devices at MHRA.
    2) Your statement of suitability did not provide enough relevant examples of the Behaviour listed in the pack, using the Successful Profile methodology.
    3) There were several other candidates with more specific experience who gave more relevant examples in their statements and who reference the correct role.'

12. The Claimant alleges a General Manager working for the Respondent, Ed Stroud, agreed to make a new submission of his CV/application to the MHRA, but then he failed to do so on the basis the closing date had passed.

13. The claim came before me for a Case Management Preliminary Hearing on 2 August 2023. I listed the Public Preliminary Hearing and ordered the Claimant to provide any evidence of means that he wished to rely on in relation to the possible making of a deposit order. I recorded the following observations about the claim: -

    "*21. The Claimant was 69 years of age when he applied to the Respondent, a specialist recruitment consultancy, for a role advertised by the Respondent on behalf of its client the Medicines and Healthcare Products Regulatory Agency (MHRA). I am told the role was for a Head of Devices – Compliance and Audit.*

    22. The Claimant believes he was highly qualified for the role. He tells me he is the most qualified person in the UK and yet the Respondent purposefully overlooked his CV and instead short-listed what must be less qualified people who were in their 50's. He believes an employee of the Respondent, Stephanie Robinson, researched his age which he tells me is available on the internet and decided not to put his CV forward. The Claimant told me he was a top scientific adviser in 2022 in relation to the Covid-19 pandemic and that he is only 1 of 3 people in the UK who can work with notifying bodies as a lead auditor. He believes Stephanie Robinson did not know what she was doing and did not appreciate his CV.

    23. The Claimant told me that when dealing with MHRA, the Respondent should only use qualified recruiting staff that can identify competent applicants. I queried with him whether he was truly saying the reason he was not selected was his age when he seemed to suggest it was a lack of competence on the part of Stephanie Robinson and/or the Respondent. He told me he had been involved in other Tribunal claims where he has argued his age is one of a range of factors for the alleged less favourable treatment.

24. The Claimant confirmed he was relying on a hypothetical comparator in his 50's.

25. The Claimant also told me that a General Manager working for the Respondent agreed to make a new submission (of his CV/job application) to the MHRA and did not do so. He says this was also less favourable treatment.

26. The Respondent's position is that it was the MHRA who carried out the selection exercise. It provided the Claimant's CV (along with those of a further 30 applicants) to the MHRA who selected 3 candidates for interview. These did not include the Claimant.

27. Prior to this hearing, both parties had indicated they may wish to make strike out applications. Mr Shellum for the Respondent informed me his client wished to make such an application under Rule 37 (1) (a) on the basis the claim had no reasonable prospects of success or, alternatively, for a deposit order. Mr Shellum referred me to the nature and context of the Claimant's correspondence with the Respondent's solicitor and indicated that should such correspondence continue, he may also wish to apply to strike out under Rule 37 (1) (b) namely that the manner in which the proceedings have been conducted by or on behalf of the Claimant has been scandalous, vexatious, or unreasonable. I will return to this latter point shortly.

28. The Claimant had also indicated he wished to apply for strike out the response. When I asked him about this he told me he had discussed this with a barrister and that he believed by dealing with the MHRA the Respondent is required to have qualified staff. He said he had offered several times to be Respondent a 'no-court pathway', to comply with what its General Manager had agreed to do, and it had not agreed and is waiting to go to court and is in the business of increasing costs. He said he believed the Respondent had acted vexatiously by refusing to accept the facts, continuing with his litigation, and by having unqualified staff, such that the Respondent must be in breach of its contract with the MHRA.

29. I agreed to list a Public Preliminary hearing to deal with these applications. Mr Shellum asked if this could be reserved to me. The Claimant did not object. I explained I sit as a fee paid Employment Judge and might not be sitting that day but would ask listing to consider this."

14. As noted at the time of the Case Management Preliminary Hearing, the Respondent was only pursuing a strike out application under Rule 37 (1) (a), however, I noted the following: -

"*30. Mr Shellum then raised the nature and tone of the Claimant's correspondence. I had already noted that in the ET1 the Claimant had referred to Stephanie Robinson as having no qualifications and 'is at most a glorified dinner lady with high heels.' There were other examples in the bundle of the*

Claimant using inappropriate language to describe her. I asked the Claimant to desist from doing this.

31. Mr Shellum also drew my attention to the volume and nature of correspondence from the Claimant to his instructing solicitor, Mr Lowe. Between 14 June 2023 and 21 July 2023, there were 63 emails, 50 of which came from the Clamant. Some of this correspondence was very impolite referring to Mr Lowe exhibiting 'legal dribbling' and impugning his integrity. Allegations had been made by the Claimant of fraud, there were threats of going to the press, of costs, and unless order applications. Mr Lowe had written to the Claimant reminding him of the overring objective.

