EMPLOYMENT TRIBUNALS

Claimant: Mr C Mallon

Respondent: Corriculo Ltd

Heard at: Reading (by CVP) **On:** 12 March 2025

Before: Employment Judge McCooey

REPRESENTATION:

Claimant: In person
Respondent: Mr Grant Williams, Senior Litigation Consultant

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

1. The claim of disability discrimination is struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.

REASONS

History

2. This was the respondent's application to strike out the claimant's claim, and in the alternative, for a deposit order.

3. The claimant applied for numerous jobs with the respondent, who is a recruitment agency, between March 2023 to June 2024. Early conciliation started on 28 June 2024 and ended on 8 August 2024. The claim form was presented on 8 August 2024.The respondent filed a response on 5 September 2024 defending the claim in full.

4. There was a case management hearing on 20 December 2024, before Judge Anderson, at which this hearing was listed and the matter set down for an in-person five day final hearing in August 2026.

5. A list of issues was prepared in respect of the four types of disability discrimination the claimant relies on: failure to make reasonable adjustments; harassment; indirect discrimination and discrimination arising from disability.

6. At the time of filing, the respondent initially made a strike out application but then changed its mind to pursue only a deposit order at that case management hearing.

7. As a result, Judge Anderson listed this hearing to consider strike out on her own volition, and she writes the following in her case summary about that:

8. *"I am aware that Mr Mallon has issued numerous claims in many regions of the tribunal on exactly the same grounds – discrimination in relation to job applications. He has appeared before me previously on one such claim. I am also aware that the points raised in this application have been unsuccessful in other published judgments.*

9. *For this reason, I decided to exercise my power under Rule 37 [now Rule 38] of the Employment Tribunal Rules to list the case for a strike out hearing on my own initiative. If the claimant is litigating points that are the same as those put forward in other cases and those claims have already been dismissed, then it may be that the current claim, or parts of the claim, have no reasonable prospect of success, or the claim is vexatious."*

Proceedings today

10. The respondent confirmed today that it was pursuing both strike out, and deposit order, applications.

11. It also confirmed today for the first time explicitly that it would like to argue that the claimant is not a genuine job applicant, having regard to **Keane v Investigo EAT UK 38909.** If that is right, the claimant falls outside the scope of the Equality Act 2010 and his claims would fail on a jurisdictional basis. I will return to that particular point later.

12. I received a bundle of 269 pages; in the bundle was the totality of the email communications relied on by the claimant which capture the factual events he relies on in support of his discrimination claim.

13. The claimant also included the outcome of his complaint to the Independent Press Standard Organisation (IPSO) following an article about him called, "Professional Victim", published on 3 February 2024 in the Daily Mail. The claimant's complaint was not upheld by the IPSO and it also declined to review its decision at the claimant's request. The investigation references two first instance decisions

involving the claimant and his disability discrimination claims against recruitment agencies. It explored points such as the claimant making 20 claims at a time; it says he has been paid more than £35,000 in out-of-courts settlements, despite winning just one case, which earned him £2,700. The article quoted an Employment Tribunal Judge hearing a claim in 2023 saying, *"the purpose of [Mr Mallon] making 4,643 job applications was to create opportunities to seek settlements or bring claims…This is effectively now his chosen career*."

14. In the claimant's reading list, produced by Artificial Intelligence, the claimant says he included the IPSO investigation as 'important context' and to show he has been *"making disability discrimination complaints for several years; has faced criticism and accusations and has a genuine concern about disability discrimination in job application process."*

15. I also had before me a witness statement from Mr Palmer, Managing Director of the respondent, and the claimant's witness statement.

16. I received two sets of written submissions from each party: from the claimant on 17 and 21 January 2025 and from the respondent on 17 January and 11 March 2025.

