



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL by CVP

BEFORE: EMPLOYMENT JUDGE F SPENCER

BETWEEN: Mr J Airey CLAIMANT
AND
British Transport Police RESPONDENT

ON: 27 November 2025

Appearances

For the Claimant: In person
For the Respondent: Ms Sharp, counsel

JUDGMENT

The Judgment of the Tribunal is that the Claimant's claim for failure to make reasonable adjustments is struck out under rule 38 of the Employment Tribunal Procedure Rules 2024 as having no reasonable prospect of success.

REASONS

These written reasons are given at the request of the Claimant, made at the hearing, following oral judgment given on the day.

1. By an application dated 21 February 2025 the Respondent seeks a strike out of the Claimant's claim that the Respondent failed in its duty to make a reasonable adjustment. The claim relates to the cancellation of an Occupational Health appointment following the withdrawal of a conditional offer to be appointed as a Special Constable, but prior to an appeal against the vetting decision.
2. The issues in this case were set out in a Case Management Order following a Preliminary Hearing before Employment Judge Jack. Since the date of

that Order the Claimant's status as a disabled person has been conceded by the Respondent.

3. It is the Claimant's case that the Respondent applied a PCP of "cancelling an Occupational Health appointment following the withdrawal of a conditional offer, while the vetting appeal was ongoing". Further it is his case that this PCP put him at a substantial disadvantage compared to someone without his disability "in that there was a lack of understanding in the vetting appeal about the Claimant's disability, difficulty in social situations and some of the incidents recorded in police records."

Relevant law

4. Rule 38(1)(a) of The Employment Tribunal Procedure Rules 2024 provides, so far as relevant, that
"The tribunal may, on its own initiative or the application of a party, strike out all part of the claim, response or reply on any of the following grounds-
(a) that is scandalous or vexatious or has no reasonable prospect of success.
5. It is well established law that claims should only be struck out in exceptional cases. It is an extremely high test, and is particularly high where the complaint is one of discrimination. The power to strike out has been described by the Court of Appeal as draconian, and not a power to exercise lightly.
6. The main principles relevant to the striking out of discrimination claims were summarized in Mechkarov v Citibank NA [2016] ICR 1121. They are:
 - a) Only in the clearest case should a discrimination claim be struck out;
 - b) Where there were core issues of fact that turned on oral evidence, they should not be decided without hearing oral evidence;
 - c) The Claimant's case must ordinarily be taken at its highest;
 - d) If the Claimant's case was "conclusively disproved by" or was "totally and inexplicably inconsistent" with undisputed contemporaneous documents, it could be struck out;
 - e) A tribunal should not conduct an impromptu mini trial of oral evidence or resolve core disputed facts.
7. Further guidance on the relevant principles for striking out was given in Cox v Adecco Group UK & Ireland and ors ICR, EAT. Amongst other things, the Claimant's case should usually be taken at its highest.
8. Notwithstanding the high threshold, complaints may be struck out in appropriate cases. In Anyanwu v South Bank Student Union (CRE intervening) [2001] ICR 391 Lord Hope stated "Nevertheless, I would have held that the claim should be struck out if I had been persuaded that it had no reasonable prospect of succeeding at trial. The time and resources of the employment tribunals ought not to be taken up by having to hear

evidence in cases that are bound to fail.” Equally, in Kaul v Ministry of Justice 2023 EA T 41 the EAT upheld the strike out of a discrimination claim noting that the need for caution when considering a strike out application does not prohibit a realistic assessment where the circumstances of the case permit.

9. As to time limits Section 123 of the Equality Act 2010 provides that complaints of discrimination should (subject to extensions for ACAS conciliation) be presented within three months of the act complained of, or within such other period as the tribunal thinks just and equitable. In order to get the benefit of any extension of time to allow for ACAS conciliation a complaint has to be presented within three months less a day of the act complained of.
10. A Section 123 (3) provides that for the purposes of section 123 conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it. Subsection (4) provides that and that, in the absence of evidence to the contrary, a person is to be taken to decide on a failure to do something when he does an act inconsistent with doing it, or on the expiry of the period in which the person might reasonably have been expected to do it.
11. In considering whether it would be “just and equitable” to extend the relevant time limits, it is necessary to consider the prejudice caused to either party should the extension be granted or refused. All the circumstances are relevant including the length of, and reasons for, the delay; any prejudice to the Respondent if the application is allowed to proceed; the likely injustice to the Claimant if the complaint is not heard including whether any other redress is available, whether the Claimant was in receipt of advice; and the conduct of the parties after the complaint was received and up to the date of the application.