32. I explained to the Claimant that this behaviour was not acceptable and was not in accordance with the overriding objective. I asked him to restrict his correspondence with Mr Lowe to that which was necessary to prepare for the hearing in November. I asked him to be temperate and measured and warned him if he did not do he was at risk of an application to strike out under Rule 37 (1) (b). The Claimant agreed he would follow my direction in this regard.

33. The Claimant raised with me the matter of Stephanie Robinson's qualifications. He said a search on LinkedIn showed she had not gone to university, and he wanted the Respondent to disclose her qualifications. I reminded him his case was that she had discriminated against him because of his age, not because of incompetence. I explained I was not going to make any such order for disclosure at this stage."

15. I also set out the 2 acts of direct age discrimination that the Claimant was relying on as follows:

    1.1 "The claimant's age group is 69 and he compares himself with people in the age group 50's.

    1.2 Did the respondent do the following things:

        1.2.1 Stephanie Robinson purposefully overlooking the Claimant's CV.
        1.2.2 The Respondent's General Manager failing to submit the Claimant's application to the MHRA having agreed to do so."

16. As noted above, at the Case Management Preliminary Hearing Mr Shellum for the Respondent had raised both the tone and volume of the Claimant's correspondence with his instructing solicitor as a cause for concern, as well as the language the Claimant was using to describe Stephanie Robinson. I cautioned the Claimant about this. He agreed to modify his behaviour.

17. In the ET1, the Claimant had referred to Stephanie Robinson as having no qualifications and being "at most a glorified dinner lady in high heels." Prior to the Case Management Hearing, and in correspondence with Alex Lowe, the

Respondent's solicitor, and copied to the Tribunal, the Claimant had made further observations about Stephanie Robinson as follows: -

a) On 18 June 2023, "Ms Stephanie Robinson did maliciously and with aforethought exclude and prevent the Claimant from being part of the short list of candidates", (page 51).
b) On 20 June 2023, "The Respondent employs a Ms Stephanie Robinson who acted with a blindfold and Chinese lucky dip methodology to shortlist", (page 52).
c) On 25 June 2023, "Ms Stephanie Robinson has NO qualifications, experience, expertise in medical devices and regulations and quite frankly could not tell the difference between a bricklayer and a doctor of medicine", (page 58).
d) On 7 July 2023, "We contend that Stephanie Robinson has the qualification of a pub employee pulling pints and she could not distinguish between a sheep farmer or a doctor of medicine."
e) On 16 July 2023, in making a written application for a strike out of the Response, "Ms Stephanie Robinson does not possess ANY qualifications or expertise university or other to discern in a CV what an eligible candidate might be" and "Ms Stephanie Robinson sir could not distinguish between a doctor of medicine or a pig farmer as she has no training and no qualifications", (pages 73 – 74).
f) On 17 July 2023, in an email headed 'witness statement', "Ms Stephanie Robinson…poses to be a 'Recruitment Consultant' but in reality is incompetent, untrained, unqualified" and could not discern between a Doctor of Medicine and a Metal Welder" and "If it were true that Ms Stephanie Robinson has less qualifications than a lady pulling pints in a pub or a supermarket checkout assistant", the Respondent would have breached their contract with MHRA (pages 75 – 76).
g) On 28 July 2023, in an email to Mr Lowe, the Claimant stated "We contend that Ms Stephanie Robinson does not know the difference between a metal shreet welder and a pig farmer", (page 290).

18. Prior to the Case Management Preliminary Hearing on 2 August 2023 the Claimant had also engaged in a large volume of correspondence with Mr Lowe, the Respondent's solicitor and had been intemperate in his language. I warned him to desist, and he agreed to do so. Examples of this correspondence are as follows:

a) On 20 June 2023, in an email to Mr Lowe, the Claimant stated, "A stupid man who has the temperity and Gaul to try and inferiorize a man at my level of genius and brilliance", (page 203).
b) On 21 June 2023, in an email to Mr Lowe the Claimant stated, "I invite you to stop trying to be clever and outsmart me or I will have to come and see your Principals face to face about you and your behaviour", (page 216).
c) On 23 June 2023, in an email to Mr Lowe, the Claimant stated, "And your client and you have chosen not to write the MHRA exactly so you could stoke the litigation hoping you could blow up the problem to capture costs…Your explanation once again tried to mislead confuse and

reshuffle the Judges and I warn you to stop such convert practice and it is the last time I am warning you", (page 216).

