



EMPLOYMENT TRIBUNALS

Claimant

Mr A Tayel

Respondent

v

(1) Sarah Stalley;
(2) Caroline Wiltshire;
(3) Ipswich Hospital;
(4) Michael Wallis;
(5) Colchester Hospital.

Heard at: Bury St Edmunds

On: 27 – 28 November 2018

Before: Employment Judge Laidler

Appearances

For the Claimant: In person

For all the Respondent: Ms R Tuck, Counsel

RESERVED JUDGMENT

1. Public Health England, West Suffolk Hospital, Jackie Powell and Cambridge University Hospital have not been served with these proceedings. The claimant's application for Default Judgments against them must therefore fail and is dismissed.
2. Insofar as the claimant's submissions could be taken to be an application to amend to bring the claim against the four named in paragraph 1 such application is refused.
3. This tribunal did not have before it the claim issued by the claimant against Public Health England and Cambridge University Hospital in the London South (Croydon) Employment Tribunal and took no action in relation to it.
4. The claims are struck out vexatious and/or having no reasonable prospects within the meaning of Rule 37
5. The claimant is ordered to pay the respondents costs of £6064.

REASONS

1. The claim form in this matter was issued on 14 June 2018 following a period of Acas Early Conciliation on only the 30 May 2018.
2. There are three applications in relation to this claim:
 - 2.1 The claimant has applied for default judgment in the absence of ET3 (his email 26 September 2018), against:
 - 2.1.1 Public Health England;
 - 2.1.2 West Suffolk Hospital;
 - 2.1.3 Jackie Powell;
 - 2.1.4 Cambridge University Hospital.
 - 2.2 The respondents have applied for orders for strike out and / or deposit orders on the basis that the matters in this claim have little or no reasonable prospect of success.
 - 2.3 The respondents apply for their costs.
3. It is the respondents' submission that the respondents against whom the claim has been issued are only the five that are named in the heading to these reasons and that only five Acas Early Conciliation reference numbers were given when the claim was submitted. The claimant has now disclosed ACAS Early Conciliation certificates naming three of his four proposed additional respondents. Two of those certificates postdate the ET1.

Respondents served with these proceedings

4. Only the claims against the respondents named at the heading to these Reasons were accepted by the tribunal and only in relation to those five were ACAS Early Conciliation Certificates produced with the ET1 claim form. That was a judicial decision but it does not appear on the tribunal file that when the claims were served against those five the administration advised that parties that no other claims had been accepted.
5. Public Health England, West Suffolk Hospital, Jackie Powell and Cambridge University Hospitals were named on Particulars of Claim submitted but not on the ET1 form. No claims were accepted against them, they have not been served with these proceedings and the claimant's request that default judgments be entered against them must therefore fail and is dismissed.
6. In the bundle for this hearing were the following ACAS EC certificates:

- 6.1 Public Health England – Date of receipt, 13 June 2018 and date of issue of certificate, 18 June 2018. This was sent to the tribunal by the claimant by letter of the 13 September 2018. The date of the certificate is after the date of issue of the claim on 14 June 2018
 - 6.2 West Suffolk Hospital - Date of receipt, 30 May 2018 and date of issue of certificate, 30 May 2018. This was sent to the tribunal by the claimant by letter of the 26 September 2018
 - 6.3 Cambridge University Hospitals NHS Foundation Trust - Date of receipt, 13 June 2018 and date of issue of certificate, 18 June 2018. This was sent to the tribunal by the claimant by letter of the 13 September 2018. The date of the certificate is after the date of issue of the claim on 14 June 2018
 - 6.4 The tribunal has not seen any ACAS EC certificate naming Jackie Powell.
7. In his letters of the 13 and 26 September 2018 the claimant applied for default judgments against Public Health England, West Suffolk Hospital and Cambridge. Having seen the response filed on behalf of the five respondents who had been served he submitted ACAS EC certificates as set out at paragraph 6 above.
 8. Solicitors for Public Health England wrote to the tribunal on the 13 September 2018 stating they client had not been served with the claim
 9. Solicitors for Cambridge University Hospital wrote to the tribunal on the 13 September 2018 stating that the ET1 had been received on the 14 June 2018 and that at that point the claimant had not been in possession of an ACAS EC certificate against their client. By letter of the 26 September 2018 they again objected to the application for default judgments stating that those named were not respondents to the claim, were not listed as such on the ET1 and no ACAS certificate number was given for them.

