



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100506/2024

5

Held in Glasgow via Cloud Video Platform (CVP) on 19 August 2024

Employment Judge L Wiseman

10

Mr Raymond Joseph

**Claimant
In Person**

15

University of Aberdeen

**Respondent
Represented by:
Mr N Maclean -
Solicitor**

20

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the tribunal is:-

- (a) to refuse the claimant's application to join the Lawn Tennis Association as a respondent to the proceedings and.
- 25 (b) to strike out the claim in terms of rule 37(1)(a) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. The hearing today was a preliminary hearing to determine three issues:
- 30 a. the claimant's application to join the Lawn Tennis Association as a respondent to the proceedings;
- b. whether the claim should be struck out in terms of rule 37(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure)

Regulations 2013 (referred to below as the Rules) for having no reasonable prospects of success and

- c. whether the claimant should be ordered to pay a deposit as a condition of proceeding with the claim or any part of it.

5 2. I heard submissions from the claimant and Mr Maclean for the respondent. I was also referred to a folder of documents produced by the respondent (referred to below using the prefix R and the page number); a folder of documents produced by the claimant (referred to below using the prefix C and the page number) and a statement of agreed facts (which was a mixture of
10 agreed facts and assertions by the claimant which were not agreed).

Background

3. The claimant presented an initial claim to the Employment Tribunal alleging "*failure to follow a fair procedure; unfair treatment; breach of contract; fraudulent misrepresentation and tort of deceit*". The claim was rejected
15 because a tribunal does not have jurisdiction to determine those matters.

4. The claimant presented a further claim on 24 January 2024 alleging he had been discriminated against because of the protected characteristics of age, race, sexual orientation, sex, religion or belief and marriage or civil
20 partnership. The claim was subsequently amended to one of indirect discrimination because of the protected characteristics of race, sex and/or sexual orientation; direct discrimination because of those characteristics; harassment because of those characteristics and victimisation.

5. The claim concerned the respondent's recruitment of a University Tennis Co-ordinator. The claimant applied, and was interviewed, for this post. There was
25 a material dispute between the parties regarding whether the claimant was offered the post. The respondent's position was that the claimant was the best candidate for the post and was offered the job. The claimant did not respond to the emails offering him the job and accordingly the offer was withdrawn and the post re-advertised. The claimant's position was that no contact was made

with him: he was not offered the job and the respondent had fabricated the documentation upon which they now sought to rely.

The agreed statement of facts (setting out only the facts which the parties have agreed)

- 5 1. On 25 September 2023 the respondent advertised a job vacancy for a University Tennis Co-ordinator.
2. The initial closing date for applications for this role was 13 October 2023.
3. On 2 October 2023 the claimant made telephone enquiries in relation to this vacancy. The claimant subsequently submitted his application for the role on
10 3 October 2023.
4. The vacancy advert was revised with the revised application being extended to 20 October 2023.
5. On 16 October 2023 the claimant was advised that he appeared to meet the adjusted criteria for the role and would be shortlisted and thereafter contacted
15 when the revised deadline had passed.
6. On 23 October 2023 the claimant and other shortlisted candidates for the position were contacted to advise there would be a delay in providing an update on the applications.
7. The claimant's interview took place on the 27 November 2023.
- 20 8. It is disputed by the claimant that the respondent made efforts during December to contact him by phone and email to confirm his selection and offer him the vacant role.
9. On 12 January 2024 the claimant made contact to enquire about any updates in relation to his interview.
- 25 10. On 16 January 2024 the claimant was advised that in the absence of having heard back from the claimant it was assumed that he did not wish to accept the job offer, and that the position would be re-advertised, and his application would be welcomed.

11. On 17 January 2024 the claimant sent an email confirming he had no record of any phone calls or emails from the respondent during any dates in December, regarding the job offer. He suggested that if there had been an error by the respondent it would not be reasonable for him to have to re-apply or re-interview.
12. Ms Heather Clark confirmed to the claimant by email dated 18 January 2023 that the vacant post had been re-advertised and that he would be welcome to apply for this. The new application deadline was 31 January 2024.
13. Ms Clark declined the claimant's offer but offered to move the claimant's previous application across to the new role.
14. On 18 January 2024 the claimant confirmed that he would not reapply and instead wished to make a formal complaint.
15. On 23 January 2024 the respondent's Mr Kenny Bruce undertook an investigation into the claimant's complaint in relation to the recruitment process.
16. On conclusion of the investigation the claimant received a letter dated 5 February 2024 with the outcome of the investigation.

