



**IN THE EMPLOYMENT TRIBUNAL  
SITTING AT HILL STREET, BIRMINGHAM  
AT AN OPEN PRELIMINARY HEARING  
ON: 12 MARCH 2018**

**Case Number: 1304525/2017**

Before  
**EMPLOYMENT JUDGE PERRY  
(sitting alone)**

Between  
**MR IMRAN PATEL**

Claimant

and  
**SITEL (UK) LIMITED**

Respondent

**Appearances:**

For Mr Millward: **In person**  
For the Respondent: **Mr M. Welsh** (solicitor)

**JUDGMENT**

1. The tribunal has jurisdiction to hear the claimant's complaint of disability discrimination only. For the avoidance of doubt that complaint relates to allegations (c) and (e) as set out at paragraph 35 of the Reasons below.

**ORDER**

1. It was agreed, no early conciliation point being taken in relation to the same, the respondent's name shall be amended to Sitel (UK) Limited.
2. Allegations (c) and (e) shall not be struck out as having no reasonable prospects of success.
3. Allegations (c) and (e) have little reasonable prospects of success. The claimant is ordered to pay a deposit of £10.00 each in relation to allegations (c) and (e) below (£20.00 in aggregate if both are pursued) as a condition of continuing to advance those allegations **by 4:00 pm on 23 April 2018** and in the event only one allegation is pursued the claimant shall also confirm which complaint he pursues.
4. In the event the claimant fails to pay the deposit by the date and time specified the specific allegations or arguments to which the deposit order relates shall be struck out without further order.

**REASONS**

- 1 This is a claim for disability discrimination and other complaints (see (3)) that was received by the tribunal on 21 December 2017. Within the claim form the following prospective respondents were named:-
  - 1.1 Sitel Coventry Earlsdon Park (Karl Brough)
  - 1.2 Rachel Chima
  - 1.3 Sean Higgs
  - 1.4 Joanne Regan-Iles
- 2 On 4 January 2018 the claim form was referred to Employment Judge ("EJ") Hughes; determined notwithstanding what she considered was a minor error between the



prospective first respondent's name as stated on the claim form and the early conciliation certificate <sup>1</sup> that the claim should be "accepted" (technically, not rejected) as against the first respondent (henceforth, Sitel). Whilst an early conciliation certificate no. had been provided for the prospective second to fourth respondents it was the same early conciliation certificate no. as that for Sitel and the prospective second to fourth respondents were not named on that certificate. Accordingly, EJ Hughes determined that the claims against the prospective second to fourth respondents should be rejected.

- 3 In addition to bringing a disability discrimination complaint in his claim Mr Patel sought to bring several other complaints concerning defamation, removal of evidence, the absence of an acknowledgement of his formal complaint, false promises, accusing Mr Patel of making a bogus claim, deleting information and falsely stating the reason, date and method by which he was dismissed. EJ Hughes decided to list the claim for an open preliminary hearing to determine if the Tribunal had jurisdiction to hear those complaints and principally that is how this hearing today came about.
- 4 To ascertain if the respondent accepted that Mr Patel was a person with a disability within the meaning of s.6 Equality Act 2010 ("the Disability Issue") EJ Hughes also directed that Mr Patel lodge an impact statement and medical records by 16 February and for Sitel to set out its position on the Disability Issue by 2 March 2018.
- 5 EJ Hughes' decisions to "accept" the claim against Sitel, reject the claims against the prospective second to fourth respondents, giving directions in relation to the disability issue and listing this hearing to determine jurisdiction were communicated to the parties on 5 January 2018.
- 6 I do not intend to relay in full here the parties correspondence with the tribunal thereafter; I do however deal with Mr Patel's responses to the rejection of the claims against the prospective second to fourth respondents at (16), and his responses to the Disability Issue (19) below. I address a point Mr Patel raised on 20 February 2018 with regard to third party disclosure below (68). Before I address the preliminary points I first turn to a number of other issues.
- 7 **Sitel's Response.** On 22 January Sitel lodged its response arguing that the claim was not brought against its correct name (Sitel (UK) Limited) and seeking a strike out and/or deposit (ET3/11). By a letter of 19 February 2018 (Acting Regional) EJ Findlay asked Mr Patel to confirm if he had intended to bring his claim against Sitel (UK) Limited, if not what did he argue was the correct name for Sitel and ordered that the Tribunal would consider Sitel's applications for strike out and/or a deposit at the hearing today (12 March).
- 8 **The Documents before me.** At the start of this hearing I was provided with an email from Mr Patel timed at 09:32 on 12 March 2018 to the Lord Chief Justice and others. That did not appear to be copied to the respondent. I asked Mr Patel if he wished to refer to that in the hearing and that if he did Mr Welsh would need to be given a copy. He told me he did not, that was not something that was directed to Sitel. He became agitated that I had referred to it at all. I indicated that if he did not wish to refer to it I would not look at it nor copy it for the respondent. Mr Welsh made no objection. I record now that despite not only my explanations but those of EJ Dimbylow in a previous claim (see (14)) between the parties Mr Patel did not appear to take on board, that any correspondence to the Tribunal concerning this claim had to be copied to Sitel and marked as such. EJ Dimbylow in the previous claim explained the