The particulars of claim

10. Although in certain paragraphs specific dates are not given by the claimant these can be ascertained from case number 3325693/2017 and the witness statements prepared on behalf of the respondents in support of their strike out application of that claim.
11. Evidence was heard from the following in relation to that application:

Mike Wallis,
Jackie Powell
Sarah Stalley

To a large extent the matters of which the claimant complains in this action relate to evidence contained in those statements.

12. The claimant starts this claim by stating that he believes that he has been subjected to race discrimination, religious discrimination, discrimination arising from disability, victimisation and harassment.

Sarah Stalley

13. The first heading refers to Sarah Stalley and asserts that she 'refused the claimant to participate in a recruitment exercise'. The date of the recruitment exercise is not given but from Mrs Stalley's witness statement and the pleadings in case number 3325693/2017 (paragraphs 26 & 27 particulars of claim) it is clear that it refers to February 2017 when the claimant applied for the role of Medical Laboratory Assistant at Ipswich Hospital. He brought that as a claim of victimisation in those proceedings.
14. Mrs Stalley gave evidence about the shortlisting process for that role at paragraphs 7 & 8 of her witness statement. It was anonymous, and they did not see personal details until they had given the applicant a score. It appears from this that the claimant now seeks to allege that in May 2018 (when the statements were prepared) she 'deliberately destroyed the shortlisting notes' of that process
15. The claimant then refers to an email that Mrs Stalley sent to Caroline Wiltshire, Tanya Muncey, Darren Rawlinson and Jackie Powell about the informal visit the claimant had requested to the laboratory. From the bundle produced for case number 3325693/2017 and Mrs Stalley's witness statement it is known that is an email of the 23 April 2017 (page 238). The claimant is quoting from it.
16. The claimant asserts that Mrs Stalley shared sensitive information with a third-party contrary to Ipswich Hospital Freedom of Information Policy. This appears to arise out of her witness statement and the email of 23 April 2017.
17. The claimant then accuses Mrs Stalley of making a false allegation of accusing the claimant of 'improper behaviour'. That would appear to arise out of the above email and Mrs Stalley's witness statement paragraphs 2, 3,4.5 and 13 where she gives examples of behaviours of the claimant during and subsequent to his training.
18. The claimant then brings a claim of defamation, and a claim of fraud in that the various hospitals did not disclose the email of Mrs Stalley despite the claimant's request under the Data Protection Act. These are not claims over which this tribunal has jurisdiction.
19. There is then a heading of 'false allegation May 2018' as an allegation of victimisation, it being asserted that Mrs Stalley falsely accused the claimant 'of threatening to kill a member of staff.' It is assumed that is

another reference to Mrs Stalley's witness statement. At paragraph 2 she set out the history of the claimant's training and stated:

'...He was not a good trainee, his attendance was poor (partly due to knew surgery that the had during the year) and there were reports that he would not take advice well, particularly from women. There was also a disciplinary issue where he posted a message on Facebook threatening to kill a member of staff (please see page 110 of the bundle).

That page was a letter dated 3 December 2010 from Dean Braunig, Head Biomedical Scientist, who had chaired the disciplinary hearing on the 29 November 2010 and issued a formal written warning to the claimant.

20. The next allegation is of racial and religious discrimination asserting that when Mrs Stalley said, "...he would not take advice well, particularly from women" in the paragraph referred to above of her witness statement she made this false allegation because the claimant is Arab and Muslim.
21. There is then an allegation of discrimination arising from disability because Mrs Stalley had stated in the same paragraph "...his attendance was poor (partly due to knee surgery that he had during the year)."
22. There then follows a further claim of a false allegation being made in May 2018 brought as a claim of victimisation when Mrs Stalley said in the same paragraph of her witness statement that the claimant was "not a good trainee". It is asserted she knowingly made this false allegation because the claimant had made protected acts.
23. The claimant then makes a further claim of 'false allegation/victimisation' by Mrs Stalley arising out of what is believed to be paragraph 13 of her witness statement. In that she explained how she felt the claimant's communications could be 'quite abrupt and aggressive adding to my stress levels'. She explained:

'...I was not aware others were being contacted as well so it felt like being personalised. Bullying and Harassment is a perception by an individual and at times I feel singled out in the communications and it is my perception of bullying and harassment because of the stress this has placed to me over an 8 year period which is a considerably long time...'