The application to include the Lawn Tennis Association as a respondent in the proceedings

Claimant's submission

6. The claimant made an application to join the Lawn Tennis Association (referred to as the LTA) as a party to the proceedings because they were 50% co-funders for the post with the University and an LTA representative sat on the interview panel. The claimant, if he had been successful in obtaining the role, would have been required to attend for training and accreditation by the LTA and, it was submitted, the LTA had an active and direct role in the employment of the candidate.
7. The claimant referred to Cpage 28 which was an extract from the LTA website regarding the University Tennis Co-ordinator posts. The page set out the LTA

vision for the posts. The claimant argued the LTA inclusion strategy was discriminatory and the respondent had used that strategy in the interview process.

Respondent's submission

- 5 8. The respondent objected to the claimant's application and submitted it was not unusual for universities to receive external funding. The LTA had provided 50% of the funding for the University Tennis Co-ordinator post, but the respondent had employed the Tennis Co-ordinator.
9. Mr Maclean referred the tribunal to Rpage 134, where Ms Kinmond, Principal
10 Employment Solicitor for the respondent, had set out the reasons for the respondent objecting to the claimant's application. He invited the tribunal to accept and adopt those reasons.
10. Mr Maclean submitted the position was administered by the University and the post-holder was employed and managed by the University. The LTA part
15 funded these positions all round the country for the development of tennis. The respondent was the employer and only employer. The post was to develop tennis and deliver the objectives.
11. Mr Maclean also noted all of the alleged acts of discrimination were against the respondent and the application to join the LTA had been made more than
20 3 months after these events took place.
12. Mr Maclean further noted that there had been a representative of Tennis Scotland on the interview panel and Tennis Scotland was a separate legal entity to the LTA. In any event, a representative being on the interview panel did not make them the employer.
- 25 13. The respondent was responsible for any wrongdoing and the application to join the LTA as a respondent to the proceedings was misconceived.

Strike out*Respondent's submission*

- 5 14. Mr Maclean referred to the terms of rule 37(1)(a) of the tribunal Rules and to the cases of ***HM Prison Service v Dolby 2023 IRLR 694*** and ***Hasan v Tesco Stores Ltd UKEAT/0098/16*** and ***Ahir v British Airways pic 2017 EWCA Civ 1392***. The first two cases made clear there was a two stage process when considering an application to strike out a claim. Firstly, there had to be a finding that one of the grounds to strike out was established and secondly
- 10 there had to be consideration of whether to strike out in the circumstances. Mr Maclean also noted the guidance that discrimination cases should not be struck out except in the most obvious of cases. There were however no categories of case where strike out was not permitted and the tribunal should have regard to the ***Ahir*** case in this respect.
- 15 15. The further and better particulars provided by the claimant (Rpage 34) set out the basis of the discrimination claims. The claimant sought to argue that the respondent wanted to run an inclusive tennis programme and that this resulted in discrimination and him not being offered the job. it was submitted there was a key flaw in the claimant's argument, and that was the fact the
- 20 respondent did offer the claimant the role. Mr Maclean referred to the emails produced at R page 201. The first email from Grant Rae, HR Advisor, dated Friday 1st December referred to the recent interview and stated "*I am pleased to inform you that the panel would like to offer you the post..*" The second email from Mr Rae was sent on 6 December and stated "*Have you had the*
- 25 *chance to consider our offer? Please let me know if you have any questions.*"
- 30 16. Mr Maclean acknowledged the claimant's position was that he had not received those emails and he questioned whether they had ever been sent. Mr Maclean submitted the respondent carried out an internal investigation of their IT system (Rpage 216/217) which confirmed the emails had been sent and accepted by Google's mail server, with an acknowledgement that the recipient email address was correct. The issue of delivery of the email beyond

that point was outwith the control of the University. The emails had been sent and the email address to which they had been sent was correct.

