



EMPLOYMENT TRIBUNALS

Claimant: Dr C Mallon

Respondent: Grant Thornton UK LLP

Heard at: Birmingham (By Cloud Video Platform)

On: 21 February 2023

Before: Employment Judge V. Jones

Representation

Claimant: In person

Respondent: Ms. R. Levene, counsel

RESERVED JUDGMENT FOLLOWING AN OPEN PRELIMINARY HEARING

1. The claimant's claims of direct disability discrimination in relation to :
 - a) the rejection without interview of his application for the post of R&D Tax manager between 7 and 14 June 2018; and
 - b) the rejection, after interview, of his application for the post of R&D Tax Manager on 31 July 2018;

were presented out of time and it is not just and equitable to extend time under s123(1)(b) Equality Act 2010 (EQA). The tribunal thus has no jurisdiction to hear those claims and they are struck out.

2. The claimant's claim of discrimination arising from disability was presented out of time but it is just and equitable to extend time under section 123(1)(b) EQA. The respondent's application to strike out this claim is dismissed. The respondent's alternative application, for a deposit order to be made on the ground that this claim has little reasonable prospects of success, is granted. The claimant is **ORDERED** to pay a deposit of £500 no later than 14 days from the date this order is sent to the parties as a condition of being permitted to continue with that claim.
3. The respondent's application to strike out the claim of direct disability

discrimination in relation to the respondent's refusal to permit the claimant to make a fresh oral application for the role of R&D Tax Manager on 28 November 2018 is dismissed. The respondent's alternative application, for a deposit order to be made as a condition of that claim proceeding, is also dismissed. That claim will proceed to a final hearing.

4. The respondent's application to strike out the claimant's claim that the respondent failed to make reasonable adjustments for him when the job was re-advertised in November 2018 is dismissed. The respondent's alternative application, for a deposit order to be made on the ground that the claim has little reasonable prospects of success, is granted. The claimant is **ORDERED** to pay a deposit of £500 no later than 14 days from the date this order is sent as a condition of being permitted to continue with that claim.

REASONS

Background

1. By his ET1, presented on 6 January 2019, the claimant claimed the respondent had discriminated against him because of disability in relation to his application for a job. He did not provide many factual details, nor specify which sections of the Equality Act 2010 he brought his claim under, though he referred at Box 8.2 of his form to "reasonable adjustments" and to believing he had been treated unfairly because of his disability. In its ET3 response, the respondent denied the claimant had been discriminated against as alleged or at all. It says the claimant did not meet the essential criteria for the role he had applied for.

2. The Claim has a long history. An application was made by the respondent to strike out the claim on 20 March 2019 and a preliminary hearing was fixed on 28 June 2019 to consider that application. That hearing was postponed at the request of the claimant and rescheduled for 27 August 2019. The hearing was further postponed by the Tribunal and relisted in January 2020. The claimant's further request for a postponement on the grounds of his mother's ill-health was initially refused but later granted, and the claimant was served with an "Unless" Order requiring him to provide medical evidence about his mother's illness before 31 January 2020. When it appeared the claimant had not complied with that order, REJ Findlay struck out the claim on 31 January 2020 under Rule 38 of the Employment Tribunal Rules of Procedure.

3. Following the strike out order, the claimant wrote to the tribunal in February 2020 but, due to a series of delays contributed to by the Covid 19 pandemic, the file was not referred back to REJ Findlay until 5 January 2022. The claimant sent further emails to the Tribunal on the 6 and 7 January 2022, but these were not referred to REJ Findlay until 25 July 2022. After reading the claimant's emails and reviewing the file, REJ Findlay fixed a hearing to consider whether the decision to strike out the claim should be set aside. At that Hearing, which took place on 5 October 2022, REJ Findlay found the claimant had in fact complied with the terms of the "unless" order. She considered it was therefore in the interests of justice to set aside her earlier judgment, and did so.