The claimant asserts in his particulars of claim that 'Mrs Stalley considered the Claimant's reasonable requests to amount to bullying and harassment'.

24. At paragraph 11 of her witness statement Sarah Stalley referred to a statement she prepared on 24 April 2017 (page 247) in which she noted:

'...The manager Mike Wallis has reported back post the interview at WSH. Mr Tayel is reported as having upset two member of female staff at interview...'

The claimant relies on this as another 'false allegation – victimisation'

Mike Wallis

25. Mike Wallis also gave evidence by witness statement and orally in relation to the strike out application in case number 3325693/2017. The claimant again relies upon evidence given to bring allegations against Mike Wallis in this claim.
26. In his witness statement at paragraph 6 Mike Wallis confirmed 'During the interview we asked Mr Tayel exactly the same questions that we had asked the first candidate. The score sheets for the interview are no longer in existence and I cannot recall much detail regarding his responses'. The claimant asserts from this witness statement that Mr Wallis 'destroyed interview notes of 31 January 2017'. This is said to be an act of victimisation.
27. In paragraph 5 of his witness statement Mr Wallis stated:

'...We interviewed another candidate first and after that interview one of the Admin & Clerical team informed me that Mr Tayel had arrived for his interview. She explained that Mr Tayel had been rude and abrupt to her and she was in tears. I cannot recall the details of the incident but she was clearly very upset.'

The claimant asserts that Mr Wallis has made a false allegation about him.

Caroline Wiltshire

28. With regard to Caroline Wiltshire, it is alleged she deliberately refused to disclose the email of 23 April 2017, despite the claimant's Subject Access Request. This however is headed both victimisation and fraud. The respondent states however that she did disclose the email.

Sara Ames

29. The claimant stated at paragraph 19 of the claim form:

'As soon as the respondent made the claimant aware of the destruction of interview notes, the claimant contacted Sarah Ames, Head of Information Governance and Legal Service, to complain. No response was given and no investigation conducted'

It is asserted that is an act of victimisation on the grounds of race as:

In 2010 Mrs Ames conducted an investigation regarding Facebook allegations. Mrs Ames treated the claimant less favourably than she treated Mr Wallis'

30. In paragraph 26 of the response it is admitted that Ms Ames was the investigating officer for a disciplinary matter involving the claimant in 2011 when she worked for Ipswich Hospital. She now works for West Suffolk Hospital. The claimant did receive a reply from Mr Smith (solicitor for

West Suffolk Hospital) on 18 May 2018 to say that the claimant's complaints were considered to relate to claim number 3325693/2017 and would be dealt with as part of that hearing.

31. There is then a general allegation at paragraph 24 that the hospitals 'refused to investigate the matters'
32. At paragraph 25 is an allegation of harassment against the solicitor, Mike Smith, of Bevan Brittan acting for the respondents on the basis he asked the claimant to abandon the claim against Ipswich Hospital in case number 3305873/2018. Mr Smith is alleged to have 'threatened' the claimant that he would apply for a significant cost order against the claimant and that he 'wanted to deny the claimant access to justice'. It is asserted this conduct was contrary to the Solicitor's Regulatory Authority Code of Conduct. Mr Smith is not a named party. No protected characteristic is relied upon in relation to the alleged claim of harassment.
33. In its response the respondents explain that Mr Smith did inform the claimant in claim 3305873/2018 that Public Health England was the correct respondent and invited the claimant to withdraw against Ipswich Hospital. The claimant refused to do so which the respondents believed amounted to unreasonable behaviour. A costs warning was issued against the claimant.
34. Against Public Health England, the claimant claims that there has been destruction of material documents as an act of victimisation. This tribunal has already found that Public Health England is not a party to these proceedings.