d) In a further email on 23 June 2023, to Mr Lowe the Claimant stated, "you chose full blown litigation and Court Proceedings possibly to try and capitalize on costs", (page 220).
e) In another email on 23 June 2023, to Mr Lowe, the Claimant stated, "Should you not reply or refuse to reply with confusing or misleading statements, such will be most strenuously brought to the attention of the Employment Judge with a consideration of a wasted costs order on you", (page 222).
f) On 24 June 2023, the Claimant emailed Mr Lowe headed "Your last warning – legal dribbling" and stating "You are put on notice as to your conduct and behaviour of legal dribbling or you will find yourself in Court in 28 days Under Rule 76.1… You Alex Lowe have been causing on me directly stress anxiety upset by dribbling me and the Courts for over six months… YOU are the one who has been warring and litigating trying to fatten up costs for you and your firms profits and coffers…ONE MORE DRIBBLE coming out from your pen or your mouth you will be in Court in 28 days" (page 224).
g) On 25 June 2023, the Claimant emailed the Tribunal, copying in Mr Lowe, and stated "it is contended that Mr Alex Lowe for the Respondent is an expert is legal-dribbling refusing to collaborate and admitting and causing several months of delay in a benign process of discussion of the issues at hand", (page 58).
h) On 5 July 2023, in an email to Mr Lowe, the Claimant stated, "your client is or has embezzled MHRA and myself and indirectly the Courts", (page 243).
i) On 5 July 2023, in a further email to Mr Lowe the Claimant stated, "As such the Claimant wishes to see the Respondent in Court for having acted irresponsible trying to generate costs for his law firm coffers", (page 247).
j) On 12 July 2023, in an email to Mr Lowe the Claimant stated, "If you try to legal dribble…it will be enforced at the CMC Hearing and…come out on the internet for everyone to read", (page 267).
k) On 13 July 2023, in an email Mr Lowe the Claimant stated, "Should you Alex Lowe repeat ever "legal dribbling" in these procedures you will be back in court on a wasted costs order under rule 77.1" (page 271).
l) On 16 July 2023, in an email to the Tribunal, copied to Mr Lowe, containing his strike out application the Claimant stated, "Both Mr Alex Lowe and a senior person in the background have been legal dribbling" and again referred to Mr Lowe seeking to 'drive up costs for his and his law firm coffers,' (pages 73 – 74).
m) On 16 July 2023, in an email to Mr Lowe, the Claimant stated, "I have a Barrister behind me note I have a Barrister behind me… Stop you and the senior solicitor who is behind you legal dribbling and Make me an our of court settlement offer", (page 276).
n) In a further email on 16 July 2023, to Mr Lowe, the Claimant stated, "As we move forward 02/08 CMC Hearing you have two options 1 Make an out of court settlement offer or see 2 In the internet Allen Lane defrauds MHRA", (page 278).

o) In an email to the Tribunal dated 17 July 2023 and headed ‘witness statement’ the Claimant stated, “in 28 days I wish to see back in Court Mr Alex Lowe and a second gentleman for unreasonable behaviour in these proceedings under rule 77.1”, (pages 75 – 76).
p) In an email to Mr Lowe of 18 July 2023 the Claimant stated, “We contend Stephanie Robinson has no qualifications and as such there was an act of fraud and deception on the MHRA”, (page 279).
q) On 19 July 2023, in an email to Mr Lowe, the Claimant stated, “When it comes out in the internet Allen Lane Ltd will be wiped out as a recruitment agency”, (page 281).

19. In correspondence prior to the Case Management Preliminary Hearing the Claimant also made threats of costs including against the Respondent’s employees directly as follows: -

a) On 14 June 2023, in an email to Mr Lowe the Claimant stated, “I am minded to seek a costs order em Stephanie Robinson and Ed Stroud under Rule 76.1”, (page 166).
b) On 17 June 2023, in an email to Mr Lowe the Claimant stated, “…when the Judgement comes out I want Ed Stroud and Stephanie Robinson back in Court for a costs order”, (pages 186 – 187).
c) On 18 June 2023, in an email to Mr Lowe the Claimant stated, “I will be seeking Ed Stroud returns to court for a costs order under rule 76.1 of not less than £45.000”, (page 196).

20. Despite me given a warning to the Claimant at the Case Management Preliminary Hearing g between 3 August 2023, the day following the Case Management Preliminary Hearing, and 22 August 2023, a period of less than 3 weeks, the Claimant sent a further 14 pieces of correspondence to the Respondent’s solicitors directly and a further 10 pieces of correspondence to the Tribunal copying in the Respondent's solicitors. The following are of note: -

a) On 3 August 2023, in an email to Mr Lowe, the Claimant made the following observations: -

i. “I will win on Rule 37.1 I Strike Out aggravated by the fact I offered you a no court solution which you rejected.
ii. …you might consider making me an out of court settlement offer as you are at high risk of being struck out.
iii. If you persist in ignoring my offer for no court action you will be exposing yourselves to the most serious consequences.
iv. As such I can prove that Stephanie Robinson created different interpretations to the outcome and scoring of the tests to mould the outcome of rejection…and for that reason I coined her ‘dinner lady in high heels’”, (pages 301 – 302).

b) Later on 3 August 2023, again in an email to Mr Lowe, the Claimant stated, “I will be applying for strike out and that besides you rejecting my offer for no court pathway you persisted in your hostile action…and you still invoking ridiculous defences to escalate costs and refusing to back

down… please back down and make an out of court settlement", (page 303).