17. I also received a list of authorities from each party, including first instances decisions involving the claimant: **Mallon v Surface Transforms Limited, 2411246/2023; Mr C Mallon v AECOM Limited, 3202234/2018; Dr C Mallon v Cranfield Aerospace Solutions Ltd.**

18. These cases themselves mention others involving the claimant, for example, **Mallon v Electus Recruitment Solutions Ltd, ET/1403362/2020** in which an adverse costs order was made of £18,000 against the claimant and it was found by that Tribunal that the claimant, *"had a system of applying for roles without assessing whether he met the requirements; of not paying deposits in claims where a deposit order was made; of not complying with unless orders, so the claim would be dismissed; and that this way of operating was now the claimant's chosen career."*

19. Another mentioned is **Mallon v Vector Recruitment Ltd ET, 3304951/2022** a case similar to this and other cases whereby the claimant brought a reasonable adjustments claim, relying on the PCP of not being offered an oral initial discussion. It was found that PCP did not put him at a substantial disadvantage because he had provided a detailed CV, and someone without his disability could not have expressed themselves any better. The conclusion was that the reason why the claimant was unsuccessful in his applications was because he was unrealistic about the jobs he was applying for.

20. I heard oral evidence from the clamant about his financial circumstances, about which he was cross-examined briefly by Mr Williams.

21. I had received a written application from the claimant for reasonable adjustments concerning this hearing, which I confirmed I could accommodate; they included closed questions; assistance with legal terminology; and patience. I also explained breaks were available to either party whenever required.

22. The respondent's representative was unwell but confirmed he was able to proceed.

Factual background

23. The claimant is a highly qualified professional with a doctorate and various other degrees. He has been employed before but not since 2019.

24. He mentioned that he makes around 2000 job applications a year.

25. The respondent concedes the claimant has a disability for the purposes of section 6 of the Equality Act 2010, namely Autism, ADHD and Dyspraxia.

26. The claimant says all twelve of his job applications, submitted by email to the respondent between 29 March 2023 and 14 June 2024, were rejected without consideration of his reasonable adjustments. In his ET1 he says, *" I do not have a copy of the 12 job adverts so it might be less than 12 as I might not have all the essential criteria for all 12 roles".*

27. The requests for reasonable adjustments are contained in the claimant's CV and were repeated in the respondent's emails where they provide a response to each in turn. The adjustments include being sent the 'essential and desirable criteria' for roles; being allowed to make an oral application for roles; being granted additional time to make applications; constructive feedback where unsuccessful and clarifying steps for making the application.

28. Regarding the respondent's recruitment procedure, it first looks at a person's CV to see if they have suitable experience for a role; if they do, they are telephoned to discuss the role in more detail and to consider making an application.

29. The respondent receives 500 applications a day. 1 in 12 are deemed suitable at the first sift. In a two week period, that equates to 4,500 applications, of which 3,700 are unsuitable.

30. The claimant's applications were not progressed for any of the roles mentioned in the bundle. A generic rejection email was sent by the respondent which read: *"After careful consideration, I'm afraid that your CV has not been shortlisted for the role at this time. Unfortunately, we have received applications from other candidates who possess skills that are more closely aligned with my client's requirements."*

31. The claimant would then send a broadly similar email response back: *"Did you read my CV? As I asked for additional support in my application?'* or *"can you please let me know how long my cv was read for? and what was the exact experience i*

was missing?" or "Did you read my CV? As I asked for reasonable adjustments on page one of my CV. Please list the essential criteria that you believe I do not have?"

32. To some of these emails he received no response, to others, he entered a dialogue, an example of this, and the focus of his claim, is the Inside Sales Manager role.

Inside Sales Manager role

33. The claimant applied for an Inside Sales Manager role on 14 June 2024.

34. Mr Dalby, Sourcing Manager assessed the claimant's application in the way described above and considered him unsuitable for the role.

35. The claimant queried his rejection at this initial stage, asking whether his CV had been, "*read by a human";* what the essential criteria were that it was felt he did not have; and, whether his request for reasonable adjustments mentioned in his CV had been seen.

36. Mr Dalby sent several replies that same day, confirming his CV had been read by a human, and he recalled it on the claimant sending it again. He explained the application had not been progressed due to the claimant's lack of recent sales experience; the claimant's last sales role was over 8 years ago. This email added that the client had expressly asked for them to find people with recent sales experience.

37. The claimant then sent a number of emails in short succession, including, *"why did you read my reasonable adjustment request and not follow them? please copy in your manager to your reply".*

38. Three minutes later: "please reply by email and copy in your manager to your reply. i did not want a call from you at this point."