The claimant's submissions

Requirement to contact ACAS before instituting proceedings and service of proceedings

35. At the outset the judge explained what was evident from the tribunal file, namely that Public Health England, West Suffolk Hospital, Jackie Powell and Cambridge University Hospital had not been served with the proceedings.
36. The claimant argued that the claim against West Suffolk Hospital had been sent to Mr Wallis who is based there and has the same address as the hospital. The solicitor who has acted for West Suffolk is acting for Mr Wallis. There is an ACAS EC naming Mr Wallis and his real employer is West Suffolk. He might be wearing 'two hats' but he is under the discretion and control of West Suffolk and vicarious liability is engaged.
37. In relation to Colchester Hospital it had been served and Mrs Powell's address is Colchester Hospital. The same arguments are made as in relation to Mr Wallis and West Suffolk. Colchester Hospital has already

been served with EC and the claimant submitted he is therefore entitled to issue a claim against Ms Powell as a respondent. They have already received early conciliation as he had contacted ACAS. One certificate is it was submitted 'more than sufficient'.

38. All four additional respondents were named on the Particulars of Claim.
39. As against Public Health England the claimant relied upon the case of Drake International v Blue Arrow but did not make it clear to the tribunal how that assisted his position. The same was the case with regard to references to Mist, and Science Warehouse. The claimant seemed to be relying upon these cases as authority for the proposition that a claimant can issue proceedings in relation to matters which occurred after the ACAS EC certificate. That is not however strictly the case here.
40. Also, in relation to Public Health England the claimant argued that its place of business is Ipswich Hospital. It provides services for Ipswich. When the claimant received a response from Public Health England that it hadn't been served with the claim he issued another claim. This appears to be the claim issued in or about October 2018 against not only Public Health England but Cambridge University Hospital which was sent to the London South Employment Tribunal and which was not before this tribunal.

The strike out application

41. The claimant referred to Mrs Wiltshire who said she provided the claimant with the email of 23 April 2017. The claimant said he received 58 documents from Ipswich on 5 May 2017. The email of Mrs Stalley of 23 April 2017 was not disclosed by Ipswich Hospital at all despite the fact it was sent from Sarah Stalley from Ipswich Hospital email address. It was sent to Caroline Wiltshire at Ipswich, so the email should have been disclosed to him on 5 May but was not disclosed until June 2018.
42. The Judge queried how this was an allegation of fraud / victimisation and the claimant stated they were under an obligation to disclose documents under the Data Protection Act and had they in 2017, these allegations would have been in the first claim. The claimant said that he did know it was a deliberate attempt to fail to disclose to him. All the respondents follow the same pattern and do not want to disclose deliberately. For example, they had not disclosed the email before the settlement even though they were in possession of it.
43. The abuse of process is by the respondent in their failure to assist the Court and comply with the rules. Had the claimant had all this information, he would have included these claims in the first claim form. He is not attacking the witness statements, but the email of Mrs Stalley who said the claimant had an history of complaints of discrimination and was not suitable for the job due to his behaviour. What behaviour? If you go back to her witness statement she made a false allegation of bullying and

harassing her. All the claimant says he did was ask for a lab visit because the job advert said that if you made an application you could contact her for such. The claimant has highlighted and made it clear that Mrs Stalley accused him of deliberately upsetting two females at the West Suffolk Hospital at an interview. It was pointed out by Counsel for the respondent that these are not allegations in the ET1 but are quotes from the May 2018 witness statements.

44. The claimant said he was not attacking Mrs Stalley's witness statement, but he was using it to support his claim. The note of Mrs Stalley of 24 April 2017 was not made in legal proceedings. It was pointed out that the quote in the claimant's particulars of claim at paragraph 15 allegedly of race and religious discrimination was from the witness statement of Mrs Stalley. The claimant stated that Mrs Stalley produced a note on 24 April 2017 and that is the one he is attacking as race discrimination.
45. The claimant says his intention was to refer to her second witness statement as religious discrimination and she referred to him as upsetting two females. On the balance of probability, it should go on his side. After the interview, Mr Wallis did not record anything.
46. In relation to the Subject Access Request, the claimant wished to reiterate that had the respondents complied with their legal obligations, he would not have had to issue the second claim and all the claims would be in one claim. He was getting information slowly from them. The failure to disclose is a species of deception and is fraud.
47. With regard to page 247 (Mrs Stalley's note of the 24 April 2017), the claimant said he received this as a word document, but when he checked the file properties it did not have dates. As soon as the Solicitor disclosed it to him he complained and checked the file properties. He is not abusing the process at all, the respondent is. They are failing to disclose.
48. With regard to disability discrimination, the claimant said this was due to the allegation of poor attendance due to his knees. He has arthritis and Mrs Stalley was fully aware back in 2017.
49. With regard to the respondents' costs application, the claimant submitted that costs in the Employment Tribunal are neutral. It is not his intention to attack the witness statement. He stated a number of times that he was aware of 'judicial immunity' but was attacking the notes recorded before the proceedings started and the email sent by Mrs Stalley and he is using the witness statement to support all those allegations.