~ ~ ~

<sup>1</sup> Mr Patel conciliated against "Sitel UK Coventry" between 20 November and 20 December 2017 under Early Conciliation certificate no. R210347/17/32.



effects the failure to do so would have on the fairness of the claim so I do not intend to repeat them.

- 9 I also had before me a witness statement from Mr Welsh and bundle (74 pages). Mr Patel told me he had not seen the witness statement. I told him I would not consider the contents of the witness statement or the strike and deposit applications until after I had dealt with the preliminary points identified by EJ Hughes and then clarify what complaints were made before addressing the strike out and deposit applications.
- 10 I explained I would take a break after I had dealt with the preliminary points identified by EJ Hughes, so he would have an opportunity to consider the witness statement and Mr Patel could raise any objections to it.
- 11 I also informed Mr Welsh that given there was a dispute if the witness statement had come to Mr Patel's attention I expected Mr Welsh to arrange for the email under whose cover the witness statement had been sent to Mr Patel to be forwarded to the Tribunal during the break. He indicated he would do so.
- 12 **Adjustments.** At the outset Mr Patel told me he was deaf. I understood him to say that he had a receiver fitted and a hearing aid. I asked what adjustments I could make for him. He told me sometimes he could hear and sometimes not. I told him that if did not hear anything or understand anything he was to let me know. I ensured Mr Patel was looking at me when I spoke so I could ensure he could identify at all times that I was speaking. I stopped several times and ask him to look at me. At the start of the hearing I could see Mr Patel was adjusting one of his hearing devices, I stopped and checked to ensure he could hear me satisfactorily. I understood he was switching between the hearing loop setting for my hearing room and another setting.
- 13 **Background.** Before I turn my determinations of the issues and to place what follows into context I need to record that Mr Patel was previously employed by Sitel under a fixed term contract that expired Sitel say on 5 or 6 January 2015 ([3] - 6 January 2015). Whilst Mr Patel suggests it was extended he did not give me a date it was extended to or point me to a document in support of that contention.
- 14 Mr Patel commenced a claim against Sitel on 1 April 2015 (Claim No. 1302235/2015) that was essentially determined at an Open Preliminary Hearing on 30 September 2015 by EJ Dimbylow, an application to amend was refused and his claims were either struck out or in one case a deposit was ordered of £20.00. The deposit was not paid and so the claim was dismissed pursuant to r. 38. Notice to that end was given on 19 November 2015.

## PRELIMINARY POINTS

- 15 **The correct name of the respondent.** Sitel takes no issue as to the minor error point rule 12(2A). I explained to Mr Patel the need to ensure the respondent's name was correct for enforcement purposes if he succeeded. The respondent states its correct name is Sitel (UK) Limited. Mr Patel accepts that is its name at Companies House. The respondent confirmed no early conciliation point was taken in that regard and so it was agreed the respondent's name shall be amended to Sitel (UK) Limited.
- 16 **The rejection of the claims against the prospective second to fourth Respondents.** It was pointed out to Mr Patel by the tribunal on two occasions (5 & 22 January 2018) that this was a mandatory requirement that he must obtain an Early Conciliation form/number for each prospective respondent. On each occasion Mr Patel responded stating on the 10 January that as he understood matters an Early Conciliation certificate was not required if the claim related to one employer and on 20 February confirming the claim was against Sitel (UK) Limited and given the individual respondents were its employees they did not need to be named. I took Mr Patel to the provision - para. 4 of *SI 2014/254* – within Butterworths. I explained the claims against the prospective second to fourth Respondents had been rejected and



in the absence of the provision of an early conciliation certificate or number for each of them or an application, I could not reconsider the rejection pursuant to rule 13 as the defect had not been remedied.

