EMPLOYMENT TRIBUNALS

Claimant : Mr Zakir Khan

Respondent: Crown Prosecution Service

PRELIMINARY HEARING

Heard at: Birmingham (in public) **On:** 6 January 2020

Before: Employment Judge Camp (sitting alone)

Appearances
For the claimant: did not appear
For the respondent: Ms E Hodgetts, counsel

JUDGMENT

The claimant has withdrawn the claim in accordance with rule 51 and the claim is dismissed pursuant to rule 52.

REASONS

1. This is the written version of the Reasons given orally at the hearing, written reasons having been requested by counsel on the respondent's behalf.

2. This case comes before me this morning, originally on an application to strike out the claim as having no reasonable prospects of success, alternatively for the making of a deposit order. It has ended up being about the withdrawal and dismissal of the claim under rules 51 and 52.

3. Rules 51 and 52 are as follows:

WITHDRAWAL

End of claim

51. Where a claimant informs the Tribunal, either in writing or in the course of a hearing, that a claim, or part of it, is withdrawn, the claim, or part, comes to an end, subject to any application that the respondent may make for a costs, preparation time or wasted costs order.

Dismissal following withdrawal

52. Where a claim, or part of it, has been withdrawn under rule 51, the Tribunal shall issue a judgment dismissing it (which means that the claimant may not commence a further claim against the respondent raising the same, or substantially the same, complaint) unless—

(a) the claimant has expressed at the time of withdrawal a wish to reserve the right to bring such a further claim and the Tribunal is satisfied that there would be legitimate reason for doing so; or

(b) the Tribunal believes that to issue such a judgment would not be in the interests of justice.

4. There is some relevant factual background that does not relate to this particular claim. I shall go into that in a moment.

5. The claim that is before the Tribunal today was issued in London Central on 9 April 2019. It is a claim against the CPS. Nominally, the claim is about places on the CPS's legal trainee scheme to start in Autumn 2019. In reality, it is about the CPS not having some kind of scholarship or sponsorship scheme for people interested in becoming trainees to help fund a place on an LPC course, the LPC being a qualification they need to have before starting as a trainee. In order to have that qualification by Autumn 2019, aspiring CPS trainees would, if they already didn't have it, have to be doing the LPC in 2018/2019 and would therefore have to have applied for a place on the relevant LPC course (and, presumably, for any sponsorship of scholarship that went with it) in 2017/2018.

6. In the relevant parts of the claim form, the claimant states:

> *The claim is related to disability discrimination. This year the CPS launched its legal trainee scheme. The requirements were such that it put in place barriers to stop me from applying and others in a similar situation. It failed to introduce reasonable adjustments for people like myself so that the requirements it asked for did not disproportionately affect people within my group unfavourably. The claim is made under Section 15, Section 19 and Section 20. … The PCP relied on for Section 19 indirect discrimination is the recruitment process, in particular the requirement to complete or be on the road to completing the LPC before the post was to begin. There may be other requirements such as requiring each candidate to evidence certain confidences, but I was not able to be held back by them due to lack of LPC requirement, which was the reason why I did not even apply. This was because the application was off-limits and from the moment onwards, I do not have the LPC or be in a position with on before* [sic] *the commencement of the post that the Organisation requires. For the purposes of clarity, I do not hold the LPC because of the effects disabilities have had on me throughout the course of life and this is predominantly the reason why I do not have the funds the embark upon the qualification to be able to have applied for the scheme, although I did have others, hence I believe I have been discriminated or treated unfavourably due to matters that are consequence of disabilities, hence apparently in violation of Section 15 of the EQA 2010.*

7. At the time the claim form was issued, the claimant already had a large number of claims in the system, including another one against the CPS, all along these lines:

   the claimant had applied for jobs and had been rejected without interview because, allegedly, of something arising in consequence of his disabilities. All of the claims were made under section 15 of the Equality Act 2010, some of them were made as reasonable adjustments claims, and there were one or two indirect disability discrimination complaints as well.

8. The very first of the claimant's claims I am aware of was, I think, in 2017 and was against Mills & Reeve solicitors. It is the only one that got all the way to trial and it was wholly unsuccessful. I had no involvement in that case.