Respondent's submissions

Requirement to contact ACAS before instituting proceedings

Mr Wallis and West Suffolk Hospital

50. The claimant entered into earlier conciliation in relation to Mr Wallis on 30 May 2018. The certificate number is R259500/18/69. That was provided by the claimant in the ET1 form in section 13. Subsequently the claimant produced the ACAS EC certificated naming West Suffolk Hospital number R259493/18/35. He was clearly aware they were potentially separate respondents but chose to issue only against Mr Wallis and not West Suffolk. He has not complied with s18A Employment Tribunals Act 1996.
51. In Drake the court held that s18A should be given a broad application. The principle is that the matter shouldn't be brought to court until there has been early conciliation and the requirement is with regard to the prospective respondent. The tribunal then retains its discretion in connection with case management matters which has to be exercised in a manner satisfying the requirements of 'relevance, reason, justice and fairness inherent in all judicial discretions'. The court made it clear that if 'there was any sustained suggestion of abuse of the procedures,' it would expect the judge to be alert to it and decline an amendment. In addition the judge considering the amendment would have regard to the overriding objective.
52. In the case here however the claimant has on the ET1 form named five respondents including Mrs Stalley and had separate EC certificate numbers for each of them. It is a completely different scenario to in the reported cases. For whatever reason the claimant only put Mr Wallis on the claim form and did not put West Suffolk Hospital. The tribunal was urged not to exercise its discretion.
53. In relation to Mrs Powell counsel submitted she was not aware of any EC certificate against her. Mrs Powell was in tribunal and instructed that she had never been contacted by ACAS. The tribunal bundle does not contain a certificate against her. There is no claim against her and it is 'fanciful' to say that as Colchester Hospital was named in the ET1, the claimant can then name anyone who works there and rely on the same certificate.
54. Dealing with the claimant's point that the four additional respondents are named in his particulars of claim, counsel submitted that made no difference as the requirement of section 18A was to have the prescribed ACAS EC information.

Strike out application

55. The respondents submit that save for perhaps two allegations, all the claims are already brought in the claim 3325693/2017 or arise out of the witness statements which have been prepared for the respondents' strike out application of those proceedings. Those allegations that do not appear to be within those two categories are:
- 55.1 an allegation that the first and fourth respondents "destroyed" the shortlisting notes, (paragraphs 4, 5 and 18 of the ET1 and paragraphs 9 and 20 of the ET3)
- 55.2 an allegation of fraud; (paragraphs 12 – 13 of the ET1 and paragraph 15 of the ET3.)
56. It is submitted on behalf of the respondents that the claimant is estopped from pursuing allegations in this claim which are already before the tribunal in the first claim. All allegations against any parties that he failed to be shortlisted for interview in February 2017 should therefore be struck out.
57. It is further submitted on behalf of the respondent that to raise a further ET1 when taking issue with matters in witness statements prepared for a preliminary hearing is an abuse of process. The claimant understands he will have the opportunity to cross examine witnesses on any relevant factual matters before the tribunal and if his allegation that they have told untruths and / or fabricated their evidence is held to be correct, he can seek aggravated damages in these proceedings. It is wholly improper to set out such complaints in a further set of proceedings.
58. The same argument is made in respect of the only "new" allegations of destroying shortlisting notes. This is a matter of evidence going to the substantive complaint of not being selected for interview, a matter within the first claim. It is an abuse of process to issue further proceedings about a matter which clearly – if the substantive survives the outstanding applications – is within the remit of the tribunal. It appears that the claimant realising the difficulties he faces in relation to the substantive complaint of not being shortlisted, is trying, in the respondents' view to create further claims to keep alive the litigation.