- 17 Before me Mr Patel pursued a third argument; that he had contacted ACAS and asked they remedy the certificate but they had not responded. I asked when he chased ACAS. He accepted he had not done so, but argued it was out of his hands.
- 18 I explained to Mr Patel that the claim having been rejected the onus was on him to obtain the Certificates, he had been told that was so twice by judges and he should have pursued the point. He indicated that because the prospective second to fourth Respondents were all employed by Sitel he was content to pursue the claims against Sitel. I clarified that he was content to proceed on the basis that any claims were made against Sitel which he did.
- 19 **The Disability Issue.** The relevant (material) time, given the points I set out below (46) concerning the effect of the earlier tribunal claim brought by Mr Patel against Sitel any complaints before me must post-date the commencement of that claim (1 April 2015).
- 20 On 16 February Mr Patel provided a bundle of evidence (but no impact statement) to Sitel. Sitel accepts that Mr Patel suffered the following impairments namely:-
- 20.1 A hearing impairment, and
  - 20.2 A personality disorder
- when he was employed by them previously. Mr Patel confirmed those were the disabilities he relies upon.
- 21 Sitel does not dispute he has continued to be so since and thus throughout the material time was a person within the meaning of s.6 Equality Act 2010 as to both those impairments.
- 22 **The Jurisdiction Issue.** I sought to clarify with Mr Patel the complaints how the Tribunal had jurisdiction (power) to hear any of the complaints I set out at (3) other than discrimination. I explained the Tribunal only has the jurisdiction to hear certain complaints and even where it does so that power is restricted (e.g. contract claims are limited to £25,000). Each time I sought to explore how the tribunal had the power to deal with any of the matters at (3) Mr Patel put the claim in terms of a discrimination claim. I repeated each time that it was accepted the tribunal had the power to hear a discrimination complaint and what I was considering were the other types of claim. I suggested to Mr Patel that given the way he put the issues were as discrimination complaints that suggested those claims were capable of being dealt with a discrimination which he accepted.
- 23 Having addressed the above points I passed to Mr Patel the tribunal's guidance note on deposit orders (SL7.3) so he could consider the same over the break because a copy had not been placed on file and thus I could not be certain that had been sent to him. Given in the previous tribunal claim Mr Patel made a deposit had been ordered I was satisfied Mr Patel should have already been aware of those issues but I considered as a litigant in person it was appropriate to remind him of the same and to give him the opportunity to do read the same during a break.
- 24 I indicated as the witness statement was only three pages long I would expect him to consider it over the break and comment on it on his return. From my cursory examination of it whilst we were discussing matters it contained factual concessions and thus he was unlikely to need to consider 3 pages of contentious points.
- 25 Before we broke Mr Welsh asked if Mr Patel would be giving evidence on oath. I explained that when clarifying his claim, Mr Patel would not be on oath and normally



only evidence of finances would be relevant to the deposit. I asked Mr Welsh if it was accepted Mr Patel was on benefits and thus any deposit would be merely a nominal amount – whilst one of the effects of a deposit should to *make a claimant stop and think carefully before proceeding with an evidently weak case*<sup>2</sup>. I can award a deposit of £1,000 in relation to each allegation or argument but a deposit Order should not be imposed at so high a level so a Claimant could comply with it so it impedes access to justice<sup>3</sup>. He accepted that was so.

- 26 I explained to Mr Patel the position and that as a result he would not be required to give evidence on that issue. I also explained to him that did not mean I would order a deposit but that he would not to give details of his means. He indicated that if a deposit was required he could make a total payment of £20. I explained that whilst I could also make a deposit order in relation to each allegation, in the absence of objections I would apportion the £20 between all the allegations that warranted a deposit (if any)<sup>4</sup>. That was acceptable to both Mr Welsh and Mr Patel.
- 27 I then took a break between 12:00 and 12:20 prior to clarifying the issues. Having adjourned Mr Patel came back into the hearing room and said he wanted to know if he could use a pro bono representative and that he wanted to discuss the contents of the email sent to the tribunal at 09:30 am. I explained three times I could not speak to him unless Mr Welsh was present. Mr Patel having continued to argue the point I decided to vacate the hearing room.
- 28 When the hearing reconvened, I explained what had happened to Mr Welsh. He raised no issue. Mr Patel told me he had sought the help of a pro bono representative but had heard nothing. He wanted the tribunal to appoint someone to act on his behalf. I explained that the tribunal could not do so, that was a matter for him.
- 29 Mr Patel also told me the questions he was asked made him feel uncomfortable. He suggested Sitel was making false allegations against him and stated he had no reason to lie. I repeated that it was important as I needed to understand his case that he explain what his complaints were about and that if he felt uncomfortable he was to let me know. He agreed to do so. But did not raise that as an issue again.
- 30 I was passed a copy of the email forwarded to Mr Patel by Sitel. Unfortunately, the enclosures that were marked as attached were not present. I remind myself that the tribunal's computer systems are unable to accept large attachments to emails. The subject field of the email stated, "witness statement and bundle". Mr Patel told me the witness statement had been hidden within the documents and he had not located it. I explained that given the subject field had made plain what it related should have included if he had not been able to identify it he should have contacted Sitel and asked for another copy. He had not. Mr Patel made no substantive objection and so I decided to proceed.