c) On 4 August 2023, in an email to Mr Lowe the Claimant stated, "kindly advise if you wish to make a written apology", (page 304).

d) On 4 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, "the Respondent are cloaking a most serious behaviour of dishonesty and lawful liability and appeared as being angelical and untainted at the Hearing 02/08", (page 94).

e) On 5 August 2023, in an email to Mr Lowe the Claimant stated, "Your defence has collapsed and we expect immediate remedies", (page 305).

f) On 5 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, "The allegations of the Respondent on the Hearing on the 02/08 were false and expressed mostly by Counsel" and "Throughout these proceedings since Inception the Hearing 02/08 saw a tapestry of lies from the Respondents Solicitors and Barrister and such falsifies were used to condition Madam Judges predisposition", (page 99).

g) On 6 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, "Madam Judge…Before yourself and the England and Wales Tribunal the Respondent and the Barrister for the Respondent persuaded you in the direction of making a deposit order…they had all lied, shamefully and dishonestly" and "Because Mills to and Barrister Sellum do not wish to accept a truth different in their fabricated story the case extended in number of emails because both Mr Alex Lowe and Barrister Sellum do not wish to read the evidence in contravention of Rule 2 of the Employment Tribunals", (pages 105 – 106).

h) On 9 August 2023, in an email to Mr Lowe the Claimant stated: -

    i. "You may agree Mrs Stephanie Robinson has problems in her eyesight and requires glasses.
    ii. …you are going to lose and have no credible defence yet you persist in not settling or making an offer.
    iii. You cannot refused to settle a claim where it is proven your defence is a tapestry of Untruths", (page 306).

i) On 10 August 2023, in an email to Mr Lowe, the Claimant stated, "The reasonable thing for Mills Reeve to do is accept admit confess this is true and make an out of court settlement offer … I expect Mills Reeve to admit guilt and liability and open up out of court settlement negotiations", (pages 307 – 308).

j) On 10 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, "The Respondent Mr Sellum Mr Alex Lowe struck to their factitious story – the ET3 and Ground of Resistance of the Respondent is a tapestry of lies and untruths…the defence of the Respondent is made of lies and untruths", (page 107).

k) On 11 August 2023, in an email to Mr Lowe, the Claimant stated, “Alex Lowe will apologise to me and offer to pay me compensation.” He further stated, “NOW HEAR THIS … If your client does not own up to the evidence and the truths you and Mr Sellum will find themselves in Court on 77.1 application”, (page 309).

l) On 11 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, “Barrister Mr Sellum and prepared by Mr Alex Lowe unloaded on to HH Hinmarsh a theatrical enactment… and HH Hinmarsh was played admirably by all of the Respondents representatives… in County Court both Mr Sellum and Mr Alex Lowe would face imprisonment for contempt.” He went on “either HH KH removes the deposit order on the Claimant will ask the London EAT to do so,” (page 108).

m) On 12 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, “the defence is a fairy tale concocted with contempt to the Judges and the Tribunal” and “it is only appropriate to order a costs order on the Respondent”, (page 109).

n) On 14 August 2023, in an email to the Tribunal, copied to Mr Lowe, the Claimant stated, “It is contended the intention of Mr Sellum and Mr Alex Lowe is to deny any out of court settlement and to keep the money in their coffers or their client’s pockets,” (pages 110 – 111).

o) On 15 August 2023, in an email to Mr Lowe, the Claimant again requested an ‘out of court settlement’, (page 310).

p) On 16 August 2023, in an email to Mr Lowe, the Claimant accused him and Mr Sellum, Counsel for the Respondent of ’57 lies’, persisting ‘over 8 months in extending carpets of lies Falsities and untruths for no other reason than extending your profits’ and ‘own cash cow income.’ In the same email he stated, “Stephanie Robinson exhibits mental impairment”, (page 311).

q) On 17 August 2023, the allegations of Mr Lowe and Counsel lying was again made in an email from the Claimant to Mr Lowe and the Claimant also stated “I intend to have you back in Court on a 77.1 in 28 days wasted costs for your behaviour and carpet of untruths”, (page 313).

r) On 18 August 2023, in an email to Mr Lowe, the Claimant accused Mr Sellum of having ‘misled’ the Tribunal and stated, “we are expecting your reasonable out of court settlement offer as no Judge will believe anything you say” and “As such I will in striking you out and even if I lose I will file Appeal at the London EAT”, (page 314).

s) On 22 August 2023, in an email to Mr Lowe the Claimant again invited the Respondent to make offers of settlement (page 316).

21. It is of note that in an email to the Tribunal on 5 August 2023, the Claimant stated, "The Claimant protests that Madam Employment Judge Hindmarch seemed biased to favour the Respondent because Ms Stephanie Robinson is a female", (pages 97 – 98).