39. Then *"It's now been 5 hours from my last email. So please reply with your managers email address copied on within 24 hours as a reasonable adjustment request. do not ignore this email and this reasonable adjustment request as I will need to raise a formal complaint."*

40. Mr Palmer, was the manager cc'd in. He then replied copying each of the reasonable adjustments outlined in the claimant's CV and addressing them in turn. He reiterated that they want to help and for the claimant to arrange a call with Mr Dalby to understand his experience further and other possible roles. It made clear, having again reviewed his CV, that his application could not be progressed due to him lacking the minimum experience (essential criteria).

41. The claimant declined that call, saying Mr Dalby had been "*unreasonable*" and *"I do not speak to unreasonable people and no disabled person should."*

42. On 19 June 2024, Mr Palmer offered to help the claimant further by looking at his CV to check that it did not miss out details of his experience that might assist his application.

43. He confirmed the role was still open to the claimant and he would help the claimant apply if the company had misunderstood his level of experience. There were no deadlines in respect of the application. He offered a phone call as requested and to facilitate others of the reasonable adjustments.

44. The claimant refused to engage with the offers, instead querying why the company had rejected him three times.

45. The ET3 says that on 20 June 2024, Mr Palmer then offered an alternative call with Ms Harlock, Operations Manager, after the claimant wrote to him to say he would give him a "*trust score of 15 out of 100*".

46. It is accepted that the claimant did not apply for a role that seemed suitable for his level of expertise, that of Senior Accountant in Oxford.

Legal framework

i. Strike Out

47. The power to strike out a claim (or part of a claim) is found within r.38(1) of the Employment Tribunal Procedural Rules 2024 ("the Rules"). The relevant ground for strike out in this case is r.38(1)(a), which provides as follows:

> "38(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim or reply on any of the following grounds –
>
> (a) That it is scandalous or vexatious or has no reasonable prospect of success.

48. The power involves a two-stage test. Firstly, one or more grounds in r.38 must be established; if they are, a decision must be made as to whether to exercise the discretion in the particular case.

49. For discrimination claims, the starting point is **Anyanwu and anor v South Bank Student Union and anor [2011] ICR 391 UKHL**. Here, the House of Lords emphasised that discrimination claims are often fact-sensitive and require close examination of the evidence at a full merits hearing.

50. Further caution has been advised in **Bahad v HSBC Bank plc [2022] EAT 83,** at paragraph 25:

> "The approach that should be adopted to applications to strike out is of extremely long standing. From the House of Lords to the EAT, the appellate

> courts have for many years urged caution in striking out discrimination and public interest disclosure claims. Yet, on occasions employment tribunals having directed themselves that it is an extraordinary thing to do, strike out claims that are far from unusual. Experienced employment judges may sometimes feel that it is pretty clear that a claim will not succeed at trial and wish to save the expense and, possibly, the distress to the claimant of a failed claim. But that is what deposit orders were designed for. **To strike out a claim the employment judge must be confident that at trial, after all the evidence has come out, it is almost certain to fail, so it genuinely can be said to have no reasonable prospects of success at a preliminary stage, even though disclosure has not taken place and no witnesses have given evidence.** When discrimination claims succeed it is often because of material that came out in disclosure and because witnesses prove unable to explain their actions convincingly when giving evidence."

51. In **Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330**, the Court of Appeal held that, as a general point of principle, cases should not be struck out when there is a dispute over key facts. The reference to key facts also encompasses the reasons for a respondent's conduct, where those reasons are relevant to the applicable legal test – **Tayside Public Transport Co Ltd (t/a Travel Dundee) v Reilly [2012] IRLR 755**.

52. There are nonetheless caveats to the general approach of caution**. In Ahir v British Airways plc [2017] EWCA Civ 1392 CA**, Underhill LJ said at [16]:

> "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 prospect 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."