- 5 17. Mr Maclean submitted it did not matter whether the claimant received those emails because it did not change the fact the claimant was offered the job and emailed about it.
- 10 18. Mr Maclean referred the tribunal to Rpages 197 - 199 which were the interview panel notes and comments regarding the candidates and confirming the claimant was the preferred candidate. An email was sent to Mr Rae (Rpage 177) attaching the interview panel's decision form and confirming "we have decided to appoint Ray Joseph".
- 15 19. Mr Maclean submitted that for the claimant to succeed he would need to show the respondent had fabricated the emails to him and the internal documents, and that argument had no reasonable prospect of success. The claimant sought to rely on a conversation with Ms Roberts on 2 October 2023 in which he alleged she said the University was "*looking for a candidate from an underrepresented background*". Ms Roberts denied making that comment and will say the discussion with the claimant was about the fact the claimant did not have the qualification required for the post. Mr Maclean acknowledged the claimant's position had to be taken at its highest but he invited the tribunal to have regard to the correspondence (email exchanges) sent at this time (Rpages 167 - 170) which were warm and encouraging and did not support the claimant's narrative. In the email at Rpage 169, sent by the claimant to Ms Roberts, the claimant stated "... *Thank you for the information and encouragement to apply! ...*"
- 20 20. Mr Maclean noted the claimant also sought to argue that the terms "inclusion" and "under-represented" discriminated against him. Mr Maclean invited the tribunal to have regard to the job advert (Rpage 159) where the purpose of the role was to develop tennis and make it more inclusive. There was nothing in the job advert to support that he, the claimant, was being discriminated against.
- 30

21. The questions asked of the candidates at interview were in keeping with broadening the scope for tennis. The tribunal was referred to Rpages 181/182 and it was submitted the questions went to the heart of the purpose of the job role. There was no suggestion by the claimant at the time that he thought these harassing. The interview notes demonstrate the claimant engaged well, gave a good presentation and was viewed positively. He had a strong understanding of diversity and inclusion and how it impacted on the role. The response to the claimant's presentation was positive.
22. Mr Maclean accepted that later in the chronology of events, when the claimant asked to be provided with copies of the emails which had been sent to him, the respondent complied with the request. However, Mr Rae altered the 6 December email before a copy of it was provided to the claimant. He altered it by adding a sentence saying "*We'd be grateful if you could confirm your acceptance by Friday 8 December*" (Rpage 208). Mr Maclean accepted that altering the email had been wrong but submitted the respondent carried out an investigation into this and it did not undermine the recruitment process or the emails. The change was not made for discriminatory reasons: it was to bring finality if there was no response.
23. The claimant did contact the respondent in January to enquire about the progress of his application and was advised that in light of the fact he had not replied to the emails, the University had concluded he was no longer interested in the post. The respondent subsequently confirmed the post would be re-advertised and that they would welcome his application (indeed they would put his application forward for the post). The claimant initially accepted this, but subsequently advised he did not want to be considered for the post. Mr Maclean submitted the decision of the respondent to re-advertise the post was not unreasonable and did not evidence discrimination.
24. Mr Maclean accepted the claimant had been cross and had complained to the respondent's Director of People (Rpage 219). The complaint made by the claimant made no reference to discrimination.

25. Mr Maclean submitted the claimant had no reasonable prospect of showing discrimination. The claimant would have to show all of the respondent's documents were fabricated and he would have to disprove the contemporaneous correspondence. There was no reasonable prospect of success of proving the facts he would need to show for discrimination or to shift the burden of proof.
26. Mr Maclean further submitted the claimant had failed to identify the provision criterion or practice relied upon in the complaint of indirect discrimination. The claimant also sought to argue he had been discriminated against because he was a white, heterosexual man, but there could be no discrimination on this combined basis. Further, there was no evidence of harassment at the time of these events.
27. The protected act relied on in the complaint of victimisation was the presenting of the ET1 claim form on 17 February 2024. The alleged detriment took place on 5 February 2024. The alleged detriment pre-dated the protected act. Mr Maclean acknowledged the claimant had, on 23 January 2024, told Mr Bruce that he had put in a claim form, but he did not provide any details of his claim and therefore there was nothing to trigger protection. There was nothing preceding 23 January 2024 which could found a victimisation complaint.
28. Mr Maclean, in response to the claimant's submission, argued that even if the claimant's case was taken at its highest and Mr Rae had not made the phone calls, the emails of 1 and 6 December were sent and they were received by the Google server. It was accepted the claimant had not received the emails: but they had been sent by the respondent to the correct email address.

