Neutral Citation Number: [2022] EAT 35

Case No: EA-2021-000468-LA

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 25 February 2022

Before :

THE HONOURABLE MRS JUSTICE EADY DBE, PRESIDENT

- -

Between :

HER MAJESTY'S ATTORNEY GENERAL **Applicant**

- and –

MR DAVID TAHERI **Respondent**

- -
- -

Mr Richard Boyle of counsel (instructed by Government Legal Department) for the **Applicant**
Mr David Taheri, the **Respondent**, in person

Hearing date: 3 February 2022

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JUDGMENT

SUMMARY

PRACTICE AND PROCEDURE *– restrictions of proceedings order/vexatious litigant –* ***section 33*** *of the Employment Tribunals Act 1996*

The Respondent had made over 40 claims in the Employment Tribunal over a period of some ten years, all relating to unsuccessful applications for employment. Many of the claims had been withdrawn before they could be determined on their merits, sometimes this was after applications had been made to strike out/for a deposit order, in other cases it was said that the claim had been settled, although the terms of any such settlements were not known. Four claims had been struck out as having no reasonable prospect of success and/or as being vexatious. In other cases, ETs had made deposit orders and the claims had been struck out when the Respondent failed to make the requisite payment. Of the two cases that had proceeded to trial, both had been dismissed, with orders of costs being made against the Respondent. A significant number of claims had been pursued and/or conducted vexatiously, with the Respondent making threats of adverse publicity or regulatory referrals against the legal professionals acting for the other party; more generally, there was evidence to suggest that the Respondent had used the ET process to put pressure on would-be employers to enter into low value settlements.

The material demonstrated that the conditions laid down by section 33 **Employment Tribunals Act 1996** were made out and that it was appropriate to make an RPO of indefinite duration in this case. Application allowed.

The Honourable Mrs Justice Eady DBE, President:

Introduction

1. This is my Judgment on the Attorney General's application for a restriction of proceedings order ("RPO"), made pursuant to section 33 of the **Employment Tribunals Act 1996** ("**ETA**"). The Applicant asks that the Employment Appeal Tribunal ("EAT") makes an RPO of indefinite duration against the Respondent, on the basis that he has habitually and persistently, and without reasonable grounds, instituted vexatious proceedings before the Employment Tribunal ("ET"). The application is supported by an affidavit sworn by Dennis Adjei-Sarpong, an Executive Officer within the Government Legal Department, who exhibits a schedule (drawn up by ET staff) summarising 44 ET claims brought by the Respondent in the period 2012-2020, together with a bundle of documents drawn from various ET proceedings.

2. The application is resisted by the Respondent who says it is vexatious and an attempt to violate his rights under Article 6 of the **European Convention on Human Rights** ("**ECHR**") and under the **Equality Act 2010** ("**EqA**"). In support of his case, the Respondent lodged a document entitled "*Affidavit of Mr David Taheri*"; this document does not comply with the requirements for an affidavit, but, given the Respondent's current health and financial issues, by Order of 26 July 2021, the EAT Registrar dispensed with the requirement to serve an affidavit for the purposes of this hearing, permitting the Respondent to rely on the document served as a witness statement in substitution.

3. At the Respondent's request, the hearing was conducted remotely, by MS Teams. This enabled the Respondent to fully participate in the hearing, notwithstanding his health issues and the financial difficulties he has said he is experiencing. The Applicant agreed to the EAT adopting this course and the hearing proceeded without any issues of

connectivity or audibility. Mindful of the Respondent's health difficulties, I also made clear that we would take breaks as and when he required (which we did). These various adjustments to the EAT's normal procedures accorded with the overriding objective and the interests of justice more generally. Although the hearing thus took place by way of video, it remained a public proceeding and the mode of hearing, and means of access, were made clear in the cause list, thus ensuring the principle of open justice.

