EMPLOYMENT TRIBUNALS

Claimant: **Mr Daniel Armstrong**

Respondent: **General Medical Council**

Heard at: **Manchester Employment Tribunals**

On: **16 December 2024**

Before: **Employment Judge Tobin (sitting alone)**

Appearances
For the claimant: Did not attend/participate
For the respondent: Ms L Amartey (counsel)

JUDGMENT

The claimant's claims are struck out pursuant to s120(7) Equality Act 2010 and/or Rule 37(1)(a) of The Employment Tribunals Rules of Procedure, Schedule 1 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.

REASONS

The hearing

1. This has been a remote hearing. The form of remote hearing was by video through HM Courts & Tribunal Service Cloud Video Platform ("CVP"). The parties were intended to be remote (i.e. not physically at the hearing centre). A face-to-face hearing was not held because all the relevant matters could be determined at this video hearing.

2. The hearing was ordered by Employment Judge Holmes on 11 February 2024. The purpose of the hearing was to consider striking out the claimant's claim under rule 37(1)(a) of the Employment Tribunal Rules of Procedure or making deposit

orders pursuant to rule 39. The original hearing was postponed, and this hearing was set by Judge Batten on 30 June 2024.

3. The claimant did not attend the hearing.

Proceeding without the claimant

4. I checked the claimant's contact details. I am satisfied that the claimant was sent the original notice of hearing, the postponement and rescheduled notice and the CVP joining instructions to his correct email address. In addition, Ms Amartey told me (which I believe) that the respondent wrote to the claimant on 5 December 2023 about the preparation for this hearing, The respondent then sent a hearing bundle and, again, on 9 December 2024 the respondent forwarded to the claimant Ms Amartey's skeleton argument.

5. We delayed the start of this hearing while the Employment Tribunal clerk telephoned the claimant. The claimant did not answer his mobile phone, and the clerk left a message. The hearting lasted approximately 30 minutes, during which the claimant made no attempt to join.

6. The claimant had not requested that this hearing be adjourned. I could see no reason why this hearing should not proceed because if I were to adjourn the hearing then we would likely face the claimant's non-attendance in any future hearing. I determined that the claimant was aware, or should have been aware, of this hearing as there were numerous contacts from both the Employment Tribunal and the respondent's solicitors about today's hearing. I determined that the claimant had voluntarily absented himself from this hearing. I determined that it was within the overriding objective of rule 2 to press on with this case and proceed without the claimant's attendance.

The case

7. The claimant said on his Claim Form that he was a doctor since 1 June 2004. The details of complaint are brief, he complained that he was persecuted for expressing his religious beliefs in respect of statins and covid vaccinations. He contended the GMC launched an investigation which restricted his practice, and he lost work.

8. The respondent clarified that it acted as the claimant's qualifications body under s54 Equality Act ("EqA"). Response denied discrimination and contended that the claim did not have reasonable prospects of success.

Striking out the claimant's claim

Jurisdiction: s120(7) EqA

9. The claimant's complaint related to the actions of the GMC in fitness to practise proceedings against the claimant under Part V of the Medical Act 1983. This process began with the GMC investigation and concluded with the case being referred to the Medical Practitioners Tribunal ('MPT'). The MPT proceedings in respect of the claimant concluded on 28 November 2024. The claimant's name

was erased from the Medical Register and he was made subject to an immediate order of suspension during the appeal period.

10. An appeal against the actions of the GMC in relation to the claimant's medical registration lies in the High Court. S40 Medical Act 1983 states that the "relevant court" has the power to terminate a direction of erasure. S40(5) states that "relevant court" is the High Court, see *General Medical Council & Ors v Michalak [2017] UKSC 71* (paragraphs 11 and 17). Given this right of appeal, the Employment Tribunal's jurisdiction to hear the claimant's complaint is excluded by s120(7) EqA. The claimant has 28 days to appeal the MPT's determination and he was still in time to appeal when this preliminary hearing took place.

Merits: rule 47(1)(a)

11. The claimant's claim is one of direct religious discrimination arising from the GMC's decision to pursue fitness to practice proceedings (including the commencing investigation) against the claimant. He relies upon a named actual comparator, Dr Malhotra.