25 *Claimant's submission*

29. The claimant referred to the LTA's Inclusion Strategy (Cpage 31) and, referring to the various pages of that document, argued that the terms used in that strategy meant that white, heterosexual males were not to be included in the strategy for inclusion or diversity.

30. The claimant took the tribunal through the chronology of events and argued two key points. Firstly that after seeing the advert he had phoned and spoken to Dr Christine Roberts whom, he alleged, told him that the University was ideally looking for an applicant who came from a traditionally unrepresented background to promote tennis to a wider demographic in Aberdeen. The claimant claims that his application for the post was unsuccessful because his protected characteristics (white, heterosexual, male) did not match that requirement.
31. Secondly, the claimant argued that he had not received any phone calls from Mr Rae, and had not received the emails of 1 and 6 December 2023. The claimant acknowledged the University had carried out an investigation into the IT system but submitted that as it was an internal investigation, the people who had done the investigation would have been supportive of the University and not objective. The claimant had obtained phone records from Three G (Cpage 175) and there was no record of any phone calls from Mr Rae.
32. The claimant had tried to obtain a report from Google, but the company responsible for UK based accounts is based in America and they would not co-operate with him without a Court Order, which cannot be obtained because it outwith the tribunal's jurisdiction.
33. The claimant submitted Mr Rae's evidence could not be treated as credible or reliable given he had retrospectively altered the 6 December email.
34. The claimant had given the University an opportunity to proceed with offering him the job before it was re-advertised, but they had refused. The claimant questioned why they had done so if he had been the best candidate. The claimant submitted that he had been the best candidate but had not been given the job: that was discrimination.
35. The claimant accepted he could not prove the emails were not sent, but argued that neither could the respondent prove they had been sent. The respondent wanted to rely on the fraudulent email to deprive him of the job. The claimant only learned of the altered email when Ms Kinmond sent it to him on 27 March (Cpage 168).

36. The claimant submitted the respondent had gone out of its way not to give him the job because of his protected characteristics.

Deposit Order

5 *Respondent's submission*

37. Mr Maclean submitted that if the claim was not struck out, a deposit order of £1000 should be made in respect of each and every allegation of discrimination should the tribunal consider they had little reasonable prospect of success.

10 *Claimant's submission*

38. The claimant invited the tribunal to have regard to the fact he is an unrepresented party and that he had tried his best to formulate the claims. He acknowledged it was possible the claim may need revision, and confirmed he was open to that.

15 *Claimant's financial means*

39. The claimant confirmed he had had a brief spell of employment between the 28 April and early May, and between the 28 June and middle of August. His total earnings in these periods was £2500. The claimant has savings of £15,000/16,000. The claimant lives in rented accommodation.

20

Discussion and Decision

Strike out of the claim

40. The tribunal firstly had regard to the terms of rule 37(1)(a) of the tribunal Rules which provides that 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 on the grounds ... that it has no reasonable prospect of success.
- 25

41. The tribunal next had regard to the case law to which it was referred. The tribunal noted that strike out is often described as a draconian measure and that it should be exercised only in exceptional circumstances. The EAT in the case of **Hasan v Tesco Stores Ltd** (above) set out that there is a two stage process when considering an application for strike out.' The first stage is to consider whether any of the grounds set out in rule 37(1)(a) - (e) have been established and if so, the second stage is for the tribunal to consider whether to exercise its discretion to strike out.
42. The House of Lords, in the case of **Anyanwu v South Bank Students Union 2001 ICR 391** stated that discrimination claims should not be struck out except in the most obvious of cases.
43. The tribunal also noted the guidance that when considering an application to strike out, it should have regard to the over-riding objective of dealing with cases fairly and justly and should also identify the issues before considering whether the claim should be struck out for having no reasonable prospects of success.
44. The tribunal also had regard to the case of **Ezsias v North Glamorgan NHS Trust 2007 ICR 1126** where the Court of Appeal held that it will only be in an exceptional case that a claim will be struck out for having no reasonable prospects of success when the central facts are in dispute. An example might be where the facts sought to be established by the claimant are totally and inexplicably inconsistent with the undisputed contemporaneous documentation.
45. The tribunal also had regard to the case of **Ahir v British Airways pic** (above) where an Employment Judge had struck out a claim as having no reasonable prospect of success. The Court of Appeal dismissed the appeal and it was said *"The Employment Judge found unsurprisingly that there was no reasonable prospect of an Employment Judge accepting the basis on which the claimant's case was being advanced. That was partly because of its inherent implausibility arid partly because the claimant could point to no material which might support it Where there was 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 that explanation is not true without the claimant being able to advance some basis for that being so."