4. At the hearing on 5 October 2022, REJ Findlay directed that a further Preliminary Hearing should be held to clarify the issues in the case and consider: (a) whether the claim had been presented in time or, if not, whether time should be extended; (b) whether the claim should be struck out on the grounds that it was scandalous, vexatious or had no reasonable prospects of success and (c) whether any further directions were necessary. That preliminary hearing took place today, 21 February 2023, before me.

Today's Hearing

5. This was a remote Hearing which was not objected to by the parties and was conducted by video (CVP) under Rule 46 of the Tribunal Rules. The claimant appeared in person and the respondent was represented by Ms. Levene of Counsel. There was an agreed bundle of documents (containing 613 digital pages) and references, in this decision, to page numbers are to pages in that bundle. I also received written witness statements from the claimant and from Mr Richard Waite (People and Care Director for the respondent) both of whom gave oral evidence. After hearing evidence the parties made submissions. I then reserved my decision.

Issues

6. In her Orders of 5 October 2022, REJ Findlay directed the claimant to write to the Tribunal, referring only to the matters set out in box 8.2 of his claim form, setting out what the respondent did or failed to do which he said amounted to disability discrimination. In each case he was asked to set out the date or dates on which he says the respondent acted, or failed to act as indicated.

7. The claimant provided some further particulars in response (p 70), but these did not include any of the dates on which the alleged acts or discrimination had occurred and his further particulars referred to a number of matters which were not included in box 8.2 of his ET1.

8. At the outset of the Hearing I spent some time with the claimant clarifying the issues he was complaining about, with a chronology. In each case we identified which "head" of discrimination he was bringing his complaint under, by reference to the relevant section of the Equality Act 2010. After we had completed this process, the claimant agreed his claims were as follows: -

Direct Discrimination – Section 13 EQA

- i. The claimant's job application for the position of R & D Tax Manager was rejected by Ray Harris without an interview in a voicemail message left between 7 and 14 June 2018 (neither party had a record of the exact date);
- ii. After the respondent agreed to reconsider the above decision and agreed to interview the claimant, his application was again rejected by Ray Harris in a voicemail message left on 31 July 2018 which informed the claimant he had been unsuccessful because there were other candidates of higher quality;

- iii. On 28 November 2018, the claimant's request to Richard Waite to be allowed to make a fresh "oral application" for the role (which had not yet been filled) was refused.

Failure to make reasonable adjustments – Section 20 EQA

- iv. The respondent had a provision criterion or practice (PCP) of considering only written applications/CV's for the RD Job when it was re-advertised in November 2018;
- v. The claimant was placed at a substantial disadvantage by this PCP compared to other applicants who were not dyspraxic in that: he could not properly convey his suitability for the post in writing;
- vi. The claimant says the respondent could have made an adjustment to its PCP by allowing him to present an oral application.

Disability discrimination arising from disability – Section 15 EQA

- vii. The following matters are "something arising" from the claimant's disability (dyspraxia):

He is persistent, does not give up easily and is more likely to complain when he feels badly treated, which can be perceived by others as aggression.

- viii. The respondent treated the claimant unfavourably because of that "something arising" when Ray Harris wrote in his feedback from the claimant's interview on 31 July that the claimant appeared "aggressive" and when he did not progress the claimant's application on 31 July 2018.

The issues for this Hearing

Time Limits

- 9. As identified by REJ Findlay, the claimant went to ACAS on 5 December 2018 and presented his claim on 6 January 2018, so complaints about anything which happened before 6 September 2018 may not have been brought in time. Complaints numbered (i), (ii) and (vii) to (viii) of para 8 above refer to matters which occurred prior to 6 September 2018. It was agreed by the respondent that the complaints at para 8 (iii) and para 8 (iv) to (vi) above had been brought in time.