Undisputed facts

12. The Claimant was an applicant for the post of Special Constable with the British Transport Police. He is a disabled person by reason of Asperger's syndrome and Bipolar Affective Disorder.
13. The Claimant applied for the post of Special Constable with the Respondent on 16 December 2022. Special Constables within the Respondent constitute about a tenth of the Force's warranted officers and have the same powers as regular police officers, although they perform their duties on a part-time, voluntary basis. They are subject to the same complaints and misconduct, conduct and performance regulations as regular police officers of BTP, as well as the same vetting checks and standards
14. A conditional offer was made to him on 3 April 2023. The offer letter (88) provided that the offer was “conditional on successfully passing several checks (references/medical/vetting)”. The Claimant duly sent his completed vetting documentation to the Respondent's Vetting Team.

15. Vetting is conducted in the police service to help identify, assess and manage risk relating to areas including, but not limited to, protection of police assets, national security, public safety, public confidence, protection of organisational assets, operational safety, leadership, corruption and coercion, and integrity. The Claimant does not dispute the need for vetting.
16. On 24th July 2023 he was informed by the Respondent's Vetting Unit that he had failed the vetting process. (91) As a consequence, he received an email from OH to say his appointment with OH had been cancelled by the Recruitment Team. (104).
17. The Claimant submitted an immediate appeal against the vetting decision and also emailed the Recruitment team, copied to the Vetting Team *"I will be appealing the decision today. I would trust therefore that the appointment is reinstated as an indication that the appeal will be considered and taking into account the short space of time there is until I can start training. It is fortunate that I had not yet purchased a train ticket for this appointment, but clearly the sooner I can buy a ticket the better as advance tickets with Cross Country much cheaper than on the day."* The Vetting team responded that they did not get involved with occupational health; there is no record of a response from the Recruitment Team
18. On 30th August 2023 the Claimant was told that his vetting appeal had been unsuccessful.
19. The reasons given for the Claimant's failure of vetting, both at the initial vetting stage and that the appeal stage were twofold.
20. The first reason related to his association with others. *"Police employees are not permitted to associate with persons who would place them in a position of vulnerability to corruption or information leakage or would undermine public confidence in the Police Service. Family members, partners, relatives, or friends who have previous convictions, subject of adverse intelligence or are reasonably suspected of being involved in crime, may be considered inappropriate associates. The force will carefully consider a number of factors before making a decision, these will include:-*
 - a. *The nature of offence or intelligence*
 - b. *Time period that elapsed since the offence*
 - c. *The existence of a protracted history of offending*
 - d. *The relationship between the application and offender*
 - e. *Whether the person concerned resides with the applicant**The overriding consideration in such cases is whether such an association could induce a conflict of interest in the applicant discharging their duties, raise the vulnerability of the employee or could cause embarrassment to the force. Unfortunately, you have been unsuccessful because of an association which is considered inappropriate.*

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15. The second reason was that *"Our checks have revealed a pattern of behaviour that falls below the standard of professional behaviour expected of*

employees of the British Transport Police.