Respondents costs application

59. The respondents made an application for their costs of defending these proceedings. A schedule was handed up which totalled £6064 but not including the costs of this hearing. The respondent stated the schedule spoke for itself. If the tribunal granted the application to strike out then the first threshold for granting costs had been met. The solicitors have had to take instructions from a range of people to defend these proceedings.

Relevant Law

60. Employment Tribunals Act 1996

18A Requirement to contact ACAS before instituting proceedings

(1) Before a person (“the prospective claimant”) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information, in the prescribed manner, about that matter.

This is subject to subsection (7).

(2) On receiving the prescribed information in the prescribed manner, ACAS shall send a copy of it to a conciliation officer.

(3) The conciliation officer shall, during the prescribed period, endeavour to promote a settlement between the persons who would be parties to the proceedings.

(4) If—

(a) during the prescribed period the conciliation officer concludes that a settlement is not possible, or

(b) the prescribed period expires without a settlement having been reached,

the conciliation officer shall issue a certificate to that effect, in the prescribed manner, to the prospective claimant.

61. Employment Tribunal Rules 2013:

Striking out

37.—(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.

When a costs order or a preparation time order may or shall be made

76.— (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

Ability to pay

84. In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

62. Counsel had referred to various cases in her skeleton argument dealing with ACAS EC. The claimant also mentioned some of these and when asked whether he wished to refer to any other stated they were 'obvious'. It was explained to him that it is for the parties to bring what they consider to be relevant case law to the tribunal's attention. At the end of Day 2 of this preliminary hearing the claimant was asked to bring any cases he was relying on. He did not do so but stated on the third and last day he was 'happy to provide'. After a discussion of the cases referred to in counsel's skeleton the claimant sought to rely on Mills v Science Warehouse and confirmed the tribunal had all the citations of cases he wished to refer to.
63. In Science Warehouse Limited v Mills UKEAT/0224/15 the EAT held that S18A Employment Tribunals Act 1996 did not require that the EC process be undertaken in respect of each claim but used the broader terminology of 'matter'. It also envisaged that the requirement to notify ACAS was one that fell on a 'prospective' – rather than an existing – claimant. Where as in that case, the claimant had previously lodged a valid ET claim (including the EC reference) and was applying to amend to add a new, but related claim, this was a matter for the ET's general case management powers under Rule 29. The fact that the new claim could not have been the subject of the earlier EC process was not determinative of the application.

64. Mist v Derby Community Health Services NHS Trust UKEAT/0170/15 concerned an application to amend existing ET proceedings to add a claim against a second respondent (the transferee in a TUPE transfer). There were a number of issues before the court but for the purposes of this tribunal the relevant aspect of its decision was that for the application to join the second respondent this fell to be considered as a possible amendment to an existing claim and as such was analogous to Science Warehouse v Mills and did not require a further early conciliation notification.
65. The decision in Drake International Systems Ltd and others v Blue Arrow Ltd UKEAT/0282/15 was handed down shortly after Mist. This was another case dealing with amendments. The claimant had brought proceedings against a parent company, and properly completed early conciliation procedures in respect of the matter between them. Once proceedings had been issued the parent company argued that the proper respondents were four subsidiaries. The claimant successfully applied to amend to substitute those subsidiaries for the parent company. The EAT upheld the tribunal's decision that since a reference to ACAS in respect of possible early conciliation is required only before relevant proceedings were instituted and in respect of a prospective claimant and prospective respondent, and since on the facts relevant proceedings had been instituted and the claimant was no longer prospective, such a reference was not required.
66. Compass Group UK & Ireland Ltd v Morgan [2016] IRLR 92 considered whether an EC certificate issued to a prospective claimant prior to termination of her employment could cover a subsequent tribunal claim relating to constructive dismissal without her going through the EC process again. The EAT upheld the tribunal decision that it could do so, as there was sufficient connection between the matters to which the EC certificate related and those that were the subject of the subsequent claim. The court stated:
- ‘...We see nothing in the operation of the legislation that requires or entails a conclusion that the process and certificate only apply to events and allegations predating the commencement of the process or the issue of the certificate or that requires any matter to be defined by reference only to the actual or alleged state of affairs or facts as at the date when EC commenced or the certificate is issued. We do not regard the fact that claimants might bring claims about which EC has not been conducted as significant in circumstances where there is no obligation to undertake any EC at all and certainly no obligation to undertake EC in relation to any particular claim. The only obligation on the prospective claimant is to obtain formal recognition that ACAS has been relevantly notified before any proceedings are instituted, and the fact that the prospective respondent has no right to engage in preclaim conciliation at all and any contact with the prospective respondent is entirely conditional upon the claimant's consent is consistent with this view...’
67. By virtue of the principle of judicial immunity no action lies against parties or witnesses for anything said or done in the ordinary course of any proceedings (even if done falsely or maliciously and without reasonable or