The Legal Framework

4. By section 33 of the **ETA** it is provided:

> **"If, on an application made by the Attorney General … under this section, the Appeal Tribunal is satisfied that a person has habitually and persistently and without any reasonable ground –**
>
> **(a) instituted vexatious proceedings, whether before the Certification Officer, in an employment tribunal or before the Appeal Tribunal, and whether against the same person or against different persons, or**
>
> **(b) made vexatious applications in any proceedings, whether before the Certification Officer, in an employment tribunal or before the Appeal Tribunal,**
>
> **the Appeal Tribunal may, after hearing the person or giving him an opportunity of being heard, make a restriction of proceedings order."**

5. Thus, as a Judge of the EAT, I can only make an RPO where I am satisfied that the Respondent, has: (1) habitually and persistently, and (2) without any reasonable ground, (3) instituted vexatious proceedings or made vexatious applications in any proceedings, whether in an ET or the EAT, and whether against the same person or different persons. If those conditions are not met, no order can be made. If the conditions are met, I have a discretion whether to make an order, I am not obliged to do so.

6. In **Attorney General v Barker** [2000] 2 FCR 1, [2000] 1 FLR 759, Lord Bingham CJ described the "*essential vice of habitual and persistent litigation*" as being:

> "**22. … keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop**. "

There must, therefore, be an element of repetition, albeit that need not be over a long period (see per Lord Bingham in **Barker**, at paragraph 23).

7. Mr Barker's vexatious litigation, pursued without reasonable ground, had only persisted for a three-month period and the Attorney General's application was ultimately refused on the basis that it had not been shown that this had the necessary quality of repetition (although Lord Bingham also made clear that he would have exercised his discretion against making the order sought in that case). As the court was prepared to accept in **Barker**, there may be circumstances in which the passage of time since the last litigious step was taken could give rise to an inference that it is unlikely that the person concerned will commence further proceedings, but that will, inevitably, depend on the particular facts of the case. In any application under section 33 **ETA**, it will be for the EAT to determine whether that is the appropriate inference to draw from a break in vexatious litigation, which has otherwise been pursued habitually and persistently and without reasonable ground (and see **Attorney General v Wheen** [2001] IRLR 91, CA, at paragraphs 12-21).

8. In **Barker**, Lord Bingham (concerned with an application made against the background of family law proceedings) envisaged the persistent and habitual litigious activity as essentially being pursued against the same Defendant. In **Attorney General v Groves** UKEAT/0162/14, Simler J (as she then was) noted that the position was often rather different in the context of ET litigation, adopting (at paragraph 6 of her Judgment) the observations of the EAT (Rimer J, as he then was, presiding) in **Attorney General v Roberts** UKEAT/0058/05, as follows:

> **"6. Most cases of allegedly vexatious litigants, as Lord Bingham there points out, concern repeated claims or applications in respect of one particular matter by which the litigant has become obsessed,**

> **commonly involving the same Defendant or Defendants. In the employment law field this is a less common feature. Instead, what is commonly seen is the making of repeated applications of a like type to employment tribunals, usually against different Respondents but founded on the like basis."**

9. Considering the question whether there had been an absence of "*any reasonable ground*", in **Barker** that condition was held to have been met as:

> **"20. All the proceedings have been struck out; none has gone to trial; none has been settled. Leave to appeal … was refused. In truth, none of these actions could have succeeded."**

10. As for the identification of a vexatious proceeding, this was described by Lord Bingham in **Barker** in the following terms:

> **"'Vexatious' is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law . . . whatever the intention of the proceeding may be, its effect is to subject the Defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the Claimant; and that it involves . . . use of the court process . . . in a way which is significantly different from the ordinary and proper use of the court process."**

11. In determining whether proceedings are vexatious, it is not the function of the EAT to look behind conclusions reached in earlier judicial decisions of the ET in the underlying proceedings. As the Court of Appeal observed at paragraph 24 of **Wheen**, if an ET's finding that the proceedings were vexatious had been thought to be erroneous the proper course would have been for the Respondent to have pursued an appeal; absent such a challenge:

> **"… the decision must stand and is capable of forming the basis for the court being satisfied upon an application [under section 33] that [the Respondent] had habitually and persistently and without any reasonable ground acted [vexatiously] …"**

12. Moreover, the fact that the Respondent did not continue to pursue proceedings in certain circumstances (for example after a deposit order had been made) does not mean the vexatious quality of those proceedings was then removed; in this context, the real vice is

the launching of proceedings that never had any reasonable prospect of success (see **Wheen**, paragraph 29).