12. It is not clear what was the claimant religious belief, and he did not attend the hearing to clarify this. The claimant refers to the Bible and the importance of Jesus, so I deduce that he is a Christian. It is not clear if he is Anglican, Roman Catholic or any other denomination. Dr Malhora's comparison, as explained by Ms Amartey, centred on what the claimant contends is more favourable treatment (i.e. not been subject to fitness to practise proceeding) for someone sharing the claimant's belief. If that is the case, then the protected characteristics of religion and/or belief cannot be the basis of the difference of treatment and the case is misconceived.

13. Even if we set aside the claimant's difficulty in respect of an appropriate comparator, the claim appears fundamentally weak.

14. In any complaint of direct discrimination, the reason for the treatment complained of will be determinative of the issue of whether there has been any unlawful discrimination. It is for claimant to adduce primary evidence from which the necessary inferences of discrimination may be drawn. The claimant advances nothing to indicate, that the acts complained of occurred because of his religion and/or belief.

15. The leading cases on s136 EqA are the Court of Appeal cases of *Igen Ltd v Wong* [2005] EWCA Civ 142 and *Madarassy v Nomura international Plc [2007] IRLR 246.* The burden of proof initially rests with the claimant. The claimant must prove on the balance of probabilities facts from which the Tribunal *could* conclude, absent adequate explanation, that the respondent has committed an act of discrimination. Unless the clamant can do that, the claim will fail. Only when the claimant establishes a prima facie case, does the burden move to the respondent to show it did not treat the claimant less favourably on prohibited grounds (i.e. religion and /or belief).

16. The following cases demonstrate what is required to pass the burden of proof. In *Madarassy*, the Court of Appeal held that the burden of proof does not shift to the

respondent on the claimant establishing the possibility of discrimination; something more is needed (see paragraphs 54-56).

17. In *Royal Mail Group v Efobi [2021] UKSC 33* the Supreme Court confirmed that at the first stage of the *Igen* test the Tribunal should consider all of the evidence, not merely the evidence of the claimant. Furthermore, the Court noted that applying the basic rules of evidence, in civil cases (including employment disputes), the general rule is that a Tribunal may only find that "there are facts" for the purposes of s136 EqA if the Tribunal concludes that it is more likely than not that the relevant assertions are true.

18. In, *Bahl v Law Society [2003] IRLR 640*, EAT at para 100, (approved by the Court of Appeal), the Employment Appeals Tribunal ("EAT") held that showing a respondent's conduct is unreasonable or unfair together with a difference in status (or the absence of a protected act), is not by itself, enough to trigger the transfer of the burden of proof. Similarly, in *Chandhok v Tirkey* [2015] IRLR 195 at paragraph 20, the EAT held that where *"on the case as pleaded, there is really no more than an assertion of a difference of treatment and a difference of protected characteristic"* the case may be susceptible to being struck out.

19. The claimant's claim amounts to nothing more than a bare assertion of discrimination without any pleaded basis for a conclusion that the acts complained of relate to his religion or belief. In particular, and to the contrary, the respondent's decision to pursue an investigation against the claimant arises from the respondent's statutory obligation to do so in circumstances where allegations of misconduct are made pursuant to Rule 4 of the GMC (Fitness to Practise) Rules 2004 and s35C(2)(a) Medical Act 1983.

20. The respondent contend that the claimant's conduct breached the respondent's guidance on good medical practice ('GMP') [see hearing bundle page 107, paragraph 25] and Doctor's use of social media Guidance. The claimant seemed to anticipate action from the GMC, having understood his actions breached the applicable Rules/Guidance. Indeed, in the introduction to the video at the heart of this investigation, the claimant said *"I am using my doctor title, my registration under the GMC in the UK to bring you this message about what the truth is but also highlight the deception. So, yes, I am pressing self-destruct on my career to bring you this, which will be my delight"* [hearing bundle p72].

21. I accept the respondent's assertion that if the claims were to proceed, the claimant would be being permitted to bring complaints under s13 EqA without more than a bare assertion to demonstrate the causative links required to establish liability.

22. I determine that there is no reasonable prospect of success for this claim. I therefore and inevitably conclude that I should use my discretion to strike out this claim.

Employment Judge Tobin

Date: 16 December 2024

JUDGMENT SENT TO THE PARTIES ON
23 December 2024

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