EMPLOYMENT TRIBUNALS

Claimant: Dr R J Heal

Respondent: (1) Oxford Health NHS Foundation Trust
(2) The Chancellor, Masters and Scholars of the University of Oxford
(3) The Principal and Fellows of the Manchester Academy and Harris College in the University of Oxford
(4) Health Education England
(5) The Secretary of State for Health and Social Care

Before: Employment Judge A James

Sitting at: London Central

Date: 23 and 24 June 2021

Appearances

For the claimant: Did not appear and was not represented

For the respondents: R1 - Mr R Moretto, counsel
R2 & R3 - Ms A Beale, counsel
R4 – Ms C Wheatley, solicitor
R5 - Ms E Hodgetts, counsel

JUDGMENT

(1) The following claims are struck out and are dismissed because they have no reasonable prospect of success:

   a. All whistleblowing claims against the first and second respondent (Part IVA Employment Rights Act 1996).

   b. All remaining Part 5 Equality Act 2010 claims against all of the respondents.

(2) All of the claims raised in the proceedings are struck out on the alternative basis that they were not submitted in time and the tribunal does not have jurisdiction to hear them, save for any claim in respect of the claimant's application for

employment with the second respondent in or about February 2018 for the post of Research Assistant – Dementia Studies in the Department of Psychiatry. Any such claim is covered by (1) above in any event.

(3) Any claims in relation to the claimant's application for employment with the second respondent in or about February 2018 for the post of Research Assistant – Dementia Studies in the Department of Psychiatry; and/or any claim in respect of his application for a degree in medicine; are struck out on the alternative basis that they amount to an abuse of process.

(4) All of the claims raised in the claim form were also totally without merit.

(5) Insofar as the claimant purports to raise any further claims within the tribunal's jurisdiction within this claim, which have not already been struck out (no such claims having been articulated by the claimant in any communications with the tribunal; and there being no other discernible claims that fall within the jurisdiction of the Tribunal which have any reasonable prospects of success), such claims are struck out because they have no reasonable prospects of success and they are not being actively pursued.

(6) To the extent necessary, the names of the respondents are amended to reflect the names set out in the heading above.

REASONS

The Issues for PH3

1. The issues for determination at this preliminary hearing are set out in Annex A. Subject to minor modifications, they are as set out in Annex B to the orders made following CPH2 – see below. This hearing will be referred to as PH3 although this is in fact the second, rather than the third public preliminary hearing in relation to these combined claims. PH2, which had been listed for hearing on 19 and 20 May 2021 on the disability issue, did not go ahead because of a failure by the claimant to comply with employment tribunal orders. Unless orders have been made in relation to that non-compliance. Those orders need not concern us further in relation to this claim, in light of the conclusions reached on the PH3 issues, which have effectively dealt with all and any legal claims raised in this matter, regardless of the claimant's disability status.

The Hearing

2. These claims are concerned with the Oxford Doctoral Course in Clinical Psychology,- referred to below as 'The Course'. It has been previously referred to as the Clinical Psychology Programme (the CPP) and is referred to in the list of issues as the Oxford CPP.

3. A preliminary hearing for case management purposes took place by video link on 5 February 2021 (CPH2). Case Management Orders (CMOs) dated 15 February 2021 were sent out following that hearing. The draft issues for that hearing were attached

as Annex B to that order. None of the parties have applied to amend those issues. I have however been asked to determine the question of employment status and the strike out claims first, before going on to consider the time limit issue, to avoid the claims being dismissed on time grounds alone. This is because counsel for the respondents are concerned that could have the effect of encouraging the claimant to make further applications outside of the Clearing House process, and then bring new claims. The issues have been dealt with in the order requested by the respondents, although I also take the view that the reasons for striking out the claims set out above are set out in the alternative in any event, in case one or all of the other strike out grounds relied on are held to be erroneous.

4. Following CPH2, all of the claims in these proceedings were struck out on 6 May 2021, save for any Part 5 Equality Act 2010 claims against all five respondents and any whistleblowing claims against the first and second respondents only.

5. The respondents had provided a 962-page bundle; an authorities bundle; witness statements from Professor David Clark, Professor and Chair of Experimental Psychology within the University's Department of Experimental Psychology; John Geddes, Head of Department of Psychiatry of the University; Simon Denton, Head of HR Operations for the Trust; and Professor Paul Salkovskis, Director of the Oxford Institute of Clinical Psychology Training and Research which is part of the Trust. Skeleton arguments were also provided on behalf of the first respondent, the second and third respondents and the fifth respondent.

6. The claimant did not take part in the hearing. He has now failed to take part in any of the hearings since CPH1 in July 2020 (which hearing he did not participate in either).

7. An email had been sent to the parties/their representatives by myself from a UK Court Skype account on 22 June 2021 at 16:51 which stated:

> *I have received the bundle, 4 witness statements and the skeleton argument on behalf of R1. If there are any other documents you would like me to consider prior to the hearing commencing, please send them to this email address as soon as possible.*

8. The claimant emailed the tribunal late on the evening of 22 June 2021. In that email, the claimant continues to maintain that the holding of hearings via video link "*violate the Human Rights of a private property owner by unlawfully demanding the requisition of private property for use by the Employment Tribunal*". That assertion was answered in paragraphs 18) to 22) of the record of CPH2 dated 15 February 2021. For ease of access and completeness, those paragraphs have been copied and pasted into Annex B below. Nothing further need be added here.

9. Until the evening of 22 June, the claimant had not provided any disclosure documents in relation to this hearing. In the email to the tribunal and the respondent's representatives, the claimant makes brief submissions and there are 15 attachments to it. Having heard representations from the parties, I have decided not to consider or take into account the content of any of those attachments. Orders were made at CPH2 in relation to the exchange of documents and preparation of a bundle of documents. The claimant has not filed a witness statement in which he refers to the documents, or explains their relevance. Nor are they paginated.

10. The claimant is familiar with the tribunal process due to his continued involvement in this long-standing and complex litigation. Orders are made by tribunals to ensure that claims are ready for hearing; to ensure that the parties understand each other's

respective cases prior to the hearing and are able to fully prepare prior to the hearing taking place; and so that the parties can consider the respective strengths of each other's cases prior to the hearing taking place to enable them, amongst other things and if deemed appropriate, to negotiate a settlement of the claims before the tribunal. If that is not possible, tribunals hear live evidence, consider the documents and witness statements and any submissions from the parties, in order to make a decision. The claimant has not put forward any proper reason why he cannot take part in the process, or comply with the directions. The claimant's late disclosure of those documents shows disrespect for the tribunal and its procedures.

11. The claimant was informed on 23 June, in response to his 22 June email, that if he wanted the tribunal to consider the attachments to it, he would need to make an application, explaining why they had been submitted so late. The claimant asserts, in a response sent at 15:30 on 23 June 2021:

> *As also suspected, the offer from EJ A James to parties to submit 'any other documents' only extended to Respondents; thus fulfilling the remit of the Employment Tribunal to use late submissions only by Respondents to prejudice/dismiss claims.*

12. In fact, the email of 22 June was sent because by that stage only one skeleton argument had been forwarded to me by HMCTS staff (relating to the first respondent only). It was assumed that there would be others. The email was not an invitation to any of the parties to submit late disclosure documents.

13. The respondents have provided further documents; and as required, made an application on 24 June to admit the documents later than the order allowed for. That application is granted. The documents submitted by the respondents consist of letters to the tribunal that the claimant was copied into, tribunal orders and judgments, the claim form in claim 'M' (case number 3306697/2018) and related Acas Early Conciliation Certificates. They were provided on the (correct) assumption that I would be working remotely, and would not have access to the hard copies of the tribunal files. The claimant is familiar with the contents of those documents, and their addition to the bundle does not in any way prejudice him. They had also been paginated, and have been added to the electronic bundle as pages 963 to 1027.

14. The claimant also makes reference in the 22 June email to having been ordered to make a submission by 4pm on 23 June 2021 that he says has a direct impact on this tribunal claim. The claimant is referring to a separate case management order in relation to a claim that has recently been transferred from Cardiff Employment Tribunal to London Central Employment Tribunal, claim number 1602267/2020. Any response in relation to that claim has no direct bearing on the current claim. It was incumbent on the claimant to ensure that the orders made in relation to this claim were complied with, in order to make sure that all relevant information was put before the tribunal prior to the hearing. He failed to do so and has not provided any reasonable explanation why.

15. The remainder of the claimant's 22 June email continues to make assertions that 'false evidence' has been presented to the tribunal and that various respondents are trying to pervert the course of justice. The arguments put forward by the claimant do not engage with the issues before the tribunal, as clarified in Annex B to the CPH2 order. Nor do they engage with the evidence that has been presented to the tribunal and which the claimant has received.