5 46. The tribunal next had regard to the claim brought by the claimant and the further particulars provided. The claim form (Rpages 4-19) indicated the type of claim as being one of discrimination on the grounds of age, sexual orientation, religion or belief, race, marriage or civil partnership and sex. In the particulars of the claim the claimant asserted that, based on the evidence,
10 he thought it was reasonable to conclude the University of Aberdeen had discriminated against him because of those protected characteristics. In the narrative provided by the claimant he made the following points:

(i) he was told the University was ideally looking for an applicant who came from a traditionally under-represented background to promote
15 tennis to a wider demographic in Aberdeen and that this theme arose during the interview *"as if to insinuate that I was not suitable for the position based on my protected characteristics"*.

(ii) the claimant considered that as a 32 year old white, married, heterosexual, Christian, American born male, he did not fit in with the
20 University's diversity and inclusion agenda for the job role;

(iii) the University of Aberdeen indicated in various ways that he was the most qualified candidate for the job ... but fabricated a retroactive job offer with an expired acceptance deadline and falsely claimed to have called his phone multiple times;

25 (iv) it is clear that the University of Aberdeen have discriminated against me... the only reasonable explanation for this, considering I was the most qualified candidate for the job, is that they discriminated against my protected characteristics of age, race, sex, marital status, sexual orientation, religion and nationality.

47. The further particulars provided by the claimant in April 2024 after a preliminary hearing were produced at Rpages 34 - 49. The further particulars made clear the claims being brought were of indirect discrimination because of the protected characteristics of race, sex and sexual orientation; direct discrimination because of those same protected characteristics; harassment because of those same protected characteristics and victimisation.
48. The basis of the claim brought by the claimant is that the respondent had the intention of discouraging him from applying for the job because he did not fit within their definition of "inclusion" and "under-represented"; the respondent did not offer him the job for discriminatory reasons and the respondent, when it *"recognised the seriousness of the proceedings against them, decided their best option was to make it optically appear"* as though they had followed a fair procedure by fraudulently fabricating documents to support their position.
49. The respondent sought strike out of the claim because the University interviewed the claimant, considered him the best candidate for the post and offered him the job: accordingly there was no discrimination. The respondent argued the claimant had no reasonable prospect of success of showing he was not offered the job.
50. The tribunal acknowledged that it will only be in an exceptional case that a claim will be struck out as having no reasonable prospect of success when the central facts are in dispute. The issue for the tribunal was whether this was just such a case because, as the respondent argued, in order to succeed in showing he was not offered the job the claimant would have to show all of the documents had been fabricated and he would have to disprove all contemporaneous correspondence.
51. The tribunal turned to consider the respective positions of the parties. The claimant, whilst arguing that he was discouraged from applying for the job, accepted he did apply and was interviewed. The claimant did not challenge the relevant correspondence which included his email to Dr Christine Roberts enquiring about the job, and her reply (Rpage 167) in which she thanked him for getting in touch and said it was great to hear he was enthusiastic and keen

to hear more about the position. There was a subsequent conversation on the 2 October between the claimant and Dr Roberts, where he alleged she made a comment that ideally they were looking for someone from an under-represented background. This is denied by Dr Roberts. In any event, after that conversation the claimant emailed Dr Roberts (Rpage 169) saying *"Hello Christine, it was great speaking with you as well. Thank you for the information and encouragement to apply! I will get the application finished now. Have a great day!"*. The tribunal considered this email from the claimant did not sit comfortably with his assertion regarding the alleged comment of Dr Roberts.