Strike Out/Deposit Order

- 10. The respondent applies to strike out the claimant's claims in their entirety, on the ground that they have no reasonable prospects of success. Alternatively, the respondent says the claims are vexatious. The respondent refers to the large number (over 100) of tribunal claims brought by the claimant against various respondents many of which decisions were included in the bundle (pp395-596). The respondent says

the claimant is a serial litigant whose claims follow broadly the same process: he applies for a role, seeking an oral application, is unsuccessful and brings claims of disability discrimination claiming compensation. The respondent submits that the claimant's claims are vexatious. Many of the claimant's past claims have been struck-out on the ground they are vexatious or have no reasonable prospects of success.

11. In the alternative, the respondent applies for the claimant to be ordered to pay a deposit under rule 39(1) of the Tribunal Rules of Procedure in order for his claims to proceed.

Findings of Fact

12. From the evidence I received and heard I made the findings of fact below.
13. On 29 May 2018, the claimant made a written application for the position of R&D Tax Manager with the respondent. There was some disagreement between the parties about how the claimant submitted this application: The respondent says it was done via its online portal but the claimant said he applied via Linked-in. I found from the evidence that the claimant was able to submit his application on-line using a "link" from Linked-in which enabled him to upload his CV/personal details to the respondent's portal (pages 85-92).
14. Separately on 5 June 2018, the claimant made a speculative application to Bill Devitt (director in the respondent's audit department) sending his CV and enquiring whether there might be a suitable role for him. Mr Devitt responded to the claimant the same day to say that there was no suitable role available.
15. Ray Harris (former senior resourcing adviser, who has now left the respondent's employment) informed the claimant on 7 June 2018 that he had been selected for interview for the R&D Tax Manager role. However, Mr Harris then changed his mind after speaking to colleagues who had interviewed the claimant before (this appeared to have taken place in 2016 and 2017). He was advised by those colleagues that the claimant did not have the necessary skills for the R & D role. Between 7 and 14 June 2018 Mr Harris telephoned the claimant and left a voicemail message withdrawing the offer of interview.
16. There followed an exchange of emails between the claimant and Mr Harris in which the claimant asked why he was no longer being interviewed. He told Mr Harris he needed an "oral application" and reasonable adjustments because he had a disability (pp 131-134). Mr Harris then offered to speak to the claimant on the phone. The claimant said he was willing to do this but would need the call to be recorded. Mr Harris told him this was not possible because the respondent did not have the necessary equipment. There followed a number of emails in which the parties discussed possible alternatives. Ultimately the claimant proposed a face to face meeting and this was agreed by Mr Harris (pp 123-130).
17. During these discussions the claimant told Mr Harris he had dyspraxia.

18. The claimant then had a face to face meeting with Mr Harris on 25 July 2018. He described this as an “oral application” or “meeting”. The claimant says few notes were taken by Mr Harris, no questions were asked about

the essential requirements of the job and the meeting consisted mainly of “chit chat”. He said he did not consider the meeting to be an interview. However I prefer the respondent’s evidence that it was a first stage interview for the post. That conclusion is supported by the evidence at pages 142 which is the letter the respondent sent the claimant inviting him to a “first interview” and p301-302, the interview competency feedback form.
19. The claimant said he was suspicious that Mr Harris conducted the interview alone without a hiring manager present, as had been his experience when applying for jobs with this respondent before.
20. Mr Harris contacted the claimant on 31 July 2018 by voicemail message to say his application had been unsuccessful because of the quality of the other applicants and the application would not be progressed further.
21. On 15 August 2018, the claimant contacted Mr Harris to say he had recently been contacted by recruiters about the R&D Tax Manager role which still appeared to be unfilled. He queried the position, given that he had been refused the role because there were other suitable candidates. Mr Harris responded that the respondent was hoping to appoint someone internally.
22. On 13 October 2018, the claimant emailed Mr Harris again. He said he was still receiving job alerts from recruiters about this role. Mr Harris replied the same day to say the job alerts were a mistake, the job had been filled and he would try to get the situation corrected.
23. On 10 November 2018, the claimant emailed Mr Harris again, this time attaching a copy of an advertisement for the R&D Tax Manager role which was still “live” and about which recruiters were continuing to contact him, believing him to be a suitable candidate. He questioned why he had been told others were of higher quality when it appeared the respondent had not appointed anyone to the role. On 13 November 2018, Mr Harris responded that the vacancy had been filled and it must be a “problem with the company’s website”. The claimant responded the same day to say recruiters had told him they were in active discussions with the respondent about the role. He said he wanted to make a formal complaint about the matter.
24. The claimant’s complaint was passed to Richard Waite who investigated the matter over the following 3 weeks. Mr Waite was Head of Resourcing at this time. He spoke to the claimant on three separate occasions and after each discussion he conducted further enquiries. Mr Waite telephoned the claimant on the 5 December 2018 to inform him of the outcome of his complaint, and followed this up which an email dated 6 December 2018 (pp255-257). Mr Waite found that the claimant had not received a good service from Mr Harris. He found there had been a lack of clarity by Mr Harris in relation to the R&D role, but was satisfied that the claimant had