probable cause). Those engaged in litigation should be able to speak freely without fear of civil liability.

Conclusions

Claimant's application for default judgments.

68. Public Health England, West Suffolk Hospital, Jackie Powell and Cambridge University Hospital have not been served with these proceedings. The claimant's application for Default Judgments against them must therefore fail and is dismissed.
69. Further, the only claims accepted by the tribunal were those against the five respondents named in the heading to these reasons. They are the only ones named in the ET1 form and the only ones the claimant provided ACAS EC certificate numbers in the claim form.
70. The claimant issued proceedings against Sarah Stalley, Caroline Wiltshire and Ipswich Hospital and obtained ACAS EC against both of them. He has demonstrated that he knew of the requirement to name those parties he wished to bring proceedings against in his claim form. The tribunal does not accept the claimant's argument that to then name Mr Wallis as a respondent and not West Suffolk Hospital that the Hospital is somehow made a party as it is Mr Wallis' 'true' employer. The same must be said of Colchester Hospital and Jackie Powell.
71. The claimant seeks to rely on recent case law dealing with leave to amend claims and ACAS EC. No formal application has been made for leave to amend. If, as a litigant in person, the claimant was in some way to be taken to have made an application to amend, it is refused. In seeking leave to amend to add the other four respondents the tribunal is entitled to take into account in exercising its discretion the merits of the claim. For all the reasons as set out below, the claim is an abuse of process and of judicial proceeding immunity and is struck out. It would not in all the circumstances be appropriate and in accordance with the overriding objective for leave to amend to be granted to add an additional four respondents to an otherwise unmeritorious claim.

Respondent's strike out application

72. The respondents' application to strike out this claim is granted. The claim is scandalous, vexatious and/or has no reasonable prospects of success within the meaning of Rule 37.
73. The allegations brought by the claimant in paragraphs 3, 6, 9,10, 22, 23 & 24 of his particulars of claim relate to matters already brought or being considered in claim number 3325693/2017 and it is an abuse of process to issue further proceedings in relation to these matters.

74. The allegations at paragraphs 4, 5, 8, 14, 15, second paragraph 12, paragraph 4 (which incorrectly follows paragraph 12), 16, 17, 21 are concerned with matters contained in the witness statements for case number 3325693/2017. It is contrary to the principle of judicial proceedings immunity for the claimant to seek to bring an action against Sarah Stalley and Mike Wallis in respect of evidence given by them in those proceedings when the place to challenge that evidence is in those proceedings. The claimant argues that he is not challenging their statements, but documents disclosed namely Sarah Stalley's note of the 24 April 2017 and her email of the 23 April 2017. They have been disclosed in case number 3325693/2017 and are in the bundle for that matter. That is the place to challenge them.
75. The claimant is however, contrary to his submissions, seeking to bring claims arising out of the witness statements as has been demonstrated in the chronology set out above. That is an abuse and the claims are struck out.
76. The allegation at paragraphs 19 and 20 of race discrimination are an abuse of process and/or have no reasonable prospects and are dismissed. They arise out of the claimant's assumption, from Mr Wallis' witness evidence, that he has 'destroyed' interview notes of the interview on 31 January 2017. The interview and all matters arising from it are the subject of claim number 3325693/2017. If the claimant has subsequently asked for interview notes and wishes to pursue a point on that matter it should be done in those proceedings. It is an abuse to cause there to be multiplicity of proceedings by raising matters about that interview in these proceedings.
77. Further, Sara Ames is not a named respondent to these proceedings. The respondent pleads that she works for West Suffolk, which is also not a party. The claimant did however get a response, from Mr Smith, solicitor. To then bring a race discrimination complaint on an allegation that by failing to respond to his request for the notes, Ms Ames treated the claimant less favourably than she treated Mr Wallis because she had investigated the Facebook allegations against the claimant in 2010 is flawed in law and has no reasonable prospect. Under section 23 of the Equality Act there must be 'no material difference between the circumstances relating to each case'. These are entirely different circumstances. That allegation is dismissed.
78. Public Health England is not a party to these proceedings
79. The costs warning given by Mr Smith in case number 3305873/2018 relates to that claim. Mr Smith is not a party to these proceedings. Any issues the claimant has with it can be raised in those proceedings if costs were to be pursued.
80. Any allegations of 'fraud' are not within the jurisdiction of this tribunal and are dismissed.