53. Mitting J in **Mecharov v Citibank NA [2016] ICR 1121 EAT** provided the following guidance at paragraph 14:

> "…the approach that should be taken in a strike out application in a discrimination case is as follows:
>
> 1. Only in the clearest case should a discrimination claim be struck out;
> 2. Where there are core issues of fact that turn to any extent on oral evidence, they should not be decided without hearing oral evidence;
> 3. The claimant's case must ordinarily be taken at its highest;
> 4. If the claimant's case is "conclusively disproved by" or is "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it may be struck out; and,

5. A tribunal should not conduct an impromptu mini trial of oral evidence to resolve core disputed facts."

54. In **Cox v Adecco & Others [2021] ICR 1307**, HHJ Taylor gave the following summary of general propositions gleaned from the relevant case-law (paragraph 28):

> "(1) No-one gains by truly hopeless cases being pursued to a hearing;
>
> (2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate;
>
> (3) If the question of whether a claim has reasonable prospect of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate;
>
> (4) The Claimant's case must ordinarily be taken at its highest;
>
> (5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is;
>
> (6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim;
>
> (7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing;
>
> (8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer;
>
> (9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances."

55. Finally, **Xie v E'quipe Japan Ltd [2024] EAT 176** reiterates the following principles:

1. Strike out is draconian and is only appropriate in clear cut cases;
2. There is a public interest in discrimination claims proceeding to a full hearing, nevertheless there is no bar to strike out in discrimination claims;

3. Where there is a core dispute of fact, strike out is generally inappropriate;
4. The claimant's case should generally be taken at its highest; and
5. Taking a discrimination case at its highest involves assuming that the facts will be established but not necessarily that an inference of discrimination will be made out.

Deposit Orders

56. The power to make a deposit order is found in Rule 40, which provides:

> (1) Where at a preliminary hearing the Tribunal considers that any specific allegation or argument in a claim, response or reply has little reasonable prospect of success, it may make an order requiring a party ("the depositor") to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument ("a deposit order").
>
> (2) The Tribunal must make reasonable enquiries into the depositor's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

57. Although much of the case law concerns strike out applications, similar principles apply to the issue of whether to grant an application for a deposit order; the lower threshold of merits does not require a different approach when there is a dispute of facts, as summarised by Simler P (as she was) in **Hemdan v Ishmail [2017] IRLR 228,** at paras. 12 and 13:

> (12) "The test for ordering payment of a deposit order by a party is that the party has little reasonable prospect of success in relation to a specific allegation, argument or response, in contrast to the test for a strike out which requires a tribunal to be satisfied that there is no reasonable prospect of success. The test, therefore, is less rigorous in that sense, but nevertheless there must be a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or the defence. The fact that a tribunal is required to give reasons for reaching such a conclusion serves to emphasise the fact that there must be such a proper basis.
>
> (13) The assessment of the likelihood of a party being able to establish facts essential to his or her case is a summary assessment intended to avoid cost and delay. Having regard to the purpose of a deposit order, namely to avoid the opposing party incurring cost, time and anxiety in dealing with a point on its merits that has little reasonable prospect of success, a mini-trial of the facts is to be avoided, just as it is to be avoided on a strike out application, because it defeats the object of the exercise. Where, for example as in this case, the Preliminary Hearing to consider whether deposit orders should be made was listed for three days, we question how consistent that is with the overriding objective. If there is a core factual conflict it should properly be resolved at a Full Merits Hearing where evidence is heard and tested."

58. The following principles apply:

1. Little reasonable prospect of success test is a less exacting test than no reasonable prospects;
2. There is more scope for the Tribunal to evaluate the evidence than in an application for strike-out;
3. Care should be taken before making a deposit order especially where core facts are in dispute; and
4. It is only in a clear case that a deposit order should be made in a discrimination claim.

Discussion

59. I considered r.38(1)(a) in respect of each the four types of disability discrimination claim as captured in the list of issues, asking myself whether, on the pre-disclosure evidence before me taken at its highest, the claim had no reasonable prospect of success. I bore in mind the draconian nature of strike-out at all times.

60. Key to my assessment was the fact that parties confirmed the totality of events could be found in the email thread contained in the bundle; there was no suggestion that any telephone or other conversations took place outside of that thread, or that any other factual events formed the narrative. In this sense there was therefore no factual dispute about what happened, rather submissions would be made at final hearing about whether this amounted to disability discrimination.

i. Discrimination arising from disability.

