



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 Case No: S/4105568/16 Held at Aberdeen on 18 April 2017

Employment Judge: Mr N M Hosie (sitting alone)

10 Mr Youssef Abdul Azeez

Claimant  
In Person

Aberdeen City Council

Respondent  
Represented by:  
Ms K Wilkie -  
Solicitor

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal (for the reasons given orally at the Preliminary Hearing)  
is that: -

25 (1) the complaints of breach of contract and indirect discrimination have no  
reasonable prospect of success and they are struck out in terms of Rule 37(1)(a)  
in Schedule 1 of the Employment Tribunals (Constitution and Rules of  
Procedure) Regulations 2013; and

30 (2) the remaining complaints of direct discrimination on the grounds of religion or  
belief and sex shall now proceed to a Final Hearing.

**ETZ4 (WR)**

**REASONS**

## **Introduction**

1. The claimant, Mr Azeez, submitted a claim form on 10 November 2016 in which  
5 he intimated a number of complaints. The claim was denied in its entirety by the respondent.

2. At a Preliminary Hearing on 23 January 2017, to consider management of the  
10 case, I directed the claimant to provide further specification of his various complaints. He responded by e-mail on 9 February 2017 and the respondent's solicitor responded, in turn, with her Answers by e-mail on 17 February 2017.

3. Having considered this additional information, I decided that a Preliminary  
15 Hearing should be fixed to consider the following issues: -

“1. *Whether the claim should be struck out in terms of Rules 37(1)(a) and/or (b) of the Tribunal's Rules of Procedure.*

2. *Whether a “Deposit Order” should be made in terms of Rule 39.”*

4. This was a Preliminary Hearing to consider these issues. The claimant appeared  
20 in person and the respondent was represented by Ms Wilkie

5. I heard submissions from the parties (the respondent's solicitor spoke to written  
25 submissions which are referred to for their terms) and documentary productions were lodged by both parties (“C2 and “R”).

6. The claimant advised that his letter of 8 February 2017, which was attached to  
30 his aforesaid e-mail of 9 February, comprised the complaints which he wished to advance and was a comprehensive statement of his position.

7. I deal with each of his complaints, in turn, with specific reference to the claimant's  
e-mail.

## **Breach of Contract**

8. It was accepted by the claimant that he did not receive an unconditional offer of employment from the respondent which he had accepted: on 17 May 2016, the respondent confirmed that he was the “preferred candidate” and he was also advised that: “*This is not yet a formal offer of employment and as such you should not resign from any current employment on the basis of the content of this letter*”. (R2)
9. While I understand that in due course the “PVG application” referred to in the letter was approved, it is the respondent’s position that they decided not to make a formal offer of employment in light of complaints which they received about the claimant which rendered it inappropriate for him to work with those who had complained about him.
10. I am not in a position to determine the exact nature of these complaints or whether they had merit, but what was important, so far as the issue with which I was concerned, was that it was not disputed that no offer of employment was ever made to the claimant. There was, therefore, no contract, let alone any breach. This meant that there was no “dismissal” and the Tribunal does not, therefore, have jurisdiction to consider this complaint.
11. I had little difficulty in these circumstances, therefore, arriving at the view that this complaint had “no reasonable prospect of success” and it is therefore dismissed.

25 **Direct Discrimination**

**Religion or Belief**

12. In considering the prospect of this complaint succeeding I had particular regard to the burden of proof provisions in s.136 of the Equality Act 2010 and the requirement that the claimant first requires to establish facts that amount to a *prima facie* case.

13. For the purpose of the exercise with which I was concerned, I took the claimant's averments in this regard, which are to be found at page 8 of his aforesaid e-mail, *pro veritate*. In other words, I proceeded on the basis that Mr Azeez would be able to prove all the facts he avers.