81. It follows from these conclusions that all claims are dismissed as vexatious and/or has no reasonable prospects of success.

Respondents costs application

82. As the claims had no reasonable prospects of success the discretion to consider the respondent's costs application is engaged within the meaning of Rule 76(1)(b).
83. Counsel handed up a costs schedule totalling £6064 for the costs incurred in defending these proceedings up to but excluding this hearing.

The claimant's means

84. The claimant had on the 27 November 2018 given the following evidence of his means to this tribunal in relation to claim number 3325693/2017.
85. The claimant is now employed in security and intelligence in the Prison Service, having started in August 2017. He earns approximately £20,000 per annum. He is married and his wife works as a teacher.
86. The house is in the claimant's wife's name as is the mortgage which she has always paid.
87. The claimant spends approximately £200 month on petrol. He did not know how much was spent on food, it could be £600 - £800 per month. They have two children aged 9 and 13. His wife pays for everything and they have never had a joint account. He has never had knowledge of what his wife earns. The only bill in the claimant's name is BT for £23 a month line rental.
88. The claimant does have a car, but it was purchased by his wife.
89. The claimant's monthly income varies between £1,400 and £1,700 net. He gives his wife some money for childcare and after school clubs and breakfast clubs of approximately £200 per month. By the 15th or 20th of the month he has only £20 left and then starts to borrow money until he gets paid.
90. The claimant started working for the Prison Service on 14 August 2017. He has no savings or other assets.
91. The claimant accepted he had received compensation from the University of Essex but could not remember how much. He had £23,000 in legal fees that had been covered by a loan and had to pay that back. It then appeared that the compensation may have been £5,000 plus legal fees.

92. The claimant confirmed he had been successful in a claim against an Academy and recovered approximately £2,000. He believed he had recovered approximately £3,000 in another claim in 2012.
93. The claimant's emphasised that he had offered to pay the compensation he received from Ipswich Hospital of £30,000 and in return they were to give him a placement, so he could get his registration. That was from a settlement in 2012. When asked where the £30,000 now was, the claimant said it had gone, he had borrowed money for legal representation and spent £13,000 - £15,000 in legal fees. He was offering to pay it back even though he did not have it.
94. The claimant has a debt of £9000 to Barclaycard, he believed £540 on a Debenhams card and has started to repay his student loan at £90 per month.
95. Even though the claimant had been warned of this costs application (and a deposit application in the other claim) and that his means would be an issue he brought no documentation to support any of his evidence.

The tribunal's conclusions on costs

96. The claimant's evidence on his means was most unsatisfactory and lacked all credibility. He did not support it by documentary evidence. He is earning and if he is to be believed contributes little to the cost of housing and household expenditure. The respondents are NHS Trusts and their employees where public money is being used to defend what has been found to be an unmeritorious claim. The tribunal is satisfied that the claimant should be ordered to pay the respondents costs of £6064. It is not for this tribunal to deal with enforcement and how that award is paid. That will be a matter for the County Court should the respondents seek to enforce it.

Employment Judge Laidler

Date: ...18 March 2019.....

Sent to the parties on: 20 March 2019.

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For the Tribunal Office