61. The unfavourable treatment as set out in the list of issues was said to be:

a) Dismissive responses to the claimant's requests for reasonable adjustments;
b) Prioritising convenience for the respondent over accommodating the claimant's neurodiversity; and
c) Failure to provide clear reasons for rejecting the claimant's applications.

62. Looking at the email threads, there is no reasonable interpretation of those which allows a conclusion that the respondent was in any way dismissive to the claimant's requests for reasonable adjustments.

63. Mr Palmer copied and pasted each request in his email to the claimant and responded to them in turn. The natural reading of the thread is that the respondent was trying to meet the requests but the claimant did not accept or engage with them when offered. For example, the claimant requested more time in making applications and was reassured to take all the time he needed regarding the Inside Sales Manager Role. He was offered telephone calls with different members of staff but declined all as he said he mistrusted them.

64. Furthermore, the claimant had to pass an initial sift to ascertain whether he had the appropriate experience to then be eligible for applying for any role in particular.

65. Regarding the Inside Sales Manager role, the claimant was considered to not have that requisite minimum experience. When the claimant raised his concerns about this, the respondent offered reasonable adjustments by way of phone calls to further understand his concerns and open a conversation to explore whether the respondent misunderstood his experience. They reiterated that his application was still live and could be pursued. He declined all of these offers. At no point did he suggest he did in fact have the relevant expertise.

66. The claimant says in his witness statement: "*they rejected my application based on my CV without fully considering my request for an oral application, which would have allowed me to explain my suitability beyond what was written".* This makes no sense because the claimant did not accept their offer to explain his suitability further in a telephone call.

67. I therefore find this aspect of the complaint has no reasonable prospect of success.

68. For the same reasons, I find the claim that the respondent 'prioritised convenience over accommodating the claimant's neurodiversity', to have no factual basis. It is not the natural impression from reading the email thread, in which Mr Palmer is polite and receptive, despite dealing with abrupt and pressurised requests from the claimant, such as that he must respond within 24 hours or 48 hours. When the claimant says he mistrusts Mr Balby and then Mr Palmer, an additional person was suggested for him to deal with, Ms Harlock, which was also rejected by the claimant.

69. The impression is that there was no real desire to be assisted by the respondent in the reasonable adjustments he was requesting.

70. Regarding the other applications the claimant made about which he received no response from the respondent beyond its generic rejection email. The claimant could not have reasonably expected to be entitled to make an oral application for every job he applied for, regardless of whether he had the requisite job experience or not. He acknowledges this in his CV to an extent.

71. In a similar vein, it could not have been a reasonable expectation for the respondent to provide the 'essential v desirable criteria' for every role the claimant applied for, regardless of his experience, particularly given the volume of applications the claimant accepts he makes.

72. In a situation where this recruitment company receives 500 applications a day, and the claimant makes over 2000 applications a year, neither are reasonable requests or expectations. As mentioned, the claimant disengaged when he received a response in any event, for example, from Tristan Quick, saying he had "*rejected his application so there's no need to speak further*".

73. There were clear reasons for rejecting the application – the lack of relevant experience; and if the respondent was mistaken about that they were open to being corrected by the claimant, which he chose not to do, perhaps as he accepted not having the relevant experience. Taking the claimant's case at its highest, including assuming that he was genuine job applicant acting in good faith, in my judgment there were clear, non-discriminatory reasons for rejecting his application.

74. For all of the above, I find that the claimant has no reasonable prospect of successfully proving he was treated unfavourably by the respondents and accordingly strike out this part of the claim as having no reasonable prospect of success.

ii. Indirect discrimination

75. The next complaint is one of indirect discrimination

76. The list of issues records the following Provision, Criterion or Practice (PCPs):
    a) Requiring written applications without providing an oral alternative;
    b) Maintaining standard and inflexible timelines, despite requests for extensions;
    c) Using complex job adverts/descriptions that hindered comprehension without simplification?

77. The issues then are whether the respondent applied the PCPs to the claimant and to persons who do not share his characteristic? If yes, did the PCPS put those with claimant's characteristic at a particular disadvantage to those who do not? Did the PCPs put the claimant at that disadvantage?