52. The tribunal next had regard to the interview notes of each member of the interview panel (Rpages 185 - 196) and the Selection Committee Decision Form (Rpage 197) indicating the claimant was considered to be the best candidate. Dr Roberts, Chair of the Selection Committee, emailed Mr Grant Rae, HR Adviser on the 1 December (Rpage 177) *stating "we have decided to appoint Ray Joseph"*. Mr Rae responded by email approximately 15 minutes later (Rpage 176) to say that he would try to make the offer that afternoon. The tribunal noted the claimant did not specifically seek to challenge the authenticity of these documents.

53. The respondent's position was that Mr Rae tried to make contact with the claimant by phone on 1 December, but his calls could not connect. Mr Rae sent the claimant an email dated 1 December (Rpage 200) saying that further to the recent interview, he was pleased to inform the claimant that *"the panel would like to offer you the post"* and a summary of the offer being made was set out noting the start date, hours and salary. There was no response to that email and so a chaser email was sent on the 6 December (Rpage 201) saying *"have you had the chance to consider our offer? Please let me know if you have any questions"*.

54. The claimant obtained an Order for Three G to provide his phone records (Rpage 237 - 244). There was no record of any phone calls being made from Mr Rae's number to the claimant's number on the 1 December 2023.

55. The respondent carried out an internal investigation of its IT systems. This was instructed by Ms Debbie Dyker, Director of People. The email from Mr Henderson to Ms Dyker on the 22 January 2024 (Rpage 215) confirmed a message trace within the Microsoft Exchange Admin Centre had been run, and the email of 1 December had been sent at 13.23.38 on 1 December and accepted by Google's mail server at 13.23.42. The email of 6 December had been sent at 11.57.42 on that date and accepted by Google's mail servers at 11.57.47. The report went on to say that *"whilst we cannot confirm the delivery to inbox within the Google email service, the message was successfully accepted by their servers with acknowledgement that the recipient email address is correct. Delivery of email beyond this point is outwith the control of the University of Aberdeen"*. The report concluded with the comment *"In my professional opinion, it is therefore extremely unlikely that the email was not presented to the appropriate individual for reading, as long as we have the correct address."* The tribunal noted there was no suggestion the respondent did not have the correct email address.
56. The claimant has tried to obtain information from Google. He obtained an Order from the Employment Tribunal which was served on Google in the UK, however they replied to advise that UK accounts are dealt with in America. The claimant made contact with Google in America, but they were not prepared to release information without a Court Order, and the Employment Tribunal has no jurisdiction to issue an order on a Company based outwith the UK.
57. The tribunal, as noted above, accepted the claimant's case has to be taken at its highest. The respondent also accepted this, but argued that even if this meant the claimant's case that Ms Roberts made the comment regarding their ideal candidate, and the phone calls by Mr Rae did not occur and the emails were not, for whatever reason, received by him, the claimant still had no reasonable prospect of success of showing the emails offering him the job and chasing him for a reply had not been sent.
58. The tribunal, in considering the respondent's submission, noted the following points: firstly, there was no dispute regarding the fact the claimant was

interviewed for the position. He did not specifically challenge the contemporaneous correspondence and documents relating to the interview process (being the selection panel notes confirming the claimant was the best candidate and Dr Roberts' email to Mr Rae confirming they had decided to offer the claimant the job).

59. Secondly, the claimant, whilst asserting he did not receive the emails of 1 and 6 December from Mr Rae, cannot bring forward or rely upon any documentation to support that position. That is not a criticism of the claimant because he has made every effort to obtain documentation from Google. The respondent acknowledged that, taking the claimant's case at its highest, the claimant may not have received the emails. The key point, however, was that the claimant had no reasonable prospect of overcoming the fact the emails were sent, to the correct address, and received by Google's mail server. The tribunal noted that in the claimant's submission, he accepted he could not show the emails were not sent.

60. Thirdly, the respondent can rely on the internal investigation to support their position that the emails were sent and received by the Google mail server. The claimant did suggest that Mr Henderson, as an employee of University of Aberdeen, would not have been objective. The tribunal did not consider that argument had any merit in circumstances where the information obtained from the IT system was recorded and noted in the email (referred to above). The claimant may disagree with Mr Henderson's professional opinion but there was no basis for suggesting the information obtained from the IT system was anything other than accurate.