22. On 20 August 2023, the Respondents solicitor emailed the Tribunal, copying in the Claimant, asking to vary its strike-out application to include grounds under Rule 37 (1)(b), making it clear this was in relation to the Claimant's conduct both prior to the Case Management Hearing and thereafter. There was also an indication that the Respondent wished to apply for a costs order at the preliminary hearing listed for 3 November 2023. The Respondent's application stated, "Since 3 August 2023 (the day after the case management hearing) the Claimant has written directly to the Respondent's solicitor on 14 separate occasions, and to the Tribunal (copying the Respondent's solicitor) on a further 10 occasions ('correspondence'). The Correspondence is aggressive, abusive in places, hard to comprehend and disproportionate given the listing of the Strike-Out PH (preliminary hearing)", (pages 131 – 132).

23. Approximately one hour after the abovementioned application was made, the Claimant emailed the Tribunal referring to the 'Respondent's legal representatives (being) in the business of seeking profiteering for themselves' and repeating 'defence of Falsifies and Untruths.' He went on "we accuse Mr Sellum of repeated perjury in the England and Wales Employment Tribunal", (page 133).

24. On 23 August 2023, in an email to Mr Lowe, the Claimant stated, "if you insist on your Application… I will file for Appeal at the London EAT and will let the London Judges rule on your act of perjury in an England and Wales Tribunal", (page 320).

25. On 31 August 2023, in an email to Mr Lowe, the Claimant stated, "kindly advise if your client wishes to make a out of court settlement offer and if not why as we are inching forward to me filling Appeal at the London EAT", (page 321).

26. In a further email on 31 August 2023, to Mr Lowe, the Claimant stated, "I advise you that another Respondent with a case much stronger than yours made me an out of court settlement offer…either at the lower courts or at appeal you will answer.. the London EAT Judge might take a very harsh view as to your behaviour", (page 322).

27. On 2 September 2023, in an email to Mr Lowe, the Claimant stated, "We have evidence against Stephanie Robinson and you are dragging your heels into the ground because you do not want to settle out of court…Such is unreasonable conduct and reflects you are mentally disturbed… in Hughes vs Ak the Respondent did the right thing which was making an out of court settlement offer…you are driving me into Appeal at the London EAT with your refusal to settle…you will both be recalled back to court on a 77.1 Application on wasted costs in 28 days", (page 323).

28. On 3 September 2023, in an email to Mr Lowe, the Claimant stated, "You have hanged yourself by lying to Employment Judge Hindmarch and the noose

around your neck just gets tighter in moving forward" and "Your Barrister lied to Employment Judge Hindmarch and I was there and I witnessed him lying and you should do the right thing which is making me an out of court settlement offer as the other Respondent did wisely and prudently", (page 324).

29. On 14 September 2023, in an email to Mr Lowe, the Claimant stated, "I can prove that at the CMO hearing your barrister committed perjury", (page 327).

30. On 15 September 2023, in an email to Mr Lowe, the Claimant stated, "we protest the gross conduct of your Barrister that lied to the Judge and committed perjury" and requested an "out of court settlement offer", (page 329).

31. On 20 September 2023, in an email to Mr Lowe, the Claimant stated, "I have written to the President of the Employment Tribunals" and again referred to Mr Shellum committing "the most serious perjury as to Hearing for Direction CMC." He again requested an "out of court settlement", (page 330).

32. On 23 September 2023, the Claimant emailed the Tribunal, copied to Mr Lowe, stating "the Claimant proves perjury in statements of the Respondent to Employment Judge Hindmarch… prolonging the proceedings and not settle to keep the legal battle going and not settle to fatten their own coffers", (page 135).

33. On 25 September 2023, in an email to Mr Lowe, the Claimant stated, "there is evidence of your perjury and that your Barrister bellowed across the Court "dogmatically that Allen Lane had nothing to do with shortlisting" when in fact Allen Lane did have to do with shortlisting", (page 332).

34. On 30 September 2023, in an email to Mr Lowe, the Claimant stated, "if you do not agree to making an out of court Settlement Offer with such a weak defence you will respond in Court for Unreasonable Conduct and a substantial costs order for abusing the limited time of the court so you can continue to bill costs on your client", (page 334).

35. On 30 September 2023, the Claimant emailed the Tribunal, copied to Mr Lowe, referring to his firm as follows, "I have ever in my life encountered such a dishonest law firm in litigation. Mills and Reeve have set the bar in the United Kingdom in dragging on litigation to line their own pockets… As such there was a serious act of perjury of your Barrister" and "…Somewhere along your education in law you decided you could conduct litigation for profit…at the Hearing for Directions the Barrister made his appearance like an Indian tribal chief with power of life and death and ordered that "Oh Allen Lane had nothing to do with it as it was all MHRA." He went on about "your indignation with the expression "dinner lady in high heels" which in fact Ms Stephanie Robinson was in the sense that she tampered with my Suitability Test to knock down the score", (pages 333 – 336).

36. On 5 and 6 October 2023, in emails to Mr Lowe, the Claimant repeated allegations of "perjury in court", (pages 337 and 338).