been fairly assessed for the role against the company's CLEAR criteria. He was satisfied the claimant had met one of the essential criteria (leadership) but he had not met another essential criterion (collaboration and agility) and there was not enough evidence to make a judgment on a third. But he said collaboration and agility were fundamental to the role and as the claimant had not met this requirement his application would not be progressed. The claimant was also informed that Mr Harris had found him to be "a little aggressive" in some of his interview answers. The claimant responded by asking to see Mr Harris's interview notes. These were sent to him on 21 December 2018.

25. Meanwhile, on or around 28 November 2018, in the course of their discussions about his complaint, the claimant asked Mr Waite if he could submit a fresh application for the R&D Tax Manager role and be given an oral interview. He sent Mr Waite some medical evidence about his condition. Mr Waite responded to say the claimant would not be given a further interview. In evidence, Mr Waite said that if a candidate had been interviewed and rejected for a role, the respondent would not normally re-interview them for a period of 12 months.
26. On 5 December 2018, the claimant brought his complaint to ACAS who issued an early conciliation certificate on 5 January 2019. On 6 January 2019 the claimant presented his claim to the Tribunal.

Claimant's financial circumstances

27. I made the following findings of fact from the written and oral evidence supplied by the claimant about his financial circumstances. He is the owner/occupier of a house owned jointly with his partner. They have a dependent child living with them. The claimant's partner works four days a week earning £10.00 per hour but this will shortly be reducing to two days p.w. The claimant and his partner share the bills which I have estimated from the claimant's witness statement to be around £1300.00 per month. The claimant owns three further properties: two are in Aberdeen and one (his mother's former house) in Ireland. They are all rented out and he receives rent of approximately £15,050.00 per annum in total. Of this, the rent for the Aberdeen flats goes direct to his Aunt to pay back a loan (currently standing at £20,000.00) which she made to him to purchase the flats. The claimant has a number of outgoings on these properties. The rent and outgoings go into and are paid from the claimant's business account, about which there was no evidence at this hearing, but the claimant accepts he makes a reasonable amount of profit from his rental business, after accounting for bills, agents' fees and a buy-to-let mortgage. In addition to this, the claimant earned £22,000.00 last year from selling car liquids on eBay.

The Law

Time Limits

28. Section 123(1) Equality Act 2010 provides that a claim under the Act must be brought within 3 months of the date of the act complained of, or within such other period as the Tribunal considers to be just and equitable. For

the purposes of Section 123, an act extending over a period is to be treated as having taken place at the end of that period.