13. Were I to be satisfied that the Respondent had (as the Applicant contends) instituted vexatious proceedings before the ET habitually and persistently and without any reasonable ground, the conditions laid down under section 33 **ETA** would have been met such as to engage the EAT's statutory power to make an RPO. Even then, however, I retain a discretion not to make the order. As Lord Bingham noted, at paragraph 2 of **Barker**:

> **"… the court has a discretion to make such an order, but it is not obliged to do so. Whether … the court will exercise its discretion to make an order, will depend on the court's assessment of where the balance of justice lies, taking account on the one hand of a citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims. It is clear … that the making of an order operates not as an absolute bar to the bringing of further proceedings but as a filter."**

14. The Respondent complains that an RPO would interfere with his rights under Article 6 of the **ECHR** and under the **EqA**. As the Court of Appeal observed, however, in **Wheen**, the right of access to the court provided for by Article 6 is not an absolute right:

> **"38. … A balance has to be struck between the right of the citizen to use the courts and the rights of others and the courts not to be troubled with wholly unmeritorious claims. The administration of justice has to be taken into account."**

15. Thus, in exercising the discretion afforded under section 33 **ETA**, I should bear in mind the right of an individual to pursue claims before the ET but, alive to the fact that an RPO acts as a filter rather than a barrier, I should take account of the interests of the public in being protected against abusive claims and the need for ETs not to be troubled with wholly unmeritorious proceedings.

The Application

16. It is the Applicant's case that the Respondent has a *modus operandi* whereby he applies for a job and, once he is refused, brings a claim against the putative employer on the basis of age, race and/or disability discrimination. It is said that the Respondent sets out limited or no basis for his accusations, values the claim for thousands of pounds, but then seeks a settlement of a few hundred pounds, and frequently makes threats of adverse publicity or regulatory referral. As far as the Applicant is aware, none of the Respondent's claims have been successful at a final hearing.

17. The Applicant points to the fact that a number of claims brought by the Respondent had been found by the ET to have been vexatious and others had been struck out or withdrawn in advance of a strike out application or after a deposit order was made (when, if the Respondent had believed the claims had reasonable prospects of success, he would have paid the deposits). The Applicant further contends it is likely that other claims were withdrawn that could have been deemed vexatious had they been pursued (for example, where claims of discrimination had been made on the basis of characteristics unknown to the employer); as the Respondent is an extremely experienced litigator, it was likely that he had withdrawn some claims to avoid adverse findings being made against him. More generally, the fact that proceedings were not deemed vexatious did not mean they were irrelevant: the vice was launching the proceedings in the first place (per **Wheen** paragraph 29).

18. It is the Applicant's submission that the effect of the litigation pursued by the Respondent is to subject would-be employers to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the Respondent – in some instances, making multiple applications for jobs and bringing multiple claims against the same entity - and

the evidence as to his conduct of that litigation was inconsistent with his contention in the present proceedings that he has always acted in a professional and truthful manner.

19. The litigation in question was plainly habitual and persistent: the Respondent had issued at least 43 cases over a 10-year period and continued to litigate (he had stated that he had "*only*" three cases pending at the Manchester ET at present). Moreover, the fact that a number of the claims had been settled did not mean they had not been vexatious: the terms of any such settlements were not known (and might have been on a "drop hands" basis or even requiring the payment of costs to the other side) but some employers might have made an economic choice to settle for a low sum (as generally sought by the Respondent) to avoid incurring costs (particularly as the Respondent had stated he had no means); settlement in such circumstances might simply prove the abuse of process. Equally, where ETs had refused strike out applications in some claims, that did not mean that the proceedings were not vexatious.