#### **MR PATEL'S CLARIFICATION OF THE COMPLAINTS.**

- 31 I spent 2¼ hours identifying the claims Mr Patel was bringing. I explained he would need to set out what was said or done by whom and when that he said was discriminatory and where he had set this out in the claim form on several occasions.
- 32 Mr Patel's explanations were lengthy, and for the most part included a history of events. At 1:15 I indicated I intended to take a break shortly. Matters became protracted and by 2:00 we had reached allegation (d). I indicated I felt that it was inappropriate to continue without a lunch adjournment. Mr Patel objected to a break. I assured him I would continue to hear from him after the adjournment. Whilst I did not

<sup>2</sup> [Simpson v Strathclyde Police](#) [2012] UKEAT/0030/11 at [42]

<sup>3</sup> [Hemdan v Ishmail](#) [2016] UKEAT/0021/16, [2017] ICR 486.

<sup>4</sup> [Wright v Nipponkoa Insurance \(Europe\) Ltd](#) UKEAT/0113/14 at [78]



express this view in tribunal I felt it was important he had a break to collect his thoughts and to ensure there was nothing he missed. When he returned he had used the opportunity to do so. Mr Welsh expressed concerns whether there would be time to address the strike out and deposit orders. I explained that could be dealt with. Mr Welsh appeared to assume that was a reference to costs. I explained I was merely referring to re-listing those issues another time. Despite having made that clear Mr Patel then made representations on costs. It appears Sitel had issued costs warnings to him. I explained I had already corrected Mr Welsh and Mr Patel continuing to pursue the point was merely extending the hearing further. I broke at 2:20. The parties agreed to take a 45-minute lunch and we returned at 3:05.

- 33 On several occasions I had to seek clarification of the claims Mr Patel made, his use of pronouns (he, she, it, they) meant it was unclear to whom he was referring. I attempted to refrain from interrupting his explanations but for instance when I attempted to interject twice to clarify a point on allegation (e) he merely continued talking for several minutes. When he finished I explained to him that I had not understood the point, I did not understand the remainder of his explanation and thus time was wasted. Having clarified the identities of the people he was referring to I asked Mr Patel to repeat the point again. I explained to him that I needed to interrupt him if there was something I misunderstood and he appeared to appreciate the point.
- 34 I should record at this point that Mr Patel volunteered to me that he felt that I had given him a chance to explain matters whereas the other judges he had previously come before had not done so.
- 35 The clarification he provided I summarise as follows:-
- (a) Since 2015/16 Mr Patel applied for jobs direct to Sitel and/or Sitel had contacted him in relation to his details/CV that had been retained via "Reed" recruitment, CV Library and "Total Jobs" and whilst Sitel had indicated they would respond to him, they did not. Mr Patel suggests that was because having reviewed his application Sitel checked its records discovered his earlier claim to the tribunal and/or that he was disabled. I asked the basis for Mr Patel coming to that view. He could not point me to any facts to support the same but that was what he believed had happened.
  - (b) In 2015 Mr Patel sought the assistance of a third party that was contracted to provide services by Sitel, the Equality Advisory Service (EASS) and having given his name Mr Patel's telephone call was placed on hold and when the call recommenced Mr Patel was told EASS were not allowed to speak to him. Mr Patel told me he could not place that call precisely but he complained about it to the respondent and others on 16 April 2015.
  - (c) He was contacted by Anita or Sinitta on 30 October and then by "Leanne" both of Sitel. During the discussion on 31 October he states he was made offer of interview by "Leanne" but was told one of the jobs he had expressed an interest in had gone. When he queried why he had not been told that the day before and asked why his applications had not resulted in job offers his call was passed to Rachel Chima. He states following his conversation with Rachel Chima the offer of the interview was retracted. He states had told "Leanne" he was disabled but could not recall if he told Rachel Chima of that. He subsequently complained to Sitel on 1 November.
  - (d) In its response Sitel state that it did not offer jobs to individuals who had been dismissed. Mr Patel stated he had not been told that by Sitel.
  - (e) Mr Patel complains that he was victimised by Sitel. The protected act was the earlier tribunal claim and the detriments (i) Sitel refusing to accept/respond to his complaint to Rachel Chima on 1 November 2017 and (ii) falsely accusing



him of lying. Mr Patel told me he had been told that a member of staff of Reed, Scott Shepherd, had told Mr Patel that Mr Shepherd had been given different versions as to whom had called whom in the telephone call Mr Patel had had with Ms Chima.

- (f) Sitel did not responded to applications Mr Patel made after 31 October 2017.
- (g) Mr Patel claims he has been harassed for reasons related to his disability by Sitel (i) refusing to negotiate with him and (ii) insisting he withdraw his claim threatening to make a claim for costs against him if he did not.