29. Rule 37(1)(a) Schedule 1 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Procedure Rules”) gives a Tribunal the power to strike out a claim where there is no reasonable prospects of its success.
30. Strike-out is the ultimate sanction. For a Strike-out Order to be appropriate the claim must be bound to fail. The Threshold is therefore high. In Ezsias v North Glamorgan NHS Trust (2007) EWCA Civ 330 the Court of Appeal held that where facts are in dispute, a Tribunal should rarely strike-out a claim without the evidence being tested at final hearing. Discrimination claims should only be struck-out in the plainest and most obvious cases: Anyanwu v South Banks Student Union and South Bank University (2001) IRLK305. The claimant’s case should be taken at its highest.
31. Deposit Orders are dealt with by Rule 39 of the Procedure Rules. The Tribunal may make a Deposit Order if a Judge considers that a claimant’s allegations have little reasonable prospect of success. Where such an Order is made a claimant should consider carefully whether to pay the deposit and proceed with the claim.

Conclusions

Out of time issue

32. The discretion in Section 123 EQA is wide. But, as the EAT and higher courts have made clear, the exercise of that discretion is the exception rather than the rule. The onus is on the claimant to convince the Tribunal that it is just and equitable to extend time. Section 123 does not set out a list of factors to be taken into account. The Court of Appeal has held that the best approach is for the Tribunal to assess all the factors in the particular case that it considers relevant, including in the length and reasons for the claimant’s delay and the balance of prejudice to the parties of extending or not extending time. There is no general principle that where a claimant decides to seek redress through the respondent’s grievance procedure, time should be extended until after that procedure has been completed.

Direct discrimination claims – s13 EQA

33. Complaints (i) and (ii) in the above list of issues relate to decisions taken by Mr Harris between 7-14 June 2018 and 31 July 2018 not to give the claimant the R&D Tax Manager role, first without an interview and then after interview. I find those decisions were part of a continuing act because they relate to the same application for the same job and the decisions were taken by the same manager.
34. I reject the claimant’s submission that claims (i), (ii) and (iii) form part of a continuing act of discrimination ending with the decision not to allow him to make an oral application for the role on 28 November 2018. That was a

discrete decision made by a different manager. The claimant's original application began when he submitted his application on 29 May 2018 and ended when he was he was rejected for the role on 31 July 2018. There was no further consideration of his application after that date and this was made clear to him on many occasions. What he sought to do on the 28 November 2018, on his own evidence, was to make a fresh application with a different CV adding more information as by then he had had more relevant experience. The request to be permitted to make a fresh application was made to another manager other, not Mr Harris. I am satisfied there was no continuing state of affairs between 31 July 2018 and 28 November 2018 which would render Mr Waite's decision on 28 November part of a continuing act or continuing state of affairs commencing with the claimant's application in May 2018. During the period of four-months after his application was rejected on 31 July 2018 the claimant was making efforts to obtain an explanation for why he had been told the post had been filled, and he was corresponding with the respondent about his subsequent complaint. But no further applications were made by the claimant in this period, nor were any being considered.

35. It follows that, applying the normal three-month time limit, the claimant should have presented complaints (i) and (ii) above, by 30 October 2018. As he did not make his complaint to ACAS by that date he could not benefit from the extension of time for early conciliation set out in s207B Employment Rights Act 1996 (ERA). Thus the time limit for presenting his claim expired on 30 October 2018. He did not present his ET1 until 5 January 2019, two months and six days after that date.
36. The claimant's explanation for the delay is that he initially accepted Mr Harris's explanation for not progressing his application, namely that there were more qualified internal candidates. He says he did not fully realise that Mr Harris had not been truthful with him until 13 November 2018. However I reject his evidence on this point. I found it was clear from his evidence that he was far from happy when Mr Harris withdrew the offer of an interview and he had to work hard to persuade Mr Harris to reconsider that decision. When he attended his interview on 31 July, his evidence was that he found the situation "suspicious" because there was no hiring manager present, he was not asked questions about the essential criteria for the role and Mr Harris made very few notes. He described the meeting as "just chit chat" and not a proper job interview. This differed significantly from his experience in the two previous applications he had made to the respondent. On those occasions he had not disclosed his disability, whereas this time he had. He said this caused him to be suspicious.
37. Therefore, when the claimant emailed the respondent on the 15 August 2018 to say he had been informed the role had not after all been filled, I find it was or should have been apparent that Mr Harris had not been transparent with him. He did not need to wait a further three months - by which time on his own evidence, he had been contacted by recruiters about the role on an almost daily basis for several weeks - to realise that something was amiss.