16. For example, the claimant states, in relation to the Oxford Institute of Clinical Psychology Training and Research (OXICPT):

> *OXCIPT is not part of the University of Oxford and not part of Harris Manchester College; despite the numerous Articles of Fraud passing off OXICPT as something other than an NHS Department. The Trust FOI Officer has declared OXCIPT is a NHS Trust Department.*

The claimant's assertion that OXCIPT is part of the Trust is not actually in dispute. Paragraph 3 of Prof Salkovskis' statement confirms that the Institute is indeed part of the Trust. The claimant's assertion demonstrates that he has not considered or engaged with that witness evidence.

17. Much of the remainder of the 22 June email relates to whether or not there is any legal basis for a degree of Doctor of Clinical Psychology within Oxford University. That is not one of the issues before this tribunal.

18. At paragraph 6.1, the claimant states:

> *The Employment and Pre-Registration Training in Clinical Psychology is a job of work in the NHS. It is not a vocational training programme and not a university course; and the NHS TCP employees are not trainees on training contracts. The Governing Body of the University of Oxford does not possess power to provide access to NHS jobs. Therefore, the Respondents <u>cannot</u> rely on s.56 (5) Equality Act 2010 to evade liability to the Claimant.*

19. Again, there is in fact no dispute that had the claimant submitted an application for the CPP to the first respondent via the Clearing House, he would be an applicant for employment and covered by Part 5 of the Equality Act 2010. This is reflected in paragraph 10.5.1 of Mr Moretto's skeleton argument, and paragraph 17 of the statement of Prof Salkovskis. It is again apparent that the claimant has not read those documents and/or considered the implications of them.

20. Finally, the claimant states:

> *If the outcome is that the claim is dismissed on the basis of the evidently (proven) false statements and false evidence submitted by Respondents, then the matter will naturally go to appeal.*

21. No evidence has been presented to me to support the allegation that false statements and false evidence has been presented to the tribunal by the respondents. Facts are found in employment tribunal proceedings on the basis of the evidence presented. If a party wishes to challenge witness or other evidence presented to the tribunal, it is incumbent on them to take part in the process, put relevant questions to relevant witnesses, and give them an opportunity to respond. The claimant has again declined to take up the opportunity to do so and instead continues to attempt to litigate his claims by correspondence, making serious and unsubstantiated allegations in the process. That is not a reasonable or acceptable way of conducting legal proceedings.

The structure of this judgment

22. This judgement is structured as follows. The issues are grouped under three main headings - employment status; strike out/deposit orders; and time limits. Under each of those broad headings, each individual issue is considered in turn, with the relevant law set out first, then the relevant findings of fact, and finally the conclusions.

23. As the claimant has not submitted a witness statement in relation to those matters, the evidence of the respondents' witnesses has not been challenged through cross-examination, and there appears to me to be no reasonable basis for not believing it. Accordingly, I accept all of the respondents' witnesses' evidence. In the interest of proportionality, since the evidence was not challenged, the factual findings have been kept relatively brief.

Conclusions on the Issues

Issues (1) and (2) - Jurisdiction: Employment Status

Issue (1) Was the claimant employed by Oxford NHS between October 1999 and April 2004 for the purposes of the whistleblowing provisions of the ERA 1996 or the Equality Act 2010?

Relevant law – Issue (1)

24. S.43K Employment Rights Act 1996 provides:

> *(1) For the purposes of this Part "worker" includes an individual who is not a worker as defined by section 230(3) but who—*
>
> *(a) works or worked for a person in circumstances in which—*
>
> *(i) he is or was introduced or supplied to do that work by a third person, and*
>
> *(ii) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them,*
>
> *(b) contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and would fall within section 230(3)(b) if for "personally" in that provision there were substituted "(whether personally or otherwise)",*
>
> *[(ba) works or worked as a person performing services under a contract entered into by him with [the National Health Service Commissioning Board] [under [section 83(2), 84, 92, 100, 107, 115(4), 117 or 134 of, or Schedule 12 to,] the National Health Service Act 2006 or with a Local Health Board under [section 41(2)(b), 42, 50, 57, 64 or 92 of, or Schedule 7 to,] the National Health Service (Wales) Act 2006]. . .,]*
>
> *[(bb) works or worked as a person performing services under a contract entered into by him with a Health Board under section 17J [or 17Q] of the National Health Service (Scotland) Act 1978,]*
>
> *(c) [works or worked as a person providing services] in accordance with arrangements made—*
>
> *(i) by [the National Health Service Commissioning Board] [[under section 126 of the National Health Service Act 2006,] or] [Local Health Board] under [section 71 or 80 of the National Health Service (Wales) Act 2006], or*

(ii) by a Health Board under section [2C, 17AA, 17C,] . . . 25, 26 or 27 [or 26] of the National Health Service (Scotland) Act 1978, . . .

[(ca) . . .]

[(cb) is or was provided with work experience provided pursuant to a course of education or training approved by, or under arrangements with, the Nursing and Midwifery Council in accordance with article 15(6)(a) of the Nursing and Midwifery Order 2001 (SI 2002/253), or]

(d) is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than—

(i) under a contract of employment, or

(ii) by an educational establishment on a course run by that establishment;

and any reference to a worker's contract, to employment or to a worker being "employed" shall be construed accordingly.

(2) For the purposes of this Part "employer" includes—

(a) in relation to a worker falling within paragraph (a) of subsection (1), the person who substantially determines or determined the terms on which he is or was engaged,

[(aa) in relation to a worker falling within paragraph (ba) of that subsection, [the National Health Service Commissioning Board, or the] Local Health Board referred to in that paragraph,]

[(ab) in relation to a worker falling within paragraph (bb) of that subsection, the Health Board referred to in that paragraph,]

(b) in relation to a worker falling within paragraph (c) of that subsection, the authority or board referred to in that paragraph, and

[(ba) . . .]

(c) in relation to a worker falling within paragraph [(cb) or] (d) of that subsection, the person providing the work experience or training.

(3) In this section "educational establishment" includes any university, college, school or other educational establishment.

(4) The Secretary of State may by order make amendments to this section as to what individuals count as "workers" for the purposes of this Part (despite not being within the definition in section 230(3)).

(5) An order under subsection (4) may not make an amendment that has the effect of removing a category of individual unless the Secretary of State is satisfied that there are no longer any individuals in that category.

25. SS 47B(1), (1A)(a), (1A)(b) Employment Rights Act 1996 provide:

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

(a) by another worker of W's employer in the course of that other worker's employment, or (b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

26. S.49B(6) Employment Rights Act 1996 provides:

(6) "NHS employer" means an NHS public body prescribed by regulations under this section."

27. The relevant regulations made under s.49B ERA 1996 are the *Employment Rights Act 1996 (NHS Recruitment - Protected Disclosure) Regulations 2018/579* (The 2018 Regulations). They prescribe the following NHS bodies at Regulation 2:

2. The NHS public bodies prescribed for the purposes of section 49B(6)of the Employment Rights Act 1996 (which defines "NHS employer" by reference to those NHS public bodies that are prescribed by regulations) are the bodies listed in paragraphs (a) to (p) of subsection (7) of that section."

28. The bodies listed in paragraphs (a) to (p) of subsection s.49B(7) ERA 1996 include (d) an NHS trust; (e) an NHS Foundation Trust; and (g) Health Education England.

29. The 2018 Regulations were made on 2 May 2018. Regulation 1(2) of the 2018 Regulations provides:

(2) These Regulations come into force 21 days after the day on which they are made.

The 2018 Regulations therefore came into force on 23 May 2018, after the claimant had submitted his claim.

30. S 230 Employment Rights Act 1996 provides:

(1) In this Act "employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.

(2) In this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

(3) In this Act "worker" (except in the phrases "shop worker" and "betting worker") means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;

and any reference to a worker's contract shall be construed accordingly.

Findings of fact – Issue (1)

31. I accept the evidence of Mr Denton that the claimant has never been an employee or worker of the first respondent or any of its predecessor trusts. The claimant does not seek to challenge that and has not submitted any evidence to the contrary. No further findings are necessary in such circumstances.

Conclusion on Issue (1)

32. The 2018 Regulations do not apply since they did not come into force until 23 May 2018, after the claim was submitted. Therefore any application for employment is not covered by those Regulations. In any event, the claimant has not sought to argue that he has made any application, save in respect of The Course. The claimant has never been an employee or worker of the first respondent or any predecessor organisation of the first respondent. Whistleblowing claims can only be taken by employees or workers (or former employees or workers). It follows, as will be reflected in relation to the strike out issue, that any whistleblowing claims against the first respondent have no reasonable prospect of success and should be struck out. It is not appropriate in the circumstances of this case, bearing in mind the history of the combined proceedings and the conclusions in relation to PH1, and the claimant's continued refusal to participate in the hearings, to order that the claim be amended or that a deposit be paid instead.