16. The Claimant was also informed that if the reason for his failure included information related to third parties would not be released to him under the provisions of the Data Protection Act.
17. The Respondent has disclosed the Vetting Officer's report although it has been highly redacted. All information concerning the refusal on the basis of the Claimant's associates has been redacted. The Claimant was therefore unaware exactly what associations were considered to be inappropriate – though he speculated that this was because of his brother, against whom there had been findings of dishonesty. But he and his brother did not get on.
18. The second reason related to the Claimant himself i.e. that he exhibited a pattern of behaviour that fell below the standard of professional behaviour expected of employees of the Respondent. The Vetting Officers report revealed 5, largely historic, offences by Claimant on the PNC (93). More recently on 23rd December 2023 there had been an incident at Kings Cross on 23 December 2022 "officers were requested to attend at Kings Cross Railway Station about a male that required ejecting from the station." The record reported that the Claimant was sitting on floor stating he was a police officer, worked for Network Rail and knew the CEO of LNER. ..."Subject suffers a variety of mental health conditions and had travelled from Peterborough to help people at Kings Cross. Subject was taken to Platform B, St Pancras International Station and instructed to get next Peterborough service."
21. In addition, and more significantly, the vetting officer reported and quoted from a number of posts on the Claimant's social media profiles on Facebook and Twitter and concluded that they breached the code of ethics and fell below the standards of what would be expected of a police officer. Those were contained in the bundle (98 – 100). The vetting officer found that the content of those social media posts *"was at the very least discriminatory highly transphobic, anti-abortion and some graphic videos and pictures which the vetting officer found rather upsetting.* The vetting officer concluded that *"This applicant's views and beliefs are completely incompatible with the policing principles and for well below the standards of professional behaviour that would be expected of a police officer."* It is recorded that *"particular scrutiny has been given to the applicant's behaviour, the material he has published along, with his overall behaviour online and in person this could seriously undermine the reputation of the force and damage public confidence it is completely incompatible with policing principles and falls well below the standards of professional behaviour expected, it is for this reason the overall risk to the force is high so clearance is refused."*
19. The Claimant contacted ACAS on 3 February 2024 with ACAS early conciliation taking place between 27 November 2023 and 4 January 2024. His claim form was presented on 3 February 2024. At box 8.2 the Claimant

says, "I am not currently looking for anything else than being cleared to serve as a Police Officer, but I am aware I may have to submit a schedule of loss."

22. At a Case Management hearing before Employment Judge Jack the Claimant clarified that his case was one of failure to make reasonable adjustments. It is the Claimant's case that by cancelling his occupational health appointment while the vetting appeal process was ongoing, Respondent applied a PCP which put him at a substantial disadvantage compared to someone without the Claimant's disability. The disadvantage was "a lack of understanding in the vetting appeal about the claimant's disability, difficulty in social situations and some of the incidents recorded in the police records." The adjustment that should been made was to allow the Occupational Health appointment to have gone ahead.

Submissions

23. Ms Sharp makes her application for a strike out on the basis of Rule 38 (1) (a) i.e. that it is scandalous or vexatious or has no reasonable prospect of success. She posits two bases upon which the claim has no reasonable prospect of success. First, she says that (i) the claim is out of time and secondly she says that (ii) the Claimant has no reasonable prospect of proving that any substantial disadvantage would have been alleviated by any reasonable adjustments.
24. Further she submits that the Claim is vexatious because the remedy that the Claimant seeks, (that the Respondent change its refusal of vetting) is not one that the tribunal can order. The Claimant had repeatedly said he wanted to be appointed as a Police officer and this that it was not about the money. He had indicated repeatedly that he would drop the case if the Respondent changed its refusal of vetting. A vexatious claim has been described as one that is pursued not with the expectation of success but to harass the other side or out of some improper motive. Another way of expressing this would be a claim that has little or no basis in law or where 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. The remedy that the Claimant sought was not one that the tribunal could order.
25. On the merits of the Claimant's claim Ms Sharp says that the claim has no reasonable prospect of success. Much of the rationale for the failure of vetting related not to the Claimant's behaviour but to his association with others. In that context, a referral to occupational health could not have overcome the disadvantage which had nothing to do with his disability. If the vetting officer was of the opinion that the behaviour or police record of persons with whom the Claimant was associated resulted in failure of vetting, that was sufficient.
26. Further no amount of understanding following an occupational health appointment or report could have changed the vetting outcome given his behaviour and the material he had published online.