## SUBMISSIONS

- 36 I heard representations from both parties concerning strike out and the deposit; just over 20 minutes in Mr Welsh's case and just under an hour in Mr Patel's. I refer below to some of Mr Welsh's assertions but in principle he argued there was no cogent basis for the claims Mr Patel made and they were contrary to the facts that there were. Mr Patel principally repeated the assertions he made but also asserted that the burden has passed to the Sitel (see (60)). Mr Patel also queried why he would lie, what had he to gain from doing so and why he would pursue a tribunal claim when it had made him ill if he was not telling the truth?
- 37 Thereafter Mr Patel asked if he could seek costs. I explained as he was not represented he could not but he could seek a preparation time order, if he wished to make the application he would need to set out what was claimed and on what basis.
- 38 Mr Patel may wish to note that if a preparation time order is made he will be prevented from seeking a costs order at a later stage as both cannot be awarded in the same claim <sup>5</sup>. Mr Welsh also suggested Sitel would be pursuing an application for costs. I indicated if Sitel wished to do so I would likewise expect it to set out what was claimed and on what basis. If either party wishes to make such an application they may do so at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party is sent to the parties <sup>6</sup>.
- 39 After submissions Mr Welsh raised a concern that Mr Patel was emailing not just to Mr Welsh but sending emails to large numbers of Sitel's staff and there was no good reason for that. I pointed out to Mr Welsh that I did not have the same powers as in other jurisdictions to prevent communications in the way he was seeking and he would need to make applications elsewhere.
- 40 I explained to Mr Patel that custom and practice required that he correspond with Mr Welsh as Sitel's representative but not other staff. I asked why he felt the need to do so. He explained he had no trust in Mr Welsh to relay matters to Sitel. I asked if he understood that was a very serious allegation against Mr Welsh and that Mr Patel might wish to pause and reflect on whether he wished to maintain that. He not only maintained that allegation but stated that Mr Welsh "P - I - S - S" him off (he did not say that word but spelled it out). He stated he was not prepared to correspond with Mr Welsh further and that instead any correspondence would need to be via ACAS. To that end Mr Patel should note the point I make at (8) above (repeating what EJ Dimbylow said) about correspondence to the Tribunal being copied to Sitel's representatives and marked as such.
- 41 Mr Patel became quite agitated at that point and given the lateness of the hour (4:45) I stated, as it had been a long day I was going to end the hearing and I would provide my decision in writing. I thanked Mr Patel and Mr Welsh and wished them a safe journey home.

<sup>5</sup> Rule 75(3)

<sup>6</sup> Rule 77



## MY CONCLUSIONS ON THE CLARIFICATION PROVIDED BY MR PATEL

- 42 The only specific incidents referred to in the claim form relate to 30 & 31 October 2017 following applications lodged on 29 October 2017. Allegation (a), except in that it repeats allegation (c), refers to matters not included to in the claim form. It identifies matters that would form an ongoing course of conduct over time for which no facts are set out in the claim form or which could constitute a relabelling (Selkent stage I), in my judgment and it would thus need to be the subject of an application to amend.
- 43 Within Mr Patel's previous claim against Sitel EJ Dimbylow addressed the amendment of Mr Patel's claim and summarised the law concerning amendment and time points. Mr Patel is a litigant in person and given he may not be aware of the principles involved, he has (or should have) a summary of the law to hand in the written reasons he sought from EJ Dimbylow. Even if he was not aware of those points, because of the application determined by EJ Dimbylow, Mr Patel is or should have been aware of the right to amend his claim.
- 44 Mr Patel has not made an application to do so far as I am aware. Nor did he take to one. Given allegation (a) relates to incidents more than 3 months ago, timing points arise. Any application to amend would thus need to address why that complaint had not been pursued earlier. I asked Mr Patel about that. He told me that was not relevant. I attempted to try to explain why it was but he interjected and spoke over me, repeating it was not relevant.
- 45 In the absence of an explanation why the allegation was not included in the claim and no application to amend having been made earlier having concluded this allegation was not set out in the claim form I do not have the necessary information before me to allow me to address an amendment application.
- 46 Allegation (b) also in my judgment is not referred to in the claim form and like allegation (a) will need to be the subject of an application to amend for the same reasons. In the case of allegation (b) given when that incident about which Mr Patel complains occurred no later than 16 April 2015 and thus before an application he made to amend his previous tribunal claim on 3 July 2015, points concerning issue estoppel, *res judicata* and *Henderson* issues also arise.
- 47 Allegations (d), (f) and (g) likewise were not included in Mr Patel's claim form; as to allegation (d) this repeats an admission made by the respondent in its response form. Mr Welsh tells me that was an error but it is yet to be corrected. I can discern no reference to the failure to respond to applications in the claim form or words to that effect in the terms as relayed in allegation (f). As to Allegation (g) there is no reference to harassment, the failure to negotiate or to insisting Mr Patel withdraw his claim or words to that effect in the claim form. Given (g) appears to relate to matters post-dating the claim timing points may (or may not) not arise. Allegations (d), (f) and (g) would thus need to be the subject of an application to amend.
- 48 In my judgment allegations (c) and (e) are clearly set out in the claim form. I return to whether they should be struck out or deposits ordered below.
- 49 I checked allegations (c) and (e) against the matters raised in the claim form. Save for allegations from which inferences could be drawn and thus which could be referred to as background, allegations (c) and (e) in my judgment reflect the points Mr Patel made in his claim form. However, allegations (a), (b), (d), (f) & (g) are not set out in Mr Patel's claim form and accordingly will need to be the subject of an application to amend. Any application to amend (save possibly as to (g)) would appear to now be out of time but that will need to be considered as part of the application to amend.