9. Another lot of cases, which included one against the CPS almost identical to the one I am dealing with today, were issued in or around 2018 and were casemanaged, all together, by Employment Judge Dean. She listed a number of them for preliminary hearings to decide whether they should be struck out as having no reasonable prospects of success or whether deposit orders should be made. Some of those hearings were before me, including a hearing in August 2019 following which I struck out the previous claim against the CPS (case number 1301255/2018) because it had no reasonable prospects of success. I also, in October 2019, dismissed a reconsideration application without a hearing under rule 72(1) because there was no reasonable prospect of the original decision being varied or revoked.

10. This second claim against the CPS with which I am concerned today came to my attention in or around September 2019, after I had dealt with the first claim and, I think, while I was in the process of dealing with the reconsideration application. It had been transferred from London Central to Midlands (West) / Birmingham in August. I made some Case Management Orders in relation to these proceedings, including listing this hearing.

11. The Orders I made included an order for the claimant to prepare and serve on the respondent a witness statement setting out in as much detail as he intended to go into at trial all of his liability evidence in support of his claim. I made clear in the Order that the purpose of that statement was purely to provide clarity as to exactly what the claim was. The claimant has not complied with that Order, which was made in a letter dated 3 October 2019.

12. On 22 October 2019, the claimant wrote to the Tribunal stating, "*I am not going to work on the case until I see my psychiatrist and medications are adjusted to tackle all of the mental impairments that I suffer from. I have an appointment on the 16 November and I will have to wait some weeks to benefit from any medication that is added or replaced. This means that the Hearing will have to be rearranged. I have attached evidence for the appointment.*" On the 25 October 2019, he sent an email attaching the evidence referred to.

13. At my request, on 4 December 2019 (I should say that, unfortunately, there has been some delay in processing the claimant's correspondence by the Tribunal administration, hence the time-lag between 22 October and 4 December, but that is by the by), the claimant was written to at my direction stating, "*If you want to have the hearing in January re-arranged, then you will need to provide medical*

evidence confirming you will not be fit enough to attend and stating roughly when you will be fit enough to attend". In directing that he be written to in those terms, I assumed the claimant would, by then, have had his appointment, would know what the position was, and would be able to produce such evidence if he really was unfit to attend.

14. That letter of 4 December 2019 from the Tribunal to the claimant crossed with some correspondence between the claimant and the respondent's solicitors. The claimant had written to them on or about 3 December 2019. He headed his letter, "*Re. Litigation against various respondents, in particular cessation of legal disputes*".

15. To put that in context, at the same time as striking out the claim against the CPS, I had made a deposit order in relation to a claim against ACAS (1304025/2018). The claimant had not paid the deposit and his claim was duly dismissed on 5 November 2019. He was also pursuing, or had been intending to pursue, reconsideration applications, and possibly appeals as well. That is what I think he was referring to by "*litigation against various respondents*" and "*legal disputes*".

16. The claimant's letter of 3 December 2019 stated, "*This is an important notification document to inform all concerned that I will no longer be pursuing the complaints made against the organisation since 2018. It is noted that these cases are currently under the category of "struck out", while they are not in my view of that category.*" Pausing there, the problem with the last sentence I just quoted in connection with the claim that I'm dealing with today is that it called into question whether the claimant meant he was no longer pursuing – i.e. was withdrawing – all and any claims, appeals, and reconsideration applications he had brought against bodies represented by the Government Legal Department, or merely those that had not been struck out, and the claim I am dealing with today, obviously, had not been struck out.

17. He went on in the letter to say: "*I will not be requiring reconsiderations therefore, while believing strongly that the decisions for strike out were largely inappropriate."* He then detailed various things about his mental health and ended with this: *"If I get better and I experience the same behaviour, I would then at that point submit further ET1s against the Organisations. It is not going to leave these proceedings with both its own skin perfectly intact together with a perfect promise that I would not bring litigation in the future, which it clearly is shamelessly and desperately labouring towards, obviously. This will simply not happen no matter what the Court does, even if it schedules a costs hearing or not.*"

18. There was a reference to a costs hearing because the respondent had applied for costs in relation to 1301255/2018. Ultimately, that application was withdrawn.