37. On 7 October 2023, in an email to Mr Lowe, the Claimant again stated that Mr Shellum had "committed an act of perjury" and "it is most possible I will escalate to the London EAT", (page 344).

38. On 8 October 2023, in an email to Mr Lowe, the Claimant again asked for a settlement (page 347).

39. In another email on 8 October 2023, to Mr Lowe, the Claimant stated, "you went to war for the purpose of generating profit for your law firm… We invite you to consider making a reasonable out of court settlement offer because even if you do win I will file Appeal at London EAT", (page 351).

40. On 10, 11 and 12 October 2023, in emails to Mr Lowe, the Claimant stated he would recall Mr Shellum "to the court on a Rule 77.1", (pages 354, 355 and 376).

41. On 14 October 2023, the Claimant emailed the Tribunal, copying in Mr Lowe, stating "It is contended Mills and Reeves intended to make money in this litigation and oppose any act to settle." The Claimant continued, "Mr Summers the Barrister at the Case Management Hearing and Directions sat in a like throne armchair and "ordered" that the case was nonsense as Allen Lane were not involved in the short-listing…As Claimant I accuse the Barrister of acting like a tribal chief with power over life and death dogmatically ordering what the Judge should think about this case as if he could decide as Judge which he was not", (pages 141 – 143).

42. On 14 October 2023, in an email to Mr Lowe, the Claimant again requested settlement, referred to perjury, and summoning Mr Shellum to court on a Rule 77.1 application. He stated, "If I am not pleased with the outcome on the 03/11 you are put on notice I will file Appeal at the London EAT in 42 days", (page 367).

43. On 17 October 2023, the Claimant emailed his Skeleton Argument for the Public Preliminary Hearing to the Tribunal, copied to Mr Lowe. In that document he stated, "The behaviours of the Respondent besides choking the Claimant with costs were an initial salvo of perjury stating that his client had nothing to do with the shortlisting", (page 144).

44. On 17 October 2023, in an email to Mr Lowe, the Claimant repeated his allegations of perjury and again mentioned an appeal to the EAT, (page 390).

45. On 18 October 2023, in an email to Mr Lowe, the Claimant again requested settlement (page 399) and on 19 October 2023 in an email Mr Lowe he again referred to 'outright perjury', page 407).

46. On 19 October 2023, in an email to Mr Lowe, the Claimant stated, "Mills and Reeve have invented a process of making money by extending the litigation and committing perjury", (page 411).

47. On 22 October 2023, the Claimant emailed the Tribunal stating that Mr Shellum had committed perjury and "should apologise for such falsity" and "to pre empt the attack on the Claimant that Ms Stephanie was "a dinner lady in high heels". Ms Stephanie is Australian with an alleged degree in theatre arts drama and "cannot tell the difference between a Medical Device Class I Class IIa Class IIb and Class III", (page 427).

48. On 26 October 2023, in an email to Mr Lowe, the Claimant stated, "I have achieved two wins at the employment tribunal in the last 180 days… These were two Judgment by Default in two cases… Proving I am a very successful litigant in court" and "you are in the business of complicating resolution so you can profit yourself."

49. In a further email to Mr Lowe, on 26 October 2023, the Claimant again referred to a costs order and appealing to the EAT (page 439).

50. Whilst I have not set out all of the correspondence above, it is clear that the Claimant has engaged in extensive correspondence with the Respondent's solicitor and the Tribunal, the language used being aggressive, threatening and inappropriate, and containing personal insults.

Submissions

51. The Claimant contended that it was Stephanie Robinson on behalf of the Respondent that did the short-listing for the position of the MHRA. She was unqualified. The Claimant referred to her in his oral submissions as 'having no qualifications save a possible BA in theatre in Australia – she know nothing about medical devices – a 2 year old would know more' and later referred to her as 'a university drop out.' The Claimant argued the Respondent had a duty of care to have a competent person assessing CV's and that it had failed in that duty of care.

52. The Claimant also accused the Respondent of scandalous behaviour referring to Mr Shellum saying at the Case Management Preliminary Hearing that the Respondent had nothing to do with short-listing. He said he had evidence of this and referenced an email he received from Stephanie Robinson in which she gave him feedback as to why he was unsuccessful in his application. In his oral submissions the Claimant referred to Mr Shellum's remarks at the Case Management Preliminary Hearing as being perjury.

53. The Claimant also criticised the Respondent's solicitor saying the claim could have been resolved 10 months ago but Mills and Reeve were complicating the process and accumulating costs.

54. As to age discrimination the Claimant said he was 69 years old and that those shortlisted candidates were in the age bracket of 45 years. He said his age was available to anyone on a search of the internet and that he had been required to give his age bracket in the Diversity Monitoring Form.