38. I found the claimant to be an intelligent man who is well versed in the Tribunal procedure in relation to discrimination claims, having brought many claims before this one. He accepts he was aware of the 3-month time limit, but says he thought that applied to the “last date” of the discrimination being complained about. I was not persuaded by that argument. I found the claimant was sufficiently aware of tribunal procedure in discrimination claims to understand the operation of the time limits. If he was in any doubt he could have sought advice about the matter, from ACAS, the CAB or via his own online research, in order to protect his interests. The claimant says he was still hoping to get another interview for the post. But he should have known, during the period 31 July 2018 – 28 November 2018, that if he intended bringing a claim it was unsafe to wait and see what the respondent would do. It was clear from his evidence that he believed by 31 July 2018 that the respondent was treating him differently and that he suspected this was because of his disability.
39. Even on the claimant’s account, that he was not fully aware of the position until 13 November 2018, it was still a further 3 weeks before he brought his complaint to ACAS and he did not provide any satisfactory explanation for this further delay. The only explanation he gave was that he was waiting for Mr Harris’s interview note. However, I reject that evidence because he brought his complaint to ACAS on 5 December 2018, before those notes arrived.
40. In considering the respective prejudice to the parties of allowing or not allowing this extension, I note the matters the claimant complains about concern an application made in May 2018, nearly five years ago, determined on the 31 July 2018 by a manager who no longer works for the respondent. I find there would be significant prejudice to the respondent if time were to be extended to enable the claimant to bring this claim now. I find that prejudice outweighs the prejudice to the claimant of not being able to bring his claim, given that I find the claimant was or should have been fully aware of the time limits.
41. Having regard to the matters above, I find it would not be just and equitable to extend the normal time limit for presenting these claims. The claims are therefore out of time and are struck out for lack of jurisdiction.

Discrimination arising from disability - Section 15 EQA

42. I consider it is just and equitable to extend time to allow the claimant to bring his claim of discrimination arising from disability (complaint (vii)-(viii) in the list of issues above). This is because I found the claimant only became aware of the respondent’s view that he was “aggressive” when he received the outcome of his complaint from Mr Waite on 5 December 2018. While this complaint relates to the interview on 25 July and subsequent decision taken on 31 July 2018, I consider there would be significant prejudice to the claimant in not permitting this claim to be heard given his lack of knowledge of this matter at the time. After becoming aware of the facts he brought his complaint to ACAS promptly on 6 December 2018 and presented his Tribunal claim on the 6 January, the

day after the ACAS early conciliation certificate was issued. Having regard to all the circumstances I find the prejudice to the claimant of not being permitted to bring this claim outweighs the prejudice to the respondent of having the claim heard, despite its age and any evidential difficulties caused by Mr Harris's departure.

Application for Strike-out/Deposit Order on grounds of no/little reasonable prospects of success (rules 37, 39 Tribunal Rules of Procedure)

43. The respondent submits that none of the claimant's claims have any reasonable prospect of success. In the alternative, the respondent seeks a Deposit Order as a condition of the claims proceeding.

Direct discrimination (claim 8(iii) in the list of issues above)

44. In relation to the claim of direct discrimination in not being permitted to make an oral application on 28 November 2018 I do not consider this claim has no or little reasonable prospect of success. The claimant was misled by Mr Harris on several occasions after his interview. He complained and the outcome of his complaint was that the respondent found Mr Harris had not been transparent with him. Against that background the claimant argues that he was treated less favourably because of his disability by not being allowed to reapply.
45. The respondent defends this claim on the basis that it has a policy not to reinterview for 12-months. The claimant had had an interview and so there was no disadvantage. But I find this claim can only properly be determined by the Tribunal at a full hearing at which the evidence of the claimant and the respondent's witnesses can be tested, and the tribunal can consider how a hypothetical comparator in similar circumstances would have been treated.
46. I therefore reject the application for a Strike-out Order or, in the alternative, a Deposit Order in relation to this claim.