Issue (2) If so, has liability in relation to that employment, if any, been transferred or novated to Oxford Health NHS Foundation Trust?

33. Issue (2) is not applicable in light of the answer to Issue (1).

Issues (6) to (9): Strike Out – No Reasonable Prospect of Success

Issue (6) In relation to the University of Oxford, HMC and the NHS Trust, have any of the respondents ever acted as an employment service provider in relation to the Oxford CPP? If not, should any claims under the Equality Act section 55 be struck out as having no reasonable prospect of success?

Relevant Law

34. The claimant makes claims under ss.13, 15, 20, 26 and 27 Equality Act 2010, the relevant provisions of which provide:

> *13 Direct discrimination*
>
> *(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
>
> *15 Discrimination arising from disability*
>
> *(1) A person (A) discriminates against a disabled person (B) if—*
>
> > *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
> >
> > *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
>
> *20 Duty to make adjustments*
>
> *…*

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

35. Section 39 Equality Act 2010 provides:

(1) An employer (A) must not discriminate against a person (B)—
(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;
(c) by not offering B employment.

(2) ….

(3) An employer (A) must not victimise a person (B)—
(a) in the arrangements A makes for deciding to whom to offer employment;
(b) as to the terms on which A offers B employment;
(c) by not offering B employment.

(4) An employer (A) must not victimise an employee of A's (B)—
(a) as to B's terms of employment;
(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;
(c) by dismissing B;
(d) by subjecting B to any other detriment.

(5) A duty to make reasonable adjustments applies to an employer.

36. Section 55 Equality Act 2010 provides:

55 Employment service-providers

(1) A person (an "employment service-provider") concerned with the provision of an employment service must not discriminate against a person—

(a) in the arrangements the service-provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;

(b) as to the terms on which the service-provider offers to provide the service to the person;

(c) by not offering to provide the service to the person.

(2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—

(a) as to the terms on which A provides the service to B;

(b) by not providing the service to B;

(c) by terminating the provision of the service to B;

(d) by subjecting B to any other detriment.

(3) An employment service-provider must not, in relation to the provision of an employment service, harass—

(a) a person who asks the service-provider to provide the service;

(b) a person for whom the service-provider provides the service.

(4) An employment service-provider (A) must not victimise a person (B)—

(a) in the arrangements A makes for selecting persons to whom to provide, or to whom to offer to provide, the service;

(b) as to the terms on which A offers to provide the service to B;

(c) by not offering to provide the service to B.

(5) An employment service-provider (A) must not, in relation to the provision of an employment service, victimise a person (B)—

(a) as to the terms on which A provides the service to B;

(b) by not providing the service to B;

(c) by terminating the provision of the service to B;

(d) by subjecting B to any other detriment.

(6) A duty to make reasonable adjustments applies to an employment service-provider, except in relation to the provision of a vocational service.

(7) The duty imposed by section 29(7)(a) applies to a person concerned with the provision of a vocational service; but a failure to comply with that duty in relation to the provision of a vocational service is a contravention of this Part for the purposes of Part 9 (enforcement).

37. Section 56 provides:

56 Interpretation

(1) This section applies for the purposes of section 55.

….

(3) This section does not apply in relation to training or guidance in so far as it is training or guidance in relation to which another provision of this Part applies.

…

38. In *Blackwood v Birmingham & Solihull Mental Health NHS Foundation Trust [2016] I.C.R. 903*, the Court of Appeal held at §§8-10:

> *8. This appeal is concerned with [section 56] subsection (5), but subsections (3) and (4) are relevant inasmuch as the three appear to form part of the same group of provisions. I set out below the terms of section 91, to which subsection (5) refers, but for present purposes it is enough to say that it falls under Part 6 of the Act (as also does section 85, referred to in subsection (4)) and that the institutions to which it applies are universities and other further and higher education institutions—for short I will simply say "universities". Thus its effect is that section 56 does not apply in relation to training of students of a university where the university "has power to afford access" to the training in question.*
>
> *9. It was common ground before us that the intended consequence of disapplying section 56 is also to disapply the substantive provisions of section 55. Although the drafting is clumsy, I accept that that must be the correct reading.*
>
> *10. The circumstances which trigger the operation of sub-sections (3)-(5) are all circumstances in which a remedy against discrimination is afforded by other provisions of the Act. In the case of sub-section (3) the only 'other provisions' of Part 5 which apply to 'training' (none refer to 'guidance') are those proscribing discrimination by the various people or institutions who provide work, such as employers (section 39), partnerships (section 44) or persons making appointments to public offices (section 50): the proscribed acts include discrimination in the way in which access is offered to (among other things) training — see, e.g., section 39 (2) (b) …*

39. Rule 37(1) of the Employment Tribunal Rules of Procedure 2013 provides:

> *(1) An employment judge or tribunal has power, at any stage of the proceedings, either on its own initiative or on the application of a party, to strike out all or part of a claim or response on any of the following five grounds:*
>
> *(a) that it is scandalous or vexatious or has no reasonable prospect of success (r37(1)(a)); ……*

40. Before making a strike out order in any of these situations, the tribunal must give the party against whom it is proposed to make the order a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing (r.37(2)). An application by a party for such an order should be made in accordance with the provisions of r.30.

41. The striking-out process requires a two-stage test (see *HM Prison Service v Dolby [2003] IRLR 694, EAT*, at para 15; approved and applied in *Hasan v Tesco Stores Ltd UKEAT/0098/16 (22 June 2016, unreported*). The first stage involves a finding that one of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim, order it to be amended or order a deposit to be paid.

42. The principles applicable to strike out applications are helpfully summarised in Mr Moretto's skeleton argument and as they have been adopted by Ms Beale and Ms Hodgetts, I also gratefully adopt them.

43. Those principles are set out in numerous authorities, and recently in for example in, *Malik v Birmingham City Council, UKEAT/0027/19/BA*, 21 May 2019, Choudhury P, paras 29-33; *Cox v Adecco, UKEAT/Appeal No. UKEAT/0339/19/AT*, 9 April 2021, at para 28.

44. The general principle is that a Tribunal will not strike out discrimination claims except in the most obvious and plain case (*Anyanwu v South Bank Student Union [2001] 1 WLR 391*). The same approach applies in whistleblowing cases: see *Ezsias v North Glamorgan NHS Trust [2007] ICR 1126*, at para 29, in which the Court of Appeal held that the same or a similar approach should generally inform whistleblowing cases.

45. However, self-evidently (and as *Anyanwu* and *Ezsias* themselves make clear) such cases must exist. The respondents argue that this is such a case.

46. As Lord Hope set out in *Anyanwu*, at para 24: *"The time and resources of the employment tribunals ought not to [be] taken up by having to hear evidence in cases that are bound to fail'.*

47. See further for example, the Court of Appeal's judgment in *Ahir v British Airways plc [2017] EWCA Civ 1392* at paras 15-16:

> *Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established…*

48. And, at para 24 of Ahir, per Underhill LJ:

> *… where there is on the face of it a straightforward and well-documented innocent explanation for what occurred, a case cannot be allowed to proceed on the basis of a mere assertion that that explanation is not the true explanation without the claimant being able to advance some basis, even if not yet provable, for that being so.*

49. See also *Kaur v Leeds Teaching Hospital NHS Trust [2019] ICR 1,* CA at para 77:

> *… there is no absolute rule against striking out a claim where there are factual issues - see, eg Ahir v British Airways plc [2017] EWCA Civ 1392. Whether it is appropriate in a particular case involves a consideration of the nature of the issues and the facts that can realistically be disputed.*

50. Finally, as put by HHJ Tayler in *Cox v Adecco*, at para 28(1) "*No-one gains by truly hopeless cases being pursued to a hearing*" (see also the authorities cited at *Malik* at paras 32-33 which make the same point).

Relevant facts

51. The second and third respondents (R2 and R3) have not acted as ESPs in relation to the Course. It is agreed that if the claimant had been accepted onto The Course, he would be an employee. The only role of R2 in relation to The Course is to validate the doctoral degree awarded to trainees who complete The Course. R3's connection with The Course is to present students for the award of their degree at the annual graduation ceremony, and provide trainees on the course, who become associated but not full members of the college, with certain college facilities. In relation to The Course, none of respondents R2 to R5 have any involvement in the selection or supplying of trainees, providing training to the trainees, or in employing them.