55. I had written submissions from Mr Shellum who also spoke to this. He said there was no evidence that Stephanie Robinson was involved in the short-listing and that her role was giving feedback to the Claimant when he was not short-listed. However, the short-listing was conducted by MHRA. Mr Shellum referred me to page 124 of the bundle which is a MHRA document referring to 'the recruitment process' for the role. It refers to the selection panel being from the MHRA. It further confirms the Diversity Monitoring Forms will not be provided to the selection panel.

56. Mr Shellum’s application to strike out was under R37 (1) (a) (b) and (c). He invited me to strike out under each ground.

57. Given the Claimant himself in correspondence had referred to settling other claims and obtaining default judgments, Mr Shellum had conducted a search on gov.uk and identified a number of cases which may have involved the Claimant and noted as follows: -

    Mr D Hughes v Aktrion Group Limited ET/1301951/2016 where Employment Judge Gaskill dismissed the claims for want of jurisdiction at a Public Preliminary Hearing. The Judge referred to the Claimant making comments about the Respondent’s solicitors honesty and professional conduct and found such comments to be without such foundation. The Judge also made the following observation: -

    “I found the Claimant to be a wholly unreliable witness; seeking to mould the facts to his personal purpose. Further, the Claimant was unwilling or unable to focus on the issues before the tribunal today; instead wishing to canvas much wider issues including serious safety concerns relating to Vauxhall motor cars. In particular I find that the version of the Consultancy Agreement presented to me by the Claimant to be false; to be a doctored version of the original.

58. In Mr D Hughes v Benson Viscometers Ltd ET 1601595/2021 at a hearing on 12 January 2023, a month before this claim was filed, Employment Judge Frazer conducted a reconsideration hearing having earlier dismissed the claim for want of jurisdiction. The Respondent was successful in a costs application with the Judge referring to voluminous, abusive, threatening, aggressive and disturbing correspondence sent by the Claimant to the Respondent’s solicitors.

59. In Mr Shellum’s submission the Claimant was not an inexperienced litigant in person. He has been warned about his behaviour by other Judges and was warned by me at the Case Management Preliminary Hearing.

60. In Mr Shellum’s submissions the claims had no reasonable prospects of success because: -

    a) The Claimant was not advancing a claim o age discrimination, rather a lack of competence on the part of the Respondent’s staff who failed to understand the merits of his application.
    b) The Claimant indicated on the Diversity Monitoring Form that he was in the age range of 55 – 59 and someone else in the same age range was shortlisted, such that there was no less favourable treatment because of age.
    c) The Claimant case as to age discrimination relied on his contention that the Respondent googled his age, discovered this, and rejected his application on this basis.
    d) It is not in dispute that the job role at the MHRA required a science degree which the Claimant does not have. The Claimant made much of his ‘lead auditor’ qualification which the Respondent says is not in fact as rare as the Claimant suggests. The Claimant contended he is only one of 3 people in the UK with this qualification. At page 104 of the

bundle was a certificate awarded to the Claimant for 150 9001 lead auditor training course. Mr Shellum argued this was not connected to medical devices.

e) There was no mention by the Claimant as to how Ed Stroud was said to have discriminated against him because of his age.

61. As to Rule 371 (b) Mr Shellum referred me to the volume and nature of the Claimant's correspondence both with the Tribunal and with Mr Lowe. Mr Shellum pointed out that I had warned the Claimant about his conduct at the Case Management Preliminary Hearing, but that it had continued.

62. Mr Shellum addressed me on the proportionality of striking out. In his submission strike out was the only effective sanction. If the claim is not struck out the Claimant will continue in his behaviour and there cannot be a fair trial in light of the unacceptable abuse to date.

63. The Respondent also wished me to strike out under Rule 37 (1) (c) on the basis the Claimant had not complied with my order made at the case management preliminary hearing.

The Law

64. The Tribunal power to strike out comes from Rule 37 of the Employment Tribunal (constitution and Rules of Procedure) Regulations 2013, Schedule.

1. Rule 37 provides

"(1) At any stage in 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 prospects of success;
b. That the manner in which the proceedings have been conducted by or on behalf of the Claimant or Respondent (as the case may be) has been scandalous, unreasonable or vexatious;
c. For non-compliance with any of these Rules or with an order of the Tribunal."

65. When considering strike out under Rule 37 (1) (a) the Tribunal must take the Claimant's case at its highest and is generally reluctant to strike out discrimination claims – Anyanwu and other v South Bank Students Union and other (2001) ICR 391. However if the claim involves no more than an allegation of a difference in treatment and a difference in protected characteristic, and nothing more, claims of discrimination can be struck out – Madarassy v Nomura International Plc (2007) ICR 867.

In the case of Ahir v British Airways Plc (2007) EWCA Civ 1392. CA it was noted the Tribunals may strike out claims where there are factual disputes but where there is no reasonable prospect of the facts relied on by a party establishing liability.

66. The Tribunal must firstly consider whether any of the grounds set out above has been established, and then whether to exercise its discretion to strike out given the permissive nature of Rule 37.