61. Fourth, the claimant did seek to argue that all of the documents had been fabricated. The tribunal considered there was an inherent implausibility to the claimant's argument, given the number of people who would have had to be involved in the fabrication and the volume of documents.

62. The respondent did accept that Mr Rae did subsequently alter the terms of the 6th December email, by adding the sentence "*We'd be grateful if you could confirm your acceptance by Friday 8 December.*" A copy of the emails of 1

December and the altered 6 December email were sent to the claimant by Ms Heather Clark, HR, on 17 January 2024. The claimant, in March 2024, learned the 6 December email had been altered.

- 5 63. The tribunal acknowledged Mr Rae's credibility and reliability may be impacted by the fact of altering the email of the 6 December, however, the email was altered after the original had been sent and had no bearing on the interrogation of the IT system and the sending of the original emails on 1 and 6 December.
- 10 64. The claimant, in his submission, asserted the respondent sought to rely on the fraudulent email (that is, the altered email of the 6th December). This was not a submission the tribunal could accept because it was incorrect both substantively and in terms of the chronology. The respondent relied on the emails of 1 and 6 December 2023 (unaltered) which were the emails sent on those dates (as confirmed by the subsequent message trace).
- 15 65. The tribunal, having had regard to all of the above points, concluded the claimant had no reasonable prospect of success of showing that he was not offered the job, and that the reasons for that were discriminatory. The tribunal reached that conclusion because the claimant was interviewed, there is contemporaneous documentation from the selection panel confirming the
20 claimant was the best candidate, there is an internal email confirming the selection panel decided to offer the claimant the job and, even if the telephone calls said to have been made were discounted, the respondent can rely on the emails of 1 and 6 December having been sent and the internal report obtained by the respondent which confirmed the emails were sent on those
25 dates, to the correct address, and received by Google's mail servers. The claimant's case, at its highest, is that he did not receive the emails of the 1st and 6th December: that may be so, but the claimant cannot demonstrate the emails of the 1st and 6th December, were not sent. The tribunal concluded the claimant has no reasonable prospect of success of showing he was not
30 offered the job.

66. The tribunal further decided, for the reasons set out above, that the claimant's assertion that documents have been fabricated is - with the exception of the email altered by Mr Rae, which is not material - without foundation.

5 67. The tribunal, having concluded the claim had no reasonable prospect of success, must now go on to consider whether to exercise its discretion to strike out the claim. The tribunal acknowledged striking out the claim is a draconian measure and also acknowledged the claimant will feel a great sense of injustice. However, the premise of the claim (that he was not offered the job) is fundamentally flawed and the claimant has no reasonable prospect
10 of success of showing he was not offered the job. In those circumstances, the tribunal considered this was one of the exceptional cases where strike out of the claim was appropriate. The tribunal, in conclusion, decided to strike out the claim in its entirety in terms of rule 37(1)(a) of the Rules because it has no reasonable prospect of success.

15 **The application to join the LTA as a party to the proceedings**

68. The tribunal, having struck out the claim, did not need to consider this application, however, for the avoidance of doubt, the tribunal refused the claimant's application. The reasons for this are because (i) it was the University which advertised the vacancy for a University Tennis Co-ordinator;
20 (ii) it would have been the University who employed the claimant if he had accepted the offer of the job; (iii) the respondent accepted it was the correct respondent to the claim; (iv) the claim brought by the claimant is that the University discriminated against him when it did not offer him the job. All of the alleged acts of discrimination are against the respondent and (v) the fact
25 the LTA provided 50% of the funding for the position, does not alter the fact the claimant would have been employed by the respondent, and the respondent would have been liable for paying his salary.

69. The tribunal decided, for the above reasons, to refuse the claimant's application to join the LTA as a respondent to these proceedings.

Deposit Order

70. The tribunal, having struck out the claim, did not consider whether a deposit order should be made.

5

10

15

**Employment Judge: L Wiseman
Date of Judgment: 5 September 2024
Entered in register: 6 September 2024
and copied to parties**

20