Conclusion on Issue (6)

52. As the first respondent (R1) accepts that, had the claimant correctly applied to it in accordance with the correct process, and had the first respondent discriminated against the claimant in that application, then a claim could be brought in the Employment Tribunal against it under Part 5 of the Equality Act 2010 (see sections

s.39(1), 39(3), 39(5) or 40(1)(b)) because the claimant would be an applicant for employment. Section 55 Equality Act 2010 has no application in these circumstances (see *Blackwood*, para 10).

53. In any event, I have found as a fact that neither R2 nor R3 have ever acted as an employment service provider in relation to the Oxford CPP. In those circumstances, any claim under section 55 Equality Act 2010 should be struck out as having no reasonable prospect of success. It is not appropriate in the circumstances of this case, bearing in mind the history of the combined proceedings and the conclusions in relation to PH1, to order that the claim be amended or that a deposit be paid instead.

54. It follows that any residual claims against R4 and R5 under ss.109-112, regarding s.55 cannot succeed either. This is because there is no liability under s. 109(2) EA 2010 for an act that was not unlawful: *Peninsula Business Service Ltd v Baker [2017] ICR 714* [77-79]. Further, there is no liability under s. 111 EA 2010, unless the relationship between R1 and the claimant was such that R1 was in a position to commit a basic contravention in relation to the claimant: s. 111(7) EA 2010. Finally, there is no liability under s. 112 EA 2010, unless there is an unlawful act for R5 to aid: *May & Baker Ltd (t/a Sanofi-Aventis Pharma v Okerage) [2010] IRLR 394, EAT* [55-58].

Issue (7) If the claimant did not apply through Clearing House to the Oxford CPP, should his claims be struck out on the grounds that they have no reasonable prospect of success?

55. The relevant law is as stated in relation to Issue (6) above.

Relevant facts

56. Applications to The Course must be made to the Clearing House for Postgraduate Courses in Clinical Psychology website (the Clearing House). The Clearing House is a charitable organisation located in the University of Leeds (and conceptually is similar to UCAS). Nationally, the Clearing House is the only way that applications to clinical psychology courses around the country can be initiated.

57. The application process for The Course is essentially made up of four stages. The Trust first checks for basic eligibility for The Course; it then carries out an academic score sift; candidates progress next to a short-listing stage. Finally, following interviews organised and managed by the Trust, successful applicants are made a conditional offer and the Trust carries out employment checks, before making final offers.

58. The application window for The Course is September to November each year, with the courses starting the following autumn. The claimant was told that applications can only be made through the Clearing House process on 8 December 2010. The claimant continues to argue that he should be entitled instead to an interview under the Guaranteed Interview Scheme offered by the Trust. In a letter to Dr Heal dated 28 March 2013, it was explained to the claimant that this scheme is a voluntary one and is not in place in relation to The Course, due to the high number of applications and limited places on it.

59. The claimant does not appear to be alleging that a guaranteed interview is required, as a reasonable adjustment. The claimant has in any event been informed on a number of occasions that if he requires reasonable adjustments to the application

process as a result of a disability, he can request those. For example, University of Oxford informed Dr Heal on 14 January 2011 that they had been in touch with the Clearing House, who informed them that they had assisted several applicants with disabilities in different ways during the 2010 application round. In this spirit, they would have considered provision of a paper application form for a candidate whose disability meant they were unable to use the online form, if that turned out to be the best solution to the difficulty.

60. In a further response dated 9 February 2011, the claimant was informed again that the programme had in place mechanisms to assist candidates who cannot use the online form, and that this is clearly flagged in more than one place on their website.

61. As a further example of the claimant's insistence on applying directly to the Trust, he included an 'application for employment with Oxford Health NHS foundation Trust… as a trainee clinical psychologist…' on 22 March 2016. He requested that "*the trust notify me in advance of any selection processes, tests, and procedures, so that I may determine what reasonable adjustments I require as a disabled person*". He attached an application form 10 pages in length, setting out amongst other things his qualifications, relevant experience, including research experience, and publications.

62. The claimant has continued to apply directly to the Trust for employment as a trainee clinical psychologist on the Course. Examples of the claimant's emails and attached documents are referred to at paragraph 30 of Prof Salkovskis' statement and I have considered examples in the bundle, for example at pages 325, 326-340, 356-7 and 374-376.

63. A letter sent to the claimant on 1 December 2016 stated:

> *As you are aware applications to the Oxford DClinPsych programme are made via the national Clearing House for Postgraduate Courses in Clinical Psychology. The deadline for 2017 entry was 30th November 2016. The application for the 2018 intake will commence in early September 2017, details of which are on the clearing house website at https://www.leeds.ac.uk/chpccp/index.html. As previously advised, reasonable adjustments for interview candidates are discussed with shortlisted applicants prior to interview. Any access difficulties should be discussed with the clearing house at https://www.leeds.ac.uk/chpccp/Disability.html*

64. In all responses to the claimant following further communications from him to the Trust about The Course, the claimant has been referred back to the 1 December 2016 letter. For example, the last 'application' by the claimant for The Course, prior to the claim being submitted was on 1 November 2017 by email (pages 384-5). In that email, the claimant attached his 'application for employment' for the post of trainee clinical psychologist with the Trust. On 10 November 2017 the claimant was referred to its previous correspondence and in particular the letters dated 23 June 2017 and 1 December 2016, copies of which were attached. The letter of 23 June 2017 simply states:

> *In relation to your email dated 15 June 2017, the Trust has nothing to add at this stage to its previous correspondence with you in relation to this matter, in particular the letter dated 1 December 2016.*

65. There are a further nine examples referred to at paragraph 45 of Mr Moretto's skeleton argument in which the claimant was told that applications to The Course had to be made via Clearing House, during 2015, 2016 and 2017. Despite the

position being made clear on each such occasion, the claimant has never applied to The Course via the Clearing House.

66. On 12 March 2018 the claimant wrote to the Trust, referring to his application dated 1 November 2017, and asked what the dates for the interviews for The Course were and whether he was to be invited for interview. It appears that a response was not sent, although the position of the Trust has already been set out in numerous previous communications.

Conclusion on Issue (7)

67. I have found as a fact that the claimant has never applied through Clearing House to the Oxford CPP. Instead, the claimant has repeatedly tried to apply directly to the Trust. Despite being repeatedly told the correct way of applying – i.e. through the Clearing House like every other applicant nationally for a 'place' on a clinical psychology course – the claimant has continued to apply directly.

68. I would find it hard to better the submissions of Mr Morretto at paragraphs 58.1 to 58.3 of his skeleton argument on behalf of R1, and so repeat them here:

> *58.1 There is no reasonable prospect of the Claimant establishing that he was treated less favourably than anyone else. He was treated in exactly the same way as everyone else – he was asked to apply in the same way as everyone else – and was treated in the same way as anyone else who purported to apply outside of the proper process. There was no less favourable treatment than anyone else.*
>
> *58.2 Furthermore, there is no reasonable prospect of C establishing that he was subjected to detriment or unfavourable treatment for the purpose of any claim under EA 2010 or s43B ERA, or establishing conduct sufficient to give rise to harassment under s27 EA. C was told in writing to apply through the correct process, and how to do so. Indeed has been invited to do so at the right time when applications were open, but he has refused to do so. He cannot realistically argue that he was subject to a detriment, unfavourable treatment or harassment in being so told. The fact he never applied through the proper process in order to be considered for the course shows no detriment.*
>
> *58.3. Further, and in any event, there is no reasonable prospect of C establishing any discrimination on proscribed grounds. That is, there can be no realistic dispute that the reason R1 told him to apply through the proper process in order to be able to consider his application, and turned down applications outside of the proper process, was because C did not apply through the proper process – not because of any protected characteristic, because of anything arising from a disability, or for reasons related to any protected characteristic, or any other proscribed reason under the EA2010 or ERA 1996. All C needed to do to enable his application to be considered was to apply in time through the appropriate procedure like everyone else. He never did so.*

69. I agree with the above, and adopt them as my conclusions.

70. The only possible claim which gave me pause for thought was a reasonable adjustments claim. However, as noted above, although being advised repeatedly that he could ask the Clearing House to make reasonable adjustments, the claimant has refused to apply via the Clearing House and instead has applied directly to the Trust.

71. The contents of the application form attached to the March 2016 letter demonstrate that that claimant is capable of preparing one; as does all of the correspondence form the claimant to the parties and the tribunal. It is difficult to conceive of any substantial difficulties the claimant might have in completing an application via the Clearing House, whether online, or using a paper application (if the latter were agreed as a reasonable adjustment, having been reasonably requested by the claimant).