## THE LAW - STRIKE OUT/DEPOSIT ORDER.

50 The test for strike out is set out in rule 37 of the Employment Tribunals Rules of Procedure 2013 (the Rules/rule as the case may be):-

*“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—*

*(a) that it is scandalous or vexatious or has no reasonable prospect of success;*

*(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*

*(c) for non-compliance with any of these Rules or with an order of the Tribunal;*

*(d) that it has not been actively pursued;*

*(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).*

*(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*

*(3) Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.”*

51 For the deposit application the relevant provisions are in rule 39:-

*“(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.*

*(2) The Tribunal shall make reasonable enquiries into the paying party’s ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.*

*(3) The Tribunal’s reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.*

*(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.”*

52 The principles concerning strike out are well known and clear. The power (to strike out is a draconic power, and should not be readily exercised.<sup>7</sup> Where the central facts are in dispute, only in an exceptional case will an application be struck out as having no reasonable prospect of success without a full hearing of the evidence<sup>8</sup>. Examples where that might be warranted are where the facts alleged are totally and

<sup>7</sup> [Balls v Downham Market High School and College](#) [2011] IRLR 217 (EAT) at [4] & [Blockbuster v James](#) [2006] IRLR 630 CA at [5] both cases under 2004 Rules

<sup>8</sup> [North Glamorgan NHS Trust v Ezsias](#) [2007] IRLR 603 per Maurice Kay LJ, [Tayside Public Transport Company Ltd. v Reilly](#) [2012] CSIH 46 & [Dossen v Headcount Resources Ltd](#) UKEAT/0483/12 amongst others



inexplicably inconsistent with the undisputed contemporaneous documentation<sup>9</sup>, where there was unchallenged medical opinion that there were no adjustments which could be made to enable a return to work<sup>10</sup>, where a discrimination claim was *prima facie* implausible and there were no facts indicative of such discrimination<sup>11</sup> or where “*there was nothing to indicate that those who interviewed the Appellant had any knowledge, or could be imputed with knowledge, of his disability*”<sup>12</sup>. That being said, an apparently hopeless case should not be permitted to proceed to trial in the hope that “*something may turn up*”<sup>13</sup>.

- 53 At the heart of most discrimination cases, is the reason for the Respondent's actions, and they are thus generally fact-sensitive<sup>14</sup> and thus the power to strike out will be rarely exercised. That is reinforced because the need to examine discrimination claims on their merits is a matter of high public interest in our pluralistic society<sup>15</sup>.
- 54 Thus, the proper approach to strike is to consider the claimant's case at its highest and to assess whether the claim can succeed<sup>16</sup>. Applications that involve prolonged or extensive study of documents, the assessment of disputed evidence or that depend on the credibility of the witnesses will not normally be pursued as strike out applications<sup>17</sup>.
- 55 The test for a deposit order, little reasonable prospect of success, is “*plainly not as rigorous as the test that the claim has no reasonable prospect of success*” and thus “*a tribunal has a greater leeway when considering whether or not to order a deposit than when considering a strike out*”. Notwithstanding that when making the determination the Tribunal “*... must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response*”<sup>18</sup>.
- 56 For deposit applications the Tribunal does not have to assume that the facts may be established (as it would for strike out) and only make a finding that there is little reasonable prospect of success if the case is likely to be unsustainable in law; “*If that had been the draughtsman's intention, the rule would surely have been differently formulated so as to render the intention clear*”. Thus, the Tribunal was entitled to consider in the context of the deposit issue legal and in the case of the latter whether the facts as asserted appeared to be credible or not<sup>19</sup>.

## MY CONCLUSIONS ON STRIKE OUT AND/OR DEPOSIT

- 57 To succeed at trial Mr Patel will need to bring forward facts from which inferences of discrimination can be drawn, specifically that he was treated less favourably than someone whose circumstances were materially the same, except for his disability and/or that he was victimised because of a protected act.