27. The Claimant submits that it was unfair to penalise him because of his relationship to his brother, with whom he does not get on and does not see. 17 million people had a criminal conviction, and he did not accept that he had an association that would affect his standing as a Police Officer. In 1985 he had been convicted of something that someone else had done. As for his posts on social media he was not a transphobe and would treat everyone with respect. The claimant said he had strong views – but this was not a barrier to his being a police officer, as long as he treated people with respect. The incident in December 2023 had been made up by the staff at King's Cross. References in the vetting officer's report to having been dragged off the train in 2008 were unfair.
28. The Claimant said that he was extremely concerned about the safety of passengers on trains. He had stopped assaults and would make a very good Officer with the Respondent. He always carried a first aid kit with him and travelled on trains. The respondent could have reversed their decision and made an adjustment by allowing his appointment with occupational health to go ahead.
29. The people interviewing him saw his potential, but the vetting officer took a personal dislike to the Claimant.
30. Today the Claimant did not suggest that his behaviour at Kings Cross was as a result of his Asperger's or bipolar, (though that it the premise of the claim for reasonable adjustments). He disputes the factual scenario behind the 2022 incident at King's Cross and denies that his tweets are transphobic – he did not believe that men should not be allowed to go into safe spaces and this was a view shared by the Supreme Court.

Conclusions

31. I am satisfied that the Claimant has no reasonable prospect of showing that had he been referred to occupational health prior to the appeal this would have had any impact on the ultimate vetting decision. The Claimant says that had he been referred to occupational health the vetting officer would have approached him with more understanding, but I am satisfied that no amount of understanding would have resulted in the Claimant passing the vetting process given the extent of the adverse traces.
32. First the Claimant failed vetting because of his association with others. A referral to Occupational Health and greater understanding could not have made any difference to the rationale which related to his association with 3rd parties.
33. But that is not necessarily a complete answer because, given the redactions, I am unable to judge whether the Claimant's association with third parties, taken on its own, might have been overcome at appeal, and the failure of vetting was on two grounds. The material in the bundle which relates to that has been redacted and no sensible judgement can be made.

34. However, Claimant also failed vetting because of his own historic offences, the incident at King's Cross and his social media posts. Whatever the Claimant's perception, having read those tweets, it is clear that the vetting officer had proper grounds for believing that the Claimant's views and beliefs were incompatible with policing principles.
35. Taken altogether that is an overwhelming number of factors which make the chances of the Claimant being able to pass vetting, even if he had been able to attend his occupational health appointment highly unlikely. The Claimant did not suggest any basis upon which he asserted that the vetting officer took a dislike to him. However sympathetic the Respondent might have been to the Claimant's disability, difficulties in social situations and some of the incidents in the police records following a referral to occupational health, the chances of the Claimant being able to establish that he would have succeeded in the vetting, and that the Respondent would have been able to overlook the social media posts as well as the other adverse traces, such that he would have been appointed to a post as a special constable, are vanishingly small, given the overall risk to the reputation of the Respondent.
36. Time issues. Ms Sharp also submits that the Claimant's claim is out of time. The Claimant was informed of the cancellation of his occupational health appointment on 24th July 2023. He did not approach ACAS until 27th November, so Ms Sharp submits that his claim is a month out of time.
37. She also submits that even if it could be said that the failure to make an adjustment did not occur on 24th July, the Claimant must have expected the appointment to have been reinstated within a few weeks so that on any account and by virtue of section 123(4)(b) the time limit must have expired well before 28th August.
38. The Claimant on the other hand says that he was informed of the failure of his appeal on 30th August and that he contacted ACAS within three months less a day of that date – and so his claim is in time.
39. I am satisfied that Ms Sharp has the correct analysis of the operation of the time limit, and that the claim is outside the primary time limit. However, if that had been the time limit had been only bar to this case going ahead, I would have found that it would be just and equitable to allow the claim to proceed. It was not unreasonable of the Claimant to consider that the time limit ran from the date that he was informed that his appeal was unsuccessful and the delay is not very great.
40. However, there is no point in allowing a claim to proceed on the just and equitable ground if it is bound to fail, and for the reasons set out above I am satisfied that it has no reasonable prospect of success.

41. Given the above it is not necessary to conclude whether the claim should be struck out because it is vexatious, although in principle a Claimant is entitled to a finding of unlawful discrimination even if the remedy sought is outside the Tribunal's jurisdiction.

Employment Judge Spencer
9 December 2025

JUDGMENT SENT TO THE PARTIES ON

12 December 2025

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FOR THE TRIBUNAL OFFICE