72. In relation to the claimant's refusal to submit an application via the Clearing House, at no point has the claimant explained why he is not able to submit an application via the Clearing House, because of any disability. He has not set out how the process puts him at a disadvantage as a result of any disability. He has not given any indication as to what adjustments he might require as a result of any such disadvantage. In such circumstances, it is difficult to conceive how a tribunal could conclude that R2 had any knowledge of substantial disadvantage. Nor has the claimant made a request for any auxiliary aid to be provided to assist with the application process, or for the provision of any auxiliary service. His claim form does not raise any such matters, and at no point since the claim was submitted has the claimant sought to provide any further information about a potential reasonable adjustments claim.

73. This case stands in marked contrast to *Mallon v Aecom Limited (UKEAT/0175/20/LA)*. In *Mallon*, the claimant had specifically requested that he be allowed to make an oral application to the respondent instead of a written application. In Dr Heal's case, he has simply refused to make an application by the correct process without at any stage having ever explained why he is not able to do so. At no point during these proceedings has the claimant set out the factual or legal basis of a reasonable adjustments claim. Had he participated in the hearing, he would have had the opportunity to do so.

74. I therefore conclude that a reasonable adjustments claim, if raised at all by the claimant, has no reasonable prospect of success.

75. The claimant's claims in relation to The Course are therefore struck out on the grounds that they have no reasonable prospect of success. It is not appropriate in the circumstances of this case, bearing in mind the history of the combined proceedings and the conclusions in relation to PH1, and the claimant's continued non-participation in the hearings to date, to order that the claim be amended or that a deposit be paid instead. The claimant's applications to The course were rejected because he did not, and has never, applied through the correct process. There is no basis in these circumstances on which any claim of discrimination can be established. Any residual claims against respondents R2 to R5 must also be struck out, for the reasons set out at the end of the conclusions section in relation to Issue (6) above.

76. In light of my conclusion in relation to issue (1) above, the claimant cannot pursue a whistleblowing claim against the Trust either. This is because he has never been an employee, and since the *2018 Regulations* came into force, he has not made an application to the Trust. Such claim therefore had no reasonable prospect of success. Even if he were to do so now, by applying directly to the Trust instead of via the Clearing House and then submitting a further claim form, any such claim would have no reasonable prospect of success because the reason for rejecting the application would be because the claimant is not applying through the correct process, and nothing to do with any alleged whistleblowing.

Issue (8) If the claimant was employed by the University between 1999 and 2004, but he has not been employed or applied for employment since then with the University, should the claims be struck out because they have no reasonable prospects of success?

Relevant law – Issue (8)

77. The relevant law is as stated above in relation to Issue (6).

78. In addition, there is an absolute bar on a litigant pursing a cause of action which is identical to one which has already been subject to a final judgment in earlier proceedings. A cause of action estoppel arises to prevent the same cause of action being re-litigated in later proceedings; see *Arnold and others v National Westminster Bank Plc (No. 1) [1991] 2 A.C. 93* at p. 104 – 5:

> *Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. In such a case the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be re-opened.*

Relevant facts – Issue (8)

79. The second respondent has not been able to establish the claimant's exact employment status. It is no longer able to locate any records. It did have an employment file for him but the contents of that file were destroyed, in line with the second respondent's normal data protection practices, after six years. The second respondent accepts that in the circumstances, any uncertainty should be resolved in favour of the claimant. It is therefore assumed for the purposes of this issue, that the claimant was employed in some capacity by the second respondent between 1999 and 2004.

80. Having made enquiries, the respondent is aware of two applications made by the claimant for employment with the second respondent since 2004. These are:

> *(a) an application in 2016 for the post of Research Assistant in Biomarkers for Parkinson's Disease in the Department of Clinical Neurosciences. The claimant was informed he had been unsuccessful on 9 August 2016;*
>
> *(b) an application in 2018 for the post of Research Assistant – Dementia Studies in the Department of Psychiatry. The claimant was informed he had been unsuccessful on 13 February 2018.*

81. No claim in relation to the 2016 application appears to have been made in this claim.

82. Potential claims in relation to the 2018 application were also raised in claim 'M', Case number 3306697/2018. This is apparent from a comparison of paragraphs 13.58, 13.86 and 13.91 of Claim 'O' (i.e. this claim) and Box 9.2 and paragraph 25 of the details of claim in claim 'M', which are helpfully summarised at paragraph 28 of Ms Beale's skeleton argument. The passages read as follows:

> (a) Claim 'O' - paragraph 13.58 (p. 102): "*C recently applied for employment as a Research Assistant within the Department of Psychiatry, University of Oxford, commencing in 2018. C has obtained copy of an application assessment form showing that the assessment of C's application for employment was falsified to*

deny C employment. The Head of the Department of Psychiatry has made false representations in response to initial complaint by C; and the University of Oxford has evaded provision of a formal complaints procedure; thus subjecting C to harassment, victimisation and demeaning and degrading treatment, and violating C's Human Rights."

(b) Paragraph 13.86 (p. 138): *"….Thus R2 had…caused C to be denied work as a Postdoctoral Research (or even as a Research Assistant) because C had made (and had been asked to make) protected disclosures about a former nominal supervisor, and because C has performed protected acts…*"

(c) Paragraph 13.91 (p. 140): "*May 2018: R2 is currently (continuing act) unlawful [sic] denying C alternative employment as a Research Assistant following a recently [sic] application for employment. C has obtained copy of an internal from [sic] showing the falsification of entries and malicious falsehoods on the form by employees of R2 to unlawfully deny C employment. R2 and the Head of the Department of Psychiatry (Professor John Geddes) are currently (continuing act) evading attending C's complaint and denying C provision of a formal complaints procedure. C previously worked as a Research Assistant on research jointly conducted by the Department of Psychiatry; and C assisted the Department of Psychiatry to salvage flawed research and publish research using an experimental paradigm designed by C. C has made protected disclosures about the falsification of research data collected by the Department of Psychiatry."*

83. These paragraphs repeat allegations previously made in "claim M":

(a) In box 9.2 (p. 991): *"[R2] has caused C to be denied an alternative career as a Postdoctoral BioMedical Researcher (from 2002) (continuing acts) and has repeatedly prevented C from obtaining even the lowest grade (Assistant) Research post within the University of Oxford (and elsewhere); including by falsifying employment forms to falsely allege C does not meet employment criteria for even the lowest grade employment post".*

(b) At paragraph 25 of the Details of Claim (p. 1012): "*In February 2018, C obtained documented evidence that following a recent job application, in 2018, [R2] falsified assessment documents in order to prevent C obtaining employment as a Research Assistant within the University of Oxford. [R2]'s continued refusal to provide references also caused C detriments. C applied to R2 for the post of Research Assistant within the Department of Psychiatry commencing in 2018 (the most junior research post; below the postdoctoral level of C; C having been previously employed as a Research Assistant between 1999 – 2004 effectively); C's application was rejected without interview. On 16/02/2018 the University of Oxford disclosed copy of a interview shortlisting form showing falsification of the assessment of C. The University has been evasive and obstructive in respect of process/documents and the Head of Department of Psychiatry (Professor John Geddes) has evaded attending to C's complaint and instead (2/03/2018) made false representations about the job and about C and about process causing C to be denied employment. The University ([R2]) has evaded providing C with a formal complaints process; evaded attending to requests for same. R1 has similarly denied C employment for every post or which C has applied.*"

84. By paragraphs 1 and 3 of the CMO dated 15 February 2021 in relation to, amongst other claims, claim 'M', the claimant was notified that the tribunal was considering striking out:

(a) the remaining Equality Act claims arising from C's employment, or application for employment, which came within Part 5 EqA 2010, if any, against R2 in "claim M";

(b) any whistleblowing claims under Part IVA ERA 1996 against R2,

and the claimant was required, if he objected to the proposed strike-out, to provide reasons in writing or request a hearing by 5 March 2021.

85. The claimant failed to provide reasons or request a hearing by 5 March 2021, and R2 therefore requested that the entirety of Claim M be struck out in its letter of 26 March 2021. By a Judgment dated 4 May 2021, the tribunal struck out the claims set out at paragraph 30 above as brought against R2 in "claim M".

86. As for any claims in relation to the graduate entry medicine programme, those were struck out following PH1, on the basis that applications to study on that degree were covered by Part 6 Equality Act 2010, not Part 5. The same reasoning applies to any such allegations raised in this claim.

Conclusion on issue (8)

87. The rejection of the application made in 2016 does not appear to be have been pleaded as an act of discrimination or whistleblowing detriment in this claim. Since no such claim has been made, and there is no application to amend the claim to include one, there is no claim to strike out. Any such claim (or application to amend to include it) would in any event, absent any continuing state of affairs (none being reasonably alleged in any arguments put before the Employment Tribunal in relation to these issues)) be issued 18 months late – see further, the conclusion on issue (3) below.