~ ~ ~

<sup>9</sup> [Dossen](#) at [13] citing [Ezsias](#)

<sup>10</sup> [Conway v Community Options Ltd](#) [2012] UKEAT/0034/12 [19]

<sup>11</sup> [ABN Amro Management Services Ltd v Hogben](#) UKEAT/0266/09

<sup>12</sup> [Patel v Lloyds Pharmacy Ltd](#) UKEAT/0418/12 [16]

<sup>13</sup> [ABN Amro Management Services Ltd v Royal Bank of Scotland](#) UKEAT/0266/09 and [Patel v Lloyds](#) (above)

<sup>14</sup> [Kwele-Siakam v The Co-operative Group Ltd](#) UKEAT/0039/17

<sup>15</sup> [Anyanwu v South Bank Students Union](#) [2001] ICR 391 HL

<sup>16</sup> [HM Revenue and Customs v Mabaso](#) [2017] UKEAT 0143/17 at [24] approving [Mechkarov v Citibank NA](#) [2016] ICR 1121 at [14]

<sup>17</sup> [QDOS Consulting Ltd v Swanson](#) UKEAT/0495/11 at [49]

<sup>18</sup> All [Van Rensberg v Kingston upon Thames](#) UKEAT/0095/07 per Elias P at [27] albeit on the 2004 Rules

<sup>19</sup> [Van Rensberg](#) at [23]. Whilst that view was doubted in [Sharma v New College Nottingham](#) UKEAT/0287/11 in [Spring v First Capital East Ltd](#) UKEAT/0567/11 Supperstone J noted [Van Rensberg](#) was not referred to in Sharma and that Sharma provided no support for the submission that the test in a strike-out claim is the same as that in an application for an order for a deposit and followed [Van Rensberg](#). The revised wording in the 2013 Rules suggests that the draftsman made a conscious decision to adopt the view of Elias P and Supperstone J by referring to both allegation (fact) or argument (law).



- 58 Mr Patel asserts he was offered an interview and it was then withdrawn and the withdrawal followed him telling “Leanne” he was disabled. Irrespective of any other analysis that calls for an explanation from the respondent. If that follows it may be a matter from which inferences concerning the failure to investigate his complaint and the subsequent discussions with Ms Chima also warrant an explanation. That being so, putting Mr Patel’s case at its highest I cannot say there are no reasonable prospects and those matters will need to be ventilated in a full hearing.
- 59 As to the deposit order it is not for me to make findings of fact. I must form a view on prospects based on the respective cases as presented.
- 60 I asked Mr Patel what had happened that caused him to believe that the offer of an interview had been withdrawn. Mr Patel repeated several times before me that given Sitel accepted he was disabled it followed that as he had been treated less favourably (or for that matter detrimentally) that he had been discriminated against (and victimised) and it was for Sitel to show they had not done so. I explained that was not quite the way the law worked and setting out the facts from an authority<sup>20</sup> where both those elements had been present but what is sometimes described as the “something more”, the “causal link” or “reason why” was missing. I repeated several times during the hearing that Mr Patel will need to provide facts from which inferences of discrimination could be drawn before the burden passed to the respondent to show otherwise.
- 61 Mr Patel’s allegation that Ms Chima accused him of lying appears to be based on her version of events being different to his when she recounted them to Scott Shepherd. That will need to be explored at final hearing (see also (68)) but a different account is not the same as alleging someone lied and what Mr Patel did not state he had specifically been said to have lied. To that end in submissions Mr Welsh raised with me the way Mr Patel was prepared to make allegations of very serious matters not just concerning discriminatory acts but blackmail amongst others, where there was no factual basis to support the same; and when Mr Patel was asked about them were based on assumptions made by him (see for e.g. (64)).
- 62 Further, Mr Welsh argued the documents and Mr Patel’s own evidence did not support his case; why were Sitel contacting Mr Patel to enquire if he wished to take roles if they were not prepared to deal with him?
- 63 Whilst Ms Chima and “Leanne” ’s reason(s) for acting as they did (or did not) will need to be tested and will be important, unless they were aware of Mr Patel’s disability and/or earlier claim it will be difficult in my view for Patel’s claim to succeed. Even if an interview was initially offered, Mr Patel accepts the conversation had become heated and voices were raised by both parties, that could provide an explanation why if the tribunal finds an interview was initially offered it was withdrawn.
- 64 Mr Patel could not clearly point me to what specific information he had relayed to Leanne and Ms Chima such that they knew he was disabled and in Ms Chima’s case he could not be certain that he had told her he was disabled. As to the previous claim he did not point me to anything specific such that either was aware of the claim, his argument before me assumed they were aware of the earlier claim. During his submissions he gave a different version of what he told Leanne and Rachel Chima. Further, he asserted that the offer of the interview was retracted after he threatened to involve ACAS. That is a different reason to the other “reason why” he suggested. Whilst that revised reason why may require an explanation from Sitel at final hearing that suggests the reason Mr Patel perceived Sitel had for his alleged treatment was not due to his disability or the earlier claim but that threat.