78. Regarding PCP b), in no way can it be said that there were "inflexible timelines despite requests for extensions" because Mr Palmer expressly told the claimant to take the time he needs and that his application was still open. It was rather the claimant who imposed inflexible timeliness, as mentioned above. On any reading, the respondent is accommodating from the email thread and the claimant nowhere in his claim suggests how they were not or that he would have evidence of how they were not at a full merits hearing.

79. Regarding c), the claimant has provided the job description for the Inside Sales Manager role. On its face, it is not a complex job advert or description. The claimant

has a PHD, is highly intelligent and skilled in his field; he had not told or otherwise indicated to the respondent that he did not understand the job description at the time he applied for that role. He simply says in his CV that he requires the 'essential and desirable criteria' to be sent for any job he is in interested in. I did consider that his disabilities may mean that what on its face appears simple to me, is in fact complex for him. But no causal link in any way has been set out by the facts of the claimant's case to evidence that point. The blanket request is made in his CV before he begins the application process. If the claimant genuinely could not understand the job advert he references, it is surprising that he nonetheless applied, without raising this as a specific issue and seeking clarification at that point in time.

80. Regarding a), it cannot be said that "requiring written applications without providing an alternative" disadvantaged the claimant, because as a starting point, he had to first have the minimum amount of experience to apply for any given role. His CV reflects that experience, and he was rejected from each role because he did not have that minimum experience; his disabilities were not a consideration or relevant at this stage. He was offered the opportunity to clarify his CV with the respondent which he refused. There is no reasonable interpretation of the email thread that evidenced that the claimant was put at a disadvantage by this practice.

81. I therefore find this complaint also has no realistic prosects of success at this stage and therefore did not go on to consider the remaining elements of that claim.

iii. Failure to make reasonable adjustments

82. The three PCPs here are the same as set out above at paragraph 76. The issues include whether the PCPs put the claimant at a substantial disadvantage compared to someone without his disability? Did the lack of an auxiliary aid, namely an online oral application process, put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

83. The request to have an online oral application, which the claimant says is the auxiliary aid, rather than a written one, only becomes relevant when it is established that the claimant has the minimum relevant experience as a baseline and so therefore could be eligible for the role. His email exchanges with Mr Palmer are not about him suggesting that his experience has been misunderstood, and nowhere does he suggest he does in fact have the necessary experience.

84. The points I have made above about whether this put him at a disadvantage as compared other people without his disability applies here: it goes back to his level of experience which he lacked. This is a feature which others of his past cases mention, namely that he applies for jobs without the requisite experience.

85. This complaint also has no reasonable prospects of success.

iv. **Harassment**

86. This complaint sets out the unwanted conduct as follows:
    a) Repeatedly failed to address concerns raised in emails, including ignoring reasonable adjustment requests while providing inadequate alternatives.
    b) The emails referred to are dated: 6.1.1.1 29 March 2023 6.1.1.2 17 April 2023 6.1.1.3 27 June 2023 6.1.1.4 4 August 2023 6.1.1.5 30 August 2023 6.1.1.6 14 September 2023 6.1.1.7 13 November 2023 6.1.1.8 14 June 2024 6.1.1.9 18 and 19 June 2024 6.1.1.10 20 June 2024 6.1.1.11 24 June 2024 6.2

87. The next agreed issues are, 'was that unwanted conduct? If yes, did it relate to disability? Then, did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? If not, did it have that effect?

88. The first category of the emails mentioned are those sent between 29 March 2023 to 13 November 2023. These are generic emails sent by the claimant saying things like, "*Did you read my CV, where I flag my reasonable adjustment requests?", "Please list the essential criteria you believe I do not have"*. It is generic because it is the same or very similar response sent to the respondent by the claimant regardless of the job he has applied for. It seems to have been sent about most jobs mentioned in the bundle. There is no response from the respondent to those emails in this period.

89. The second category of emails are different because they are back and forth email exchanges between the claimant and respondent, where a colleague picks up the generic email from the claimant. From June 2024, Mr Dalby responds to the claimant's expressed concerns, then Mr Palmer, his manager, takes over as the claimant says he has lost trust in him.

90. Regarding those June 2024 emails, taken at their highest, it cannot be said that they show repeated failures to address the concerns raised by the claimant.

91. Any specific concerns are addressed in full by Mr Palmer; where they are not taken forward, that is the claimant's choice, as mentioned above.