88. As for the 2018 application, the cause of action estoppel arises to prevent the same course of action being relitigated in later proceedings - see *Arnold and others* above. Such principles prevent the claimant pursuing a cause of action raised in the earlier claim, claim M, which has now been struck out in its entirety, in this claim, claim O. Therefore, insofar as this claim raises any claims in relation to the 2018 application for employment as a research assistant with R2, those claims are identical to the claims raised in claim M and subject to a course of action estoppel. They must therefore be struck out under rule 37(1)(a) as having no reasonable prospect of success. Further, they should be struck out because they are an abuse of process.

89. The same conclusion applies in relation to any allegation made in this claim, for entry to the graduate entry medicine programme. The Claimant might just be referring back to the previous claim form, rather than raising the same issues ibn this claim, but this is dealt with for the sake of completeness. As concluded following PH1, any claim in respect of an application for entry to the graduate entry medicine programme would need to be made to the County Court under Part 6, not to the Employment Tribunal under Part Equality Act 2010. To the extent raised, such claims are therefore struck out because they also have no reasonable prospects of success.

90. Again, it is not appropriate in the circumstances of this case, bearing in mind the history of the combined proceedings and the conclusions in relation to PH1, and the claimant's continued non-participation in the hearings to date, to order that the claim be amended or that a deposit be paid instead.

Issue (9) Were respondents 2 to 5 involved in any decisions to reject the claimant's applications (if any were properly made), between 2010 and 2018 to the Oxford CPP? If not, should any claims against them under section 109 to 112 Equality Act 2010 be struck out because they have no reasonable prospects of success?

Relevant law – Issue (9)

91. Section 109 Equality Act 2010 2010 provides:

> *(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.*
>
> *(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.*
>
> *(3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.*
>
> *(4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—*
>
> > *(a) from doing that thing, or*
> >
> > *(b) from doing anything of that description.*
>
> *(5) This section does not apply to offences under this Act (other than offences under Part 12 (disabled persons: transport)).*

92. Section 110 Equality Act 2010 provides:

> *(1) A person (A) contravenes this section if—*
>
> > *(a) A is an employee or agent,*
> >
> > *(b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and*
> >
> > *(c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).*
> >
> > *…*
>
> *(6) Part 9 (enforcement) applies to a contravention of this section by A as if it were the contravention mentioned in subsection (1)(c).*

93. In *Blackwood v Birmingham & Solihull Mental Health NHS Foundation Trust [2016] I.C.R. 903*, the court said at §17:

> *17. I should spell out the way that those provisions work in cases involving agency relationships. The primary provisions of the Act which proscribe discrimination, such as sections 55 or 91, do so by reference to the relationship of the putative discriminator with the victim—that is, what they proscribe is discrimination by, say, an employer against an employee or, relevantly to the present case, by the person providing the putative victim with an employment service or the university at which he or she is studying. If the person doing the act complained of is not in the relevant relationship they will not be directly caught by the relevant primary provision. However: (a) the effect of section 109(2) is that the principal of the person doing the actual act is treated as having done it himself, so that if he is in the relevant relationship, though the agent is not, he is brought within the scope of the primary provision*

and proceedings can be brought against him in the forum appropriate to that provision; (b) in such a case the agent who did the act complained of is also rendered liable, by section 110(1), on the back of the liability of the principal. Section 110(6) provides that any claim against the agent must be brought in the forum appropriate to the contravention by the principal."

94. Section 111 Equality Act 2010 2010 provides:

> *111 Instructing, causing or inducing contraventions*
>
> *(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 112(1) (a basic contravention).*
>
> *(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.*
>
> *(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.*
>
> *…..*
>
> *(7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.*
>
> *(8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.*
>
> *(9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating—*
>
> > *(a) in a case within subsection (5)(a), to the Part of this Act which, because of the relationship between A and B, A is in a position to contravene in relation to B;*
> >
> > *(b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.*

95. Section 112 Equality Act 2010 provides:

> *(1) A person (A) must not knowingly help another (B) to do anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 111 (a basic contravention).*
>
> *….*
>
> *(5) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating to the provision of this Act to which the basic contravention relates.*

96. See also the references in the conclusions section below to *Peninsula Business Service Ltd v Baker [2017] ICR 714* (paragraphs 77-79); and to *May & Baker Ltd (t/a Sanofi-Aventis Pharma v Okerage) [2010] IRLR 394, EAT* (see paragraphs 55-58).

Relevant facts – Issue (9)

97. The relevant findings of fact are as set out in relation to Issue (6) above.

Conclusion on Issue (9)

98. It follows from the findings of fact that none of R2 to R5 inclusive have been involved in any decisions to reject the claimant's applications, between 2010 and 2018 to the

Oxford CPP. Indeed, no proper application has been made at all. In relation to the claimant's direct applications to the first respondent, rather than through Clearing House, none of the other respondents have been involved in or influenced in any way the decision of the first respondent not to process those applications, the applications having not been properly made in the first case, in any event.

99. Therefore, any claims against them under sections 109 to 112 Equality Act 2010 have no reasonable prospects of success. In any event, to the extent that the substantive claims against the first and/or second respondent have been struck out because they have no reasonable prospect of success, any subsidiary claims against the remaining respondents under sections 109 to 112 of the Equality Act 2010 must necessarily fail. That follows both as a matter of logic but is also in accordance with the principles set out in *Peninsula Business Service Ltd v Baker [2017] ICR 714* [See paragraphs 77-79]. Further, it has been held that there is no liability under s. 112 EA 2010, unless there is an unlawful act for a respondent to aid: *May & Baker Ltd (t/a Sanofi-Aventis Pharma v Okerage) [2010] IRLR 394, EAT* [see paragraphs 55-58].

100. Again, it is not appropriate in the circumstances of this case, bearing in mind the history of the combined proceedings and the conclusions in relation to PH1, and the claimant's continued non-participation in the hearings to date, to order that the claim be amended or that a deposit be paid instead.

Issues (3) to (5) – Jurisdiction: Time

Issue (3) Should any remaining claims be dismissed as out of time?

Relevant law

101. Section 123 EA 2010 provides that:

(1) Subject to [section] … 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(6) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

102. Section 48(3)-(4) ERA contains the following provisions in respect of whistleblowing detriment claims:

(3) An employment tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of subsection (3)—

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer, a temporary work agency or a hirer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done.

(4A) Section … 207B (extension of time limits to facilitate conciliation before institution of proceedings) [applies] for the purposes of subsection (3)(a).

103. Section 140B(3) EA and section 207B(3) ERA provide:

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

104. These provisions have been considered in a number of cases. Again, I gratefully adopt the case law summary provide by Mr Moretto as follows.

105. Time limits are to be applied strictly in Employment Tribunal proceedings, and the onus is on a claimant to show to the tribunal that his is a case in which the time limit should, exceptionally, be disapplied (see *Robertson v Bexley Community Centre [2003] IRLR 434*, at para 25:

It also of importance to note that the time limits are exercised strictly in employment and industrial cases. When tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse. A tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.

106. As explained in *Caston v Lincolnshire Police [2010] IRLR 327*, para 26:

Plainly, the burden of persuading the ET to exercise its discretion to extend time is on the claimant (she, after all, is seeking the exercise of the discretion in her favour). Plainly, Schedule 3 of DDA does not give rise to a presumption in favour of extending time. In my judgment, Auld LJ's use of the word 'convince' in paragraph 25 of his judgment adds little.

107. As set out by the Court of Appeal in *Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23*, 15 January 2021:

The best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay".

108. In relation to the issue as to what constitutes a 'continuing state of affairs' (see *Hendricks v Metropolitan Police Commissioner [2003] IRLR 5*) as opposed to a one-off act, Mr Moretto refers to three court of Appeal authorities. First, *Tyagi v World Service [2001] IRLR 465*, at para 25, in which the Court of Appeal held that a refusal of employment is a one-off act, and an applicant for employment could not therefore argue that there continued to be a discriminatory policy or practice in place to which they were subject:

The way in which s.1 [of the RRA] bites on the actual treatment of an applicant or the actual application of a requirement or condition adverse to an applicant, in my judgment, means that it does not bite on a discriminatory practice which is not in action at all vis-à- vis a particular applicant if he is not employed by the employer at all so as to be denied access to the opportunities and benefits or otherwise treated disadvantageously.

109. Second, in *Cast v Croydon College [1998] IRLR 318*, para 34, the Court of Appeal held that:

… a decision may be an act of discrimination whether or not it is made on the same facts as before, providing it results from a further consideration of the matter and is not merely a reference back to an earlier decision.