failure to make reasonable adjustments (para 8(iv) – (vi) in the list of issues)

47. The claimant says that, in relation to the role being re-advertised in November 2018, the respondent had a policy which did not permit oral applications. There was no evidence of this in the bundle. But it was clear from the evidence before me that the respondent was not willing to accept either an oral or a written application from the claimant at that time. The respondent's actions here appear to have been directed at the claimant alone. It was not the case that he was told he could apply in writing but not orally: he was not permitted to apply at all. It is therefore hard to see how the claimant can establish that, even if he shows the PCP about which he complaints existed, he was substantially disadvantaged by it.
48. Notwithstanding the above, I have to take the claim at its highest. I cannot conclude the claim has *no* reasonable prospects of success, i.e. that it is bound to fail. I have however concluded that the claim has little

reasonable prospects of success. Taking into account the claimant's means, I make a Deposit Order of £500.00 under Rule 39(1) as a condition of this claim proceeding.

Discrimination arising from disability (para 8 (vii)-(viii) in the list of issues)

49. The claimant found it difficult to formulate this claim at the outset of this hearing. He said it related to the statement in his ET1 that he was found by the respondent to be "aggressive". The claimant does not contend that he *is* aggressive because of dyspraxia. Indeed his evidence was that being labelled aggressive" was something he is not used to. But he speculated that because of his persistence and determination the respondent might have perceived him to be aggressive. On the other hand he also speculated that he might be perceived as aggressive because of his height (he is 6"5 - 6"6 tall) or because the two managers he encountered in his previous applications did not like him.
50. I found no evidence in the bundle linking dyspraxia to persistence, not giving up or being more likely to complain. None of these matters was mentioned by the claimant in his ET1. He said only that the respondent found him "aggressive". From the evidence I saw, this comment appears to relate to the claimant's answers at interview, not to anything he said or did prior to that interview. However, mindful of the EAT's guidance that I must take the claimant's claim at its highest and strike-out should be used in discrimination cases only in the plainest and most obvious cases, I reject the respondent's application for this claim to be struck out.
51. I do however find this is a claim which has little reasonable prospects of success, on the basis of my findings above. I therefore order the claimant to pay a deposit under Rule 39(1) of the Procedure Rules. Taking into account the claimant's means I order him to pay a deposit of £500.00 as a condition of this claim proceeding.

Respondent's alternative application to strike out the claims as vexatious

52. In the alternative, the respondent applied for all the claimant's claims to be struck-out on the ground they are vexatious. It says the claimant has a history of bringing ET claims such as this one (as evidenced at pages 395-596 of the bundle) where his motives have been questioned. The vast majority of those claims have been struck out, deposit orders made or they have been dismissed. The claimant's evidence today was that he had won one case but the majority of his claims have been unsuccessful.
53. I have considered the respondent's submissions but I do not find the complaints raised by this particular claim to be vexatious. The claimant had considerable experience of working in the field of R&D Tax and had been interviewed by the respondent before. He clearly possessed some of the essential criteria for the role he applied for. He went on to work in another R&D role, with another employer, afterwards. He has been interviewed by the respondent since the events giving rise to this claim. In relation to these particular claims I do not therefore find the claimant to be a vexatious litigant.

Case management Orders

54. Subject to the outcome of this hearing, Ms Levene applied for leave to serve an amended response to the claimant's claims. I grant that application. The respondent must serve its amended response to the claim, as now clarified by this decision, within 21 days of receipt of this Order.

55. As I reserved my judgment due to time constraints, I was not able to make any further case management orders for the final hearing, which is listed in September 2023. I have arranged for a telephone case management hearing to be listed for this purpose. The parties will receive notice of that hearing separately.

Employment Judge V Jones

Date: 6 March 2023