19. The claimant's letter of 3 December 2019 was forwarded by the Government Legal Department to the Tribunal under cover of an email of 4 December 2019. The covering email included this: "*We write further to the claimant's correspondence indicating that he is withdrawing his claim. There is a one-day hearing listed in this matter on the 6 January 2020, so I would be grateful if the Tribunal could issue the dismissal order and vacate the Hearing as soon as possible so we can stand counsel down*". Again, there was a delay in that email being referred to an

Employment Judge. The first time it was seen by a Judge was on Thursday, 2 January 2020, when it came to me. I was not satisfied that the claimant's letter constituted a withdrawal of the claim. I therefore directed the Tribunal administration to write to the claimant asking him to confirm to us that he had intended to withdraw. The email from the Tribunal to the claimant was not sent

until Friday, 3 January 2020, the last working day before this hearing. He did not reply. I understand from the administration staff that they tried to speak to him on the telephone as well, but couldn't get through to him; they may have left a message.

20. Later on 3 January 2020, a further letter was written to the claimant at the direction of the Acting Regional Employment Judge stating that as the claimant had not responded, the hearing was going ahead today.

21. Over the weekend, on Saturday, 4 January, at 11.31am, the Tribunal received an email from the claimant, not copied to the respondent, stating: "*I do not intend to continue with the proceedings for the reasons mentioned earlier* [it is not clear what reasons he is referring to here]. *Therefore can you please unlist the case. I will assume that this will be the case for Monday so that my attendance is not necessary.*" Neither I nor the respondent's representatives saw that before this morning. He doesn't use the word "withdraw" – and why he won't use that word I don't know – but it is clear enough, in my view, to constitute a withdrawal, and respondent's counsel agrees.

22. I should add that the claimant emailed a further letter about the claim at 12.30pm on Sunday, 5 January 2020, which was copied to the respondent, but was rather ambiguous. Its ambiguities don't matter, though, because of the relative clarity of the previous day's email.

23. That is where we were this morning, at the start of the hearing.

24. The claim has been withdrawn, meaning the proceedings have ceased – the claim has "*come to an end*" in accordance with rule 51. That leaves as the only issue whether I should dismiss the claim in accordance with rule 52.

25. Under rule 52, I must issue a judgment dismissing the claim unless we are in one of two situations: (a) or (b). (b) – "*that to issue such a judgment would not be in the interests of justice*" – is the only one that might conceivably apply. I therefore have to consider whether it is in accordance with the interests of justice, and the overriding objective, to dismiss the claim.

26. The main reasons why dismissal is appropriate in this case are:

    26.1 the claimant has not objected;

    26.2 this claim has no reasonable prospects of success. So far as concerns why it has no reasonable prospect of success, I simply refer to my decisions in the previous claim against the CPS, 1301255/2018. If anything, the present claim is even weaker than the previous one. This time around, the claimant didn't – it appears – contact the respondent at all in relation to the particular training scheme, starting in Autumn 2019, he was allegedly interested in

applying for. He has no *locus* to bring this claim in the Employment Tribunal because he was not a job applicant. If he was not a job applicant, what he is complaining about is the non-provision of some sort of scholarship scheme for an academic course. That is not a complaint the Tribunal has jurisdiction to deal with. In addition, he is making an indirect discrimination claim, something he wasn't doing last time. Such a claim would be hopeless because he accepts that the relevant "*provision, criterion or practice*", namely requiring trainees to have the LPC, is justified. His case (which I

don't accept either) is that the relevant unfavourable treatment – presumably making clear any application would be rejected – would not be justified under section 15(1)(b) of the Equality Act 2010. He does not seem to appreciate that in relation to an indirect discrimination claim, what has to be justified as a proportionate means of achieving a legitimate aim is not the treatment but the PCP itself;

26.3 the claimant has not complied with the case management orders that I made and is not actively pursuing the claim. He hasn't produced any further medical evidence proving his inability to attend this hearing. He has not produced the witness statement I ordered him to produce. He has made clear that he does not want to pursue it. And he has not attended today.

27. For all of these reasons, I dismiss the claim pursuant to rule 52.

28. **Addendum:** This was not part of my original decision, but having been told at the end of the hearing that an application may in the future be made for an order preventing the claimant from issuing further Employment Tribunal proceedings without permission (and – I am mindful of Oni v NHS Leicester City (Formerly Leicester City Primary Care) [2012] UKEAT 0144_12_1209 – having been assured that the respondent has no present intention of applying for costs against the claimant in relation to this particular Tribunal claim), it may be helpful for me to indicate that I think this claim was totally without merit.

Employment Judge Camp
9th January 2020