67. In Bennett v London Borough of Southwark (2002) 12LR 407, Sedley LJ considered the word `scandalous' stating that it was not to have the `colloquial' meaning but rather `two somewhat narrow meanings; one is the misuse of the privilege of legal process in order to vilify others; the other is giving gratuitous insult to the court' in the cause of such process.

68. The meaning of vexatious was considered in a family case in the High Court; Attorney General v Barker (2002) 1 FLR 7559 when the then Bingham LJ stated

   `Vexatious is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis), that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.'

69. In A v B UK EATS/0042/19 the EAT upheld a decision to strike out a claim where the Tribunal found certain email communications from the Claimant to a witness were `scandalous, unreasonable and vexatious.' In this case the Employment Tribunal had sought to address the Claimant's conduct through `robust case management' and had made orders that she desist from repeating allegations and should correspond politely and professionally. Despite these warnings, she sent a further two emails to the witness in similar terms to those she had been warned about, and was struck out. The emails were in breach of an earlier order, were designed to intimidate the witness and had made a fair trial impossible.

70. The case of Blockbuster Entertainment Ltd v James (2006) IRLR 630 stated that proportionality should be considered in the context of the duration and character of the unreasonable conduct of proceedings. The Tribunal should be satisfied that the conduct involves deliberate and persistent disregard of required procedural steps or has made a fair trial impossible and, in either case, strike out must be proportionate.

71. In Weir Valves & Control UK v Armitage (2004) ICR 371 the EAT set out some relevant factors to consider where an application for strike out is made out under Rule 37 (1) (c). These include the magnitude of the default, whether the default is that of a party or their representative, what disruption, unfairness or prejudice has been caused and whether a fair hearing is still possible.

Conclusions

72. Turning firstly to the Claimant's application to strike out, this is refused. I cannot find the defence is scandalous, vexatious or has no reasonable prospects of success. It is clear the Respondent's case has always been that it's client, the

MHRA, carried out the shortlisting and selection of candidates, albeit the Respondent provided some commentary to its client in relation to each candidate and also provided feedback to the unsuccessful candidates. I do not find that Mr Shellum was lying to me at the Case Management Preliminary Hearing when he told me the Respondent had nothing to do with the short-listing; that has always been the Respondent's case. Stephanie Robinson providing feedback to the Claimant does not evidence her being involved in any short-listing exercise.

73. As to the Respondent's application to strike out, I have decided to uphold this under all 3 grounds. Firstly, as to Rule 37 (1) (a) I agree the claim of age discrimination has no reasonable prospects of success. Firstly, the Claimant gave his (incorrect) age as being 55 – 59 years on the Diversity Monitoring Form and a candidate was selected for interview from the same age range. This does not suggest age as being a factor for non-selection. Secondly, and importantly, the Claimant repeatedly references Stephanie Robinson's inexperience and lack of expertise in her failure to understand his CV. This assertion has been made many times and it is something I referred to at the Case Management Preliminary Hearing (see paragraph 13 above). Despite me doing so, the Claimant continued to refer to her lack of competence, rather than his age, as being the reason for his non-selection. Further, and as a matter of fact, the Claimant did not hold the science degree necessary for the role. His case appears to be that, whilst he did not put his correct age on the Diversity Monitoring Form, Stephanie Robinson must have googled it and, on discovering it, failed to shortlist him. This contention is totally speculative and at odds with all his criticism of her qualifications being the reason for her not appreciating his CV, and the Respondent's position that she was not in fact involved in the shortlisting. As to the allegation concerning Ed Stroud, the Claimant has not put forward any case as to how his age played any part in Ed Stroud's alleged failure to submit his application to the MHRA.

74. Even if I am wrong to say the case has no reasonable prospects of success, I am of the view the claim should also be struck out under Rule 37 (1) (b) and (c). I warned the Claimant at the Case Management Preliminary Hearing about the language he was using about Stephanie Robinson and about his correspondence with the Respondent's solicitor. Despite this, and despite the Claimant telling me he would desist, he has continued in these behaviours and as set out in detail above. He has been insulting to the Tribunal, to the Respondent's potential main witness and to its legal representatives. Whilst I accept that legal proceedings can be highly emotional, the Claimant's behaviour has seriously over-stepped the mark. His conduct of the proceedings has been scandalous, vexatious and unreasonable. He has been threatening and offensive.

75. Having found that the grounds in Rule 37 (1) have been made out I have to consider whether strike out is proportionate and whether a fair trial is still possible. I do not believe a fair trial is possible. The Claimant has continued, despite my warnings, to mis-use the Tribunal process to vilify witnesses and legal advisers and I have no doubt this will continue. I can have no confidence that the Claimant will desist.

76. Turning to proportionality, I recognise strike out is a draconian step however it is a tool available to the Tribunal and there must be occasions where it should be used. In my Judgment it is proportionate to strike out this claim in light of the Claimant's unreasonable behaviour and in light of the poor merits of the claim. For the reasons the claim is struck out.

Employment Judge Hindmarch
2 January 2024