110. Third, in *Okoro v Woodrow [2013] ICR 580*, para 37, the Court of Appeal confirmed that:

In the absence of a continuing relationship between the parties, there was no continuing state of affairs on which a complaint could be based.

Relevant facts

111. ACAS early conciliation took place between 10 December 2017 and 10 January 2018, a period of 31 days, not counting Day A, which is 10 December. The claimant's claim was issued, on his account, as set out in an email to the tribunal dated 31 May 2018, by hand on 4 May 2018. The respondents do not seek to argue otherwise and I am content to give the claimant the benefit of the doubt and find that, on the balance of probabilities, although the claim form is date stamped later (26 June 2018), it was actually lodged on 4 May 2018.

112. The relevant facts in relation to the 'applications' to The Course are set out in relation to issues (7) and (8) above. The claimant has not provided any evidence in relation to the time limit issue.

Conclusion on Issue (3)

113. If I am wrong about any of the conclusions on Issues (1), (2) and (6) to (9) above, I conclude, for the following reasons, that in any event the claims were not submitted in time and that as a result, the tribunal does not have jurisdiction to hear them.

Claims in relation to The Course

114. The last specific application for The Course upon which the claimant relies in his Details of Claim at para 3 was on 1 November 2017, to start in September 2018. The first respondent responded to that by 10 November 2017 referring the claimant back to previous responses telling him the correct means of applying, namely

through the Clearing House. If time runs from the date of rejection of that application, the normal three-month time limit would have expired on 9 February 2018, which is extended by the 31 days Early Conciliation period to 12 March 2018. The claim was not submitted until 4 May 2018, 7 weeks and 4 days later.

115. The claimant has not presented any evidence to explain why his claim was presented late. There is no evidence before me as to why it was not reasonably practicable for the claimant to submit his claims in time. In the absence of any evidence or argument from the claimant to the contrary, there is no other conclusion I could reasonably come to save that it would have been reasonably practicable for the claimant to present the claim in time.

116. Further, there is no evidence upon which it would be reasonable for me to conclude that it is just and equitable to extend time. Even though the latter test is more forgiving than the reasonably practicable test, time limits are still to be exercised strictly, as the authorities make clear. The burden of persuading a tribunal to exercise its discretion to extend time is on the claimant. Yet the claimant has not sought to persuade me at all in relation to time limits, by way of evidence and/or legal argument. He has simply ignored this issue entirely. I conclude therefore that it would not be just and equitable to extend time in relation to any discrimination claims.

117. The respondents raise a further argument that in any event, relying on the Court of Appeal's decisions in *Tyagi*, *Cast* and *Okoro*, the claims are even further out of time. Mr Moretto argues that since at least March 2016, the Trust has been relying on its earlier responses. On the basis of the facts set out above, I conclude that since the first respondent has been relying on its previous decisions since 1 December 2016, time runs from that date. I have already concluded that if the claims were submitted seven and a half weeks late, time should not be extended in relation to the whistleblowing or discrimination claims. I therefore have no hesitation in finding that time should not be extended when in fact the claim form has been submitted over 14 months late.

118. Finally, to the extent that the claimant had sought to argue that the 12 March 2018 email to the first respondent was a fresh application, giving rise to a fresh time limit, again I would have rejected that argument, relying on *Tyagi* etc.

119. These claims were therefore submitted out of time, the tribunal has no jurisdiction to hear them, and they are struck out.

120. Further, whilst the claimant insists upon applying directly to the first respondent, and the Trust continues to rely on its previous decisions, there will be no fresh decision on which the claimant could rely, in submitting a further claim. Such a claim would have no reasonable prospect of success and it is to be hoped that the claimant will refrain from submitting any such claims. Even if he does, the claim will be out of time and would fall to be dismissed on that ground alone.

Applications for employment to the second respondent

121. In relation to the second respondent, and the applications for employment in 2016 and 2018, I conclude as follows. First, in relation to the 2016 application, rejection of that application having been communicated to the claimant on 9 August 2016, then even if that allegation has been raised in this claim (which appears doubtful) the claim has been submitted 18 months late. The claimant has not provided any evidence as to (a) why it would be just and equitable to extend time, or (2) of any continuing state of affairs, or (3) why it was not reasonably practicable to submit the

claim in time. Therefore, applying the same reasoning set out above, I find that the claim form was not submitted within time, the tribunal has no jurisdiction to hear the claim, and the claim is therefore struck out.

122. In relation to the 2018 application to the second respondent, the decision to reject the application having been communicated by email dated 13 February 2018, that claim has been submitted in time. Had it not been struck out on other grounds, I would have found that it had been submitted in time.

Issue (4) In the alternative, should the claim or part of it be struck out as having, on time grounds, no reasonable prospect of success?

Issue (5) In the further alternative, should the claim or part of it be made the subject of a deposit order as having, on time grounds, little reasonable prospect of success?

123. Since I have been able to arrive at clear conclusions in relation to issue (3), these issues do not need to be determined.

Issue (10) – Deposit Order

124. Rule 39 Employment Tribunal Rules of Procedure 2013 deals with Deposit Orders but in light of the conclusions above, it is not necessary to set out the relevant legal principles. Due to the conclusions in relation to issues (6) to (9) above, there is no need to determine this issue.

Issue (11) – Claims Totally without Merit

Relevant Law

The Civil Procedure Rules 1998 – Civil Restraint Orders

125. The Introduction to CPR PD 3C states:

> *Introduction*
>
> *1 This practice direction applies where the court is considering whether to make –*
>
> *(a) a limited civil restraint order;*
> *(b) an extended civil restraint order; or*
> *(c) a general civil restraint order,*
> *against a party who has issued claims or made applications which are totally without merit.*
>
> *Rules 3.3(7), 3.4(6) and 23.12 provide that where a statement of case or application is struck out or dismissed and is totally without merit, the court order must specify that fact and the court must consider whether to make a civil restraint order. Rule 52.20(6) makes similar provision where the appeal court refuses an application for permission to appeal, strikes out an appellant's notice or dismisses an appeal.*

126. The White Book commentary relating to CPR rule 3.11 states:

> *This rule was added to Pt 3 by the Civil Procedure (Amendment No.2) Rules 2004 (SI 2004/2072) and came into effect on 1 October 2004. The rule puts on to a statutory basis the court's inherent jurisdiction to prevent abuse of its process, as explained by the Court of Appeal in Bhamjee v Forsdick (Practice Note) [2003] EWCA Civ 1113; [2004] 1 W.L.R. 88, CA. Rule 2.3 (Interpretation) states that "civil restraint order" means an order restraining a party (a) from making any further applications in current proceedings (a "limited civil restraint order" [or "limited CRO"]), (b) from issuing any further*

applications or making certain applications in specified courts (an "extended civil restraint order" [or "ECRO"]), or (c) from issuing any claim or making any application in specified courts (a "general civil restraint order" [or "GCRO"]).

The underlying feature of all cases in which a CRO is made is that the person restrained has repeatedly made applications or issued claims which are totally without merit. In this context the term "totally without merit" refers to an application or claim in respect of which no rational argument was or could have been raised (R. (Wasif) v Secretary of State for the Home Department [2016] EWCA Civ 82; [2016] 1 W.L.R. 2793, CA). A claim or application may be held to be "totally without merit" even if it was not abusive, made in bad faith, or supported by false evidence or documents. However, evidence of such misconduct will reinforce the case for a civil restraint order (Sartipy v Tigris Industries Inc [2019] EWCA Civ 225 at [27]).

127. Civil Restraint Orders (CROs) can be made in relation to Employment Tribunal proceedings. In *Nursing and Midwifery Council and ano v Harrold [2016] EWHC 1078 (QB)* Laing J stated at §139:

> *Finally, in their oral arguments, both sides recognised that, now that this court has recognised that the power to make CROs under the inherent jurisdiction extends to orders to protect the process of the ET from abuse, it would be desirable for ETs, when they make decisions in weak claims, expressly to consider, and to make a finding on, the question whether the claim (or application) is TWM. I echo that, and hope that ETs will take notice of this suggestion. It will greatly help to have the views of the ET on the TWM issue in any case in which a respondent to ET claims applies for a CRO in this court. It may also be that those who draft the rules governing the procedures in the ET and in the EAT may wish to give some thought to this topic.*

128. Those remarks have been reiterated recently by HH Stacey J In *London Underground Ltd V Roger Mighton [2020] EWHC 3099 (QB) QBD 18/11/2020*.