<sup>20</sup> [Bahl v The Law Society](#) [2004] EWCA Civ 1070, [2004] IRLR 799



- 65 Those matters being so I conclude there are little reasonable prospects of success for allegations (c) and (e). Having reached that view, I must consider if I should take into account Mr Patel's means when exercising my discretion to order a deposit be paid and with regards to the level of the deposit. I have decided given Mr Patel's limited means to do so. Provided the deposit does not prevent access to justice and the deposit here (£20) will not, for the reasons I give at (25 & 26) above, no good reasons have been set out why I should not order a deposit; given my findings as to prospects one of the purposes of a deposit "*to make a claimant stop and think before proceeding*" is engaged here and thus a deposit shall be ordered. As to amount; £10 for each of allegations (c) and (e) shall be ordered so that £20 in total is payable.
- 66 There is no time limit pursuant to Rule 39 for the payment of the deposit. The Employment Tribunals Rules of Procedure 2004 required a deposit normally to be paid normally within 21 days (rule 20(4)(a)) but at most within 35 days (rule 20(4)(b)). Historically most benefits payments were made fortnightly. I will thus allow 5 weeks to allow for at least two payments to have been received by Mr Patel.

### **CASE MANAGEMENT**

- 67 In the event the deposit is paid the parties shall write in to the tribunal suggesting any specific case management directions they require and the reasons why; for instance, if either wishes to seek to amend its claim/response.
- 68 I did not address an application made by Mr Patel on 20 February 2018 for third party disclosure against O2 relating to telephone records. If the deposit is paid and Mr Patel wishes to pursue that point he will need to clarify on what date and time that occurred and how that is relevant to allegations (c) and/or (e) (see (61)). The relevance and proportionality of a disclosure order against a third party will then need to be considered and as part of that exercise the tribunal will consider if that is relevant and necessary, whether the respondent accepts that Mr Patel was called by Rachel Chima will impact on that.
- 69 The claim shall be listed for an in person closed preliminary hearing on a date to be fixed after 7 weeks, time estimate 3 hours before an Employment Judge sitting alone.

Employment Judge Perry

19 March 2018



**PRELIMINARY HEARING**  
**NOTE ACCOMPANYING DEPOSIT ORDER**  
**Employment Tribunals Rules of Procedure 2013**

1. The Tribunal has made an order (a “deposit order”) requiring a party to pay a deposit as a condition of being permitted to continue to advance the allegation(s) or argument(s) specified in the order.
2. If that party persists in advancing that/those allegation(s) or argument(s), a Tribunal may make an award of costs or preparation time against that party. That party could then lose their deposit.

**What happens if you do not pay the deposit?**

3. If the deposit is not paid the allegation(s) or argument(s) to which the order relates will be struck out on the date specified in the order.

**When to pay the deposit?**

4. The party against whom the deposit order has been made must pay the deposit by the date specified in the order.
5. If the deposit is not paid within that time, the allegation(s) or argument(s) to which the order relates will be struck out.

**What happens to the deposit?**

6. If the Tribunal later decides the specific allegation(s) or argument(s) against the party which paid the deposit for substantially the reasons given in the deposit order, that party shall be treated as having acted unreasonably, unless the contrary is shown, and the deposit shall be paid to the other party (or, if there is more than one, to such party or parties as the Tribunal orders). If a costs or preparation time order is made against the party which paid the deposit, the deposit will go towards the payment of that order. Otherwise, the deposit will be refunded.

**How to pay the deposit?**

7. Payment of the deposit must be made by cheque or postal order only, made payable to HMCTS. Payments CANNOT be made in cash.
8. Payment should be accompanied by the tear-off slip below or should identify the Case Number and the name of the party paying the deposit.
9. Payment must be made to the address on the tear-off slip below.
10. An acknowledgment of payment will not be issued, unless requested.

**Enquiries**

11. Enquiries relating to the case should be made to the Tribunal office dealing with the case.



12. Enquiries relating to the deposit should be referred to the address on the tear-off slip below or by telephone on 0117 916 5015. The PHR Administration Team will only discuss the deposit with the party that has been ordered to pay the deposit. If you are not the party that has been ordered to pay the deposit you will need to contact the Tribunal office dealing with the case.

✂-----

## DEPOSIT ORDER

**To: HMCTS Finance Support Centre  
Law Library  
Small Street  
Bristol  
BS1 1DA**

Case Number \_\_\_\_\_

Name of party \_\_\_\_\_

I enclose a cheque/postal order (*delete as appropriate*) for £\_\_\_\_\_

**Please write the Case Number on the back of the cheque or postal order**