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14. When considering this issue, I paid particular regard to what Lord Steyn said in **Anyanwu & Others v. Southbank Student Union & Others [2001] 2ALL ER 353** that as discrimination cases tend to be "fact sensitive" strike-outs should only be ordered: *in the most obvious and clearest cases.*" I was also mindful of the  
10 guidance in such cases as **Ezsias v. North Glamorgan NHS Trust [2007] EWCA CIV 330**; **Igen Ltd v. Wong [2005] IRLR 258** and **Bahl v. The Law Society & Others [2004] IRLR 799**.

15. In light of the guidance in these cases, and having regard, in particular, to the  
15 averments relating to what Ms Nabulsi and Ms Peteranna told him, allegedly, I was not satisfied that this complaint has "*no reasonable prospect of success*". I decided, therefore, that it should not be struck out.

16. However, I was satisfied that the contention by the respondent's solicitor that  
20 "Incident 1", on page 8, is lacking in specification was well-founded and after discussion with the parties I decided that this should be amended to read as follows: -

25 *"Incident 1*  
*In the first or second week of May 2016, during a private conversation in Union Street, Aberdeen after a meeting at the museum, Ms Nabulsi said that she did not wish to work with men who do not shake hands, in reference to devout Muslims, whose religious practice prohibits hand shaking. This was after she had telephoned me on 25 April 2016 to advise that I was to be offered preferred candidate status for part-time work as a Refugee Support Officer."*

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The complaint of direct discrimination on the ground of religion or belief complaint will proceed to a Final Hearing, therefore, on this amended basis.

**Sex Discrimination**

17. I also decided, have regard to the guidance in the case law and the averments relating to what Ms Nabulsi told him, allegedly, in this regard, that I was unable to  
5 conclude that the sex discrimination complaint has “*no reasonable prospect of success*”. I decided, therefore, that it should not be struck out.

18. I decided, therefore, that this complaint should also proceed to a Final Hearing, but based on an amendment to “Incident 3”, on page 9, which was agreed, and  
10 the first paragraph of which now reads as follows: -

*“Incident 3*

*In April 2016, Alana said in one meeting with a refugee family in their home: ‘I only want to employ females’. This was in response to a male name, which was proposed for the role of Support Worker for refugees. A discussion followed this comment where it was proposed that male workers may have certain advantages Ms Nabulsi did not consider.”*

**“Discrimination based on assumptions”** (Pages 10/11).

19. It was clear to me that the averments under this heading could not give rise to discrimination based on any of the “relevant protected characteristics” listed in s.14 of the 2010 Act. I had no difficulty, therefore, deciding that not only did the Tribunal not have jurisdiction to consider such a “complaint”, but also that it has  
25 “*no reasonable prospect of success*”.

20. However, the averments under the heading “Incident 6”, on pages 10 and 11, may have some relevance to the complaints of direct discrimination as it appeared to me that the claimant was maintaining that the respondent had given  
30 him another reason or reasons for not offering him employment, despite his preferred status, which was contrary to the respondent’s position that the reason for the respondent’s decision was that they had received complaints from refugees about the claimant which rendered it inappropriate for him to work with them and for the respondent to offer him employment. These averments,  
35 therefore, remain in support of the direct discrimination complaints.

21. It was clear to me, that central to the direct discrimination complaints will be the Council's reason why they did not offer him employment despite his preferred status their position being that this was due to the complaints which they received from refugees who knew him. The Tribunal will require to examine, therefore, the nature of these complaints and the communications between the complainers and the respondent.

22. It is also worth recording, I believe, that it is the respondent's position that although they did not offer the claimant employment on this occasion, they advised him he should apply again if the opportunity arose as this would be in respect of refugees who are not known to him and who had not complained about him. However, this was denied by the claimant.

### **Indirect Discrimination**

23. I was satisfied that the submissions by the respondent's solicitor in this regard were well-founded.

24. Despite being directed by me at the Preliminary Hearing on 23 January to identify the "provision, criterion or practice" which he alleges the Council applied to him. He failed to do so.

25. I had no difficulty, therefore, arriving at the view that this complaint has "*no reasonable prospect of success*" and that accordingly it should be struck out.

Employment Judge: Nicol M Hosie  
Date of Judgment: 24 April 2017  
Entered in Register: 24 April 2017  
and Copied to Parties