92. Regarding the emails before June, these are essentially the same comment made after any unsuccessful job application querying whether his CV was "actually read" and whether humans do the initial sift. Mr Balby later confirms that humans do the reading and he recalls seeing the claimant's CV personally.

93. It is not reasonable to expect a personalised response at this early stage of the application process to the same generic email sent in respect of any unsuccessful job application. There was no specific concern targeted to any particular job in question.

94. The claimant nowhere says, nor do the emails reveal, why the "inadequate alternatives" were inadequate.

95. The emails therefore, taken at their highest, cannot reasonably amount to unwanted conduct.

96. For these reasons, I consider that this complaint also has no reasonable prospect of success.

97. In light of the discussion above, I do consider it appropriate to then exercise my discretion to strike out each of the complaints. The matter is listed for a 5 day final hearing. It is not in accordance with the overriding objective to permit the case to proceed to determination in these circumstances where the claim is, in my judgment, certain to fail. I have considered carefully the caution that must be exercised before making this decision in cases concerning discrimination.

98. Having determined that the complaints should be struck out under r.38(a), I did not then go on to consider the alternative argument as to whether the complaints are also vexatious; I acknowledge other Employment Judges have found that to be the case regarding similar complaints made by the claimant.

Genuine job applicant

99. I have considered EJ Anderson's observation about the similarity of the claimant's claims in this case to many others he has brought in the Employment Tribunal about which he has been unsuccessful. The respondent did not address me on this particular aspect in submissions.

100. From the first instance decisions referred to, as well as the IPSO decision in so far as it contains undisputed facts, clearly the claimant does repeatedly bring claims on the same or similar grounds, which then fail. This is something I weighed to an extent in finally making my decision under rule 38(a). The claimant's previous tribunal history should not, in itself, preclude him from bringing future claims; however, it is relevant that he brings claims knowing he has lost on the same points. It impacts his credibility. He was warned about this in the EAT, as referenced by another first instance decision in the bundle:

> "…*Were it to be established that multiple applications were being made for jobs that he does not want, with the aim of bringing claims, possibly to achieve settlements, that is a matter that could result in strike out and costs."*

101. This leads me to the final point of whether the claimant was a genuine job applicant, by reference to the case of **Keane v Investigo & Others UKEAT/0389/09/SM**. This case, and others like it, have significant consequences in that if a claimant is found not to be a genuine job applicant, they fall outside the protection offered under the Equality Act 2010, and accordingly, the Tribunal has no jurisdiction to hear the claims.

102. The respondent points me to a part of its response which it says does imply that the claimant was not a genuine applicant, in that he failed to apply for a job that he did have relevant experience for. However, the argument that the claimant was not a genuine job applicant has only really been run in this way today. The claimant did not appear to be aware of this case law and was unlikely to have had time to process and respond to that in full, though we did have a break for reading time. In the interests of fairness, I therefore declined to address the issue of whether the claimant was a genuine job applicant or not, in light of my conclusions under r.38(1)(a).

103. I do observe in passing that that issue would very likely be relevant should the matter have proceeded to a full merits hearing. The impression from this case is that the claimant's real concern is one of activism rather than remedying a genuine grievance with a particular employer.

Deposit order

104. When considering the claim as a whole and in light of the discussion above, I was satisfied that the higher threshold of no reasonable prospects, rather than little responsible prospects was met here. The email thread itself left little room for a more generous interpretation to be afforded to the claimant and to say anything other than the case has no, rather than little, reasonable prospects of success. There were no core factual disputes or findings that might have improved the claimant's chances which I could make out.

105. For example, in terms of factual inconsistencies between the email thread and the respondent's witness statement, the claimant confirmed these were contained in a summary produced by Artificial Intelligence in his email dated 21.2.2025. There were no other points of factual contention the claimant said may arise at trial. Having reviewed the summary, I was satisfied these were not of any clear relevance to the issues nor would they have any meaningful bearing on the case at a full merits hearing.

Conclusion

106. To conclude the claim is struck out in their entirety under rule 38 (1)(a).

Approved by:

Employment Judge McCooey

2 April 2025

JUDGMENT SENT TO THE PARTIES ON

25/04/2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) 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.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/