129. In *Vaidya v General Medical Council [2017] EWHC 922 (Admin)*, McGowan J held at §9:

> *One of the modifications is that Dr Vaidya has started to bring proceedings in the ET. The GMC seeks to extend the order to cover such tribunals. That is not resisted by Dr Vaidya who concedes that if the extension is granted it should cover the tribunals also. There is authority for such an order in NMC v Harrold [2015] EWHC 2254 (QB). It must be right that such protection be afforded to those who may suffer from such persistent and vexatious claims in the tribunals as well as the courts. Any distinction would be artificial and unfair.*

130. The meaning of 'totally without merit' was considered in the case of *R. (Grace) v Secretary of State for the Home Department [2014] 1 W.L.R. 3432, CA*, in which Maurice Kay LJ held at §13:

> *I return to the purpose of CPR r 54.12(7). It is not simply the prevention of repetitive applications or the control of abusive or vexatious litigants. It is to confront the fact, for such it is, that the exponential growth in judicial review applications in recent years has given rise to a significant number of hopeless applications which cause trouble to public authorities, who have to acknowledge service and file written grounds of resistance prior to the first judicial consideration of the application, and place an unjustified burden on*

> *the resources of the Administrative Court and the Upper Tribunal. Hopeless cases are not always, or even usually, the playthings of the serially vexatious. In my judgment, it would defeat the purpose of CPR r 54.12(7) if totally without merit were to be given the limited reach for which Mr Malik contends. It would not produce the benefits to public authorities, the Administrative Court or its other users which it was intended to produce. I have no doubt that in this context totally without merit means no more and no less than "bound to fail". There is no reason to suppose that the judge did not apply that test in that way or that he applied it erroneously in the present case.*

131. Lord Dyson MR held at §19:

> *The phrase "totally without merit" is now firmly embedded in our Civil Procedure Rules. It is perhaps unfortunate that the word "merit" is included in the phrase. We are familiar with the notion of a claim being meritorious or having merit, connoting the idea that the claim is just or "is in accordance with the merits", but the word "merit" in the phrase "totally without merit" does not have this meaning. Although the court always seeks to do justice, the purpose of "totally without merit" is to enable the court to root out claims which are bound to fail, and, for the reasons given by Maurice Kay LJ, I would construe that phrase as meaning "bound to fail".*

Relevant facts

132. I refer to all of the facts found above in relation to the other issues.

Conclusion on Issue (11)

133. I conclude that the claimant's claims against all of the respondents are totally without merit. They were bound to fail, because the claimant has never made a valid application in relation to The Course. Further, any reasonable adjustments claim pursuant to the Equality Act 2010 was bound to fail because the claimant has never set out, or sought to argue, that he suffers any substantial disadvantage, due to any disability, as a result of an application to The Course having to be made via the Clearing House. Yet further, to the extent to which the claims against the first, third, fourth and fifth respondents raised whistleblowing claims against them, those claims were bound to fail because those respondents have never employed the claimant. Yet further still, they were bound to fail because, save for one claim in respect of the 2018 application to the second respondent, they were not submitted in time, and the claimant has made no effort to present any evidence, or advance any legal argument, in relation to time limits.

_____

Employment Judge A James

13 July 2021

Sent to the parties on:

13/07/2021.

For the Tribunal

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ANNEX A - ISSUES TO BE DETERMINED AT PH3

A. JURISDICTION

Employment status

(1) Was the claimant employed by Oxford NHS between October 1999 and April 2004 for the purposes of the whistleblowing provisions of the ERA 1996 or the Equality Act 2010?

(2) If so, has liability in relation to that employment, if any, been transferred or novated to Oxford Health NHS Foundation Trust?

Time limits

(3) Should any remaining claims be dismissed as out of time? Determining that issue will involve a consideration of sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA"); and sections 48(3)(a) & (b) of the Employment Rights Act 1996 ("ERA"); whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether it was not reasonably practicable for a complaint to be presented within the primary time limit; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred.

(4) In the alternative, should the claim or part of it be struck out as having, on time grounds, no reasonable prospect of success?

(5) In the further alternative, should the claim or part of it be made the subject of a deposit order as having, on time grounds, little reasonable prospect of success?

B. STRIKE OUT APPLICATIONS – RULE 37

(6) In relation to the University of Oxford, HMC, and the NHS Trust, have any of the respondents ever acted as an employment service provider in relation to the Oxford CPP? If not, should any claims under the Equality Act section 55 be struck out as having no reasonable prospect of success?

(7) If the claimant did not apply through Clearing House to the Oxford CPP, should his claims be struck out on the grounds that they have no reasonable prospect of success?

(8) If the claimant was employed by the University between 1999 and 2004, but he has not been employed or applied for employment since then with the University, should the claims be struck out because they have no reasonable prospects of success?

(9) Were respondents 2 to 5 involved in any decisions to reject the claimant's applications (if any were properly made), between 2010 and 2018 to the Oxford CPP? If not, should any claims against them under sections 109 to 112 Equality Act 2010 be struck out because they have no reasonable prospects of success?

C. DEPOSIT ORDER APPLICATIONS

(10) In relation to any claims the tribunal does have jurisdiction in relation to, and which have not been struck out, should a deposit order be made, and if so in what amount, on the basis that any remaining claims have little reasonable prospect of success?

D. TOTALLY WITHOUT MERIT CLAIMS

(11) Were any of the claimant's claims totally without merit and if so which ones?

ANNEX B – THE REMOTE HEARING ISSUE

Paragraphs 18) to 22) of the Case Management Summary in relation to CPH2 read as follows.

18) The respondents agreed that the hearing should take place as a remote hearing. No good reasons have been put forward by the claimant why it should take place in person so far. The clamant did send an email to the tribunal on 4 February 2021 which states, on the CVP issue:

The Employment Tribunal Services does not have legal authority/jurisdiction to requisition private property for the purposes of extending the physical bounds of the Employment Tribunal Service. Private property (in this case not even owned by the Claimant) cannot be legally requisitioned by the Employment Tribunal Services for the purposes of conducting legal proceedings required to be conducted within the Employment Tribunal Service.

Contrary to the belated and spurious assertions made by some individuals, the use of CVP was not put in place for the benefit of the Claimant; and not put in place to meet the needs of the Claimant; and does not meet the needs of the Claimant as a litigant in person; and no part of the proceedings conducted by London Central Employment Tribunal since 17/12/2018 have met the needs of the Claimant.

London Central Employment Tribunal and the EAT have and continue to fail to comply with the Directive issued by the President of the Employment Tribunals (Judge Doyle) to the National User Group; directing that video hearings must not be used for anything other than the briefest of case management; not for complex cases, nor used to hear evidence, nor used for judgements; and the use of video must not ever result in Claimants being denied access to justice and open justice. LCET and EAT have and continue to wilfully fail to comply with Judge Doyle's Directive to the National User Group.

The National User Group correspondence proves that the use of CVP was put in place due to systemic failures of the Employment Tribunal Service to make adequate provision of physical buildings/rooms for the conducting of legal proceedings. Thus, the latest/belated allegation that CVP is used to meet the needs of the Claimant is patently spurious.

The Employment Tribunal Service misconduct and use of CVP is wholly and persistently prejudicial to the Claimant. The EAT continues to evade attending to an Appeal; and has made false representations about the use of and effects of the use of CVP by HMCTS.

19) The suggestion that by holding hearings remotely, the tribunal is "requisitioning private property" is fanciful. It warrants no further comment.

20) The reference to the National User Group is misplaced and very much outdated. Remote hearings have been used regularly by employment tribunals, in line with other courts and tribunals nationally, since the pandemic began, in order to maintain access to justice. The claimant is directed to the guidance given by President Clarke in September 2020 on Remote Hearings, which is available at these links 14-Sept-2020-SPT-ET-EW-PD-Remote-Hearings-and-Open-Justice.pdf (judiciary.uk) ; and 14-Sept-2020-SPT-ET-EW-PG-Remote-and-In-Person-Hearings-1.pdf

(judiciary.uk) . It is that Guidance which employment tribunals are taking into account, not National Tribunal User Group minutes.

21) The claimant has been asked on a number of previous occasions to set out any adjustments he requires, in relation to the proposed hearings but has failed to do so. He has been offered the opportunity for a 'dry-run', with one of the dedicated staff dealing with remote hearings. He has failed to take up those opportunities. The offer remains open. If the claimant wants to take up the offer, he should email the tribunal.

22) Further, if there are any reasonable adjustments the clamant requires, in relation to the proposed hearings, the claimant should make representations to the tribunal, bearing in mind the up to date guidance on remote hearings referred to above. The claimant has previously been directed to write to the tribunal, setting out any adjustments he requires. Again, he has declined the opportunity to do so.