The Respondent's Position

20. The Respondent, who has relied on protected characteristics of age (belonging to an older age group – the precise age specified has, inevitably, changed over the history of the litigation in question), race (the Respondent describes himself as of Iranian ethnicity), and disability (he has been diagnosed with prostate cancer), contends that this application - which he believes to be made in collusion with solicitors who have acted for some of the employers in his claims – is a vexatious attempt to violate his Article 6 **ECHR** rights. He says his only intention has been to find purposeful employment rather than be driven into debt; he feels he has been treated unfairly in past hearings and denied real justice and the present proceedings are "*just another attempt by an unfair system to silence an older disabled person who is finding it impossible to find work*". The Respondent says he is just asking to be treated fairly, "*if I was younger without cancer, I am sure I would not be*

encountering the constant rejection with employment applications". He has always "*tried to mediate with companies that have blatantly discriminated against me because of my age and disability*", first asking them to reconsider their decision and making claims as "*a last resort because of the reticence of employers to refuse to enter into any dialogue*". He says his claims "*are not made purely for monetary gain*"; the remedy he seeks is to be offered employment.

21. The Respondent says there are errors in the schedule drawn up by the ET: two of the entries were duplicated and there was a reference to two claims against Prosurance Limited, when he does not recall making more than one claim against that entity; at most there should be 41 claims. The Respondent also points out that he has not instituted any claims since February 2021 and, of the three outstanding claims (all before the Manchester ET), two were likely to be withdrawn as the employers appeared to have gone into liquidation.

22. The Respondent disputes that his claims are vexatious, observing that, when refusing an application to strike out in case no. 1400729/2019, the Employment Judge ("EJ") considered it was "*not proper to conclude that someone of the claimant's age and with his medical problems may not have experienced a series of discriminatory events …*". In oral submissions, the Respondent said his "*strategy*" was to seek employment: he did not immediately litigate; his "*normal approach*" was to ask ACAS to seek a settlement, although some companies were "*so obtuse, they would dig their heels in and preferred to spend thousands on legal costs rather than settle*". As for the suggestion that he was guilty of harassment, to the extent his behaviour had been less than professional, the Respondent said this was due to his medical condition, pointing to evidence he had submitted (in early 2020) in case no. 2415029/2019 (which confirmed his diagnosis of prostate cancer and that he suffered high blood pressure, high cholesterol, stomach problems, anxiety and

depression), albeit he acknowledged there was nothing that stated that this had impacted upon his behaviour.

23. The Respondent stressed that the claims had been brought over a period of 10 years and were, at times, sporadic. He had not made large sums as a result and faced a £20,000 costs order which dwarfed any settlement he had received. The application was an unnecessary attack on his character and there was really only one on-going claim. The court should not make an RPO in these circumstances.

The Litigation History

24. In setting out the history of the Respondent's litigation in the ET between 2012 to 2020, Mr Adjei-Sarpong has provided details (drawn from available documentation) of the Respondent's claims, as set out below. He has also referred to the schedule drawn up by ET staff, although it is accepted (as the Respondent has pointed out) that this contains some errors and Mr Boyle agreed that, to the extent that the source documentation revealed errors in the schedule or in Mr Adjei-Sarpong's affidavit, I should take the history from the original ET documents available.

Case No. 2703084/2012 (Orchid Pubs and Dining Limited; "Orchid")

25. On 18 October 2012, the Respondent instituted this claim in the Reading ET. At section 5.1 of the ET1 form, he indicated that he had been discriminated against on grounds of sexual orientation and age and was also owed "*other payments*". At section 5.2, however, the Respondent stated: "*I believe that I have been discriminated on the grounds of my sex, age and Race*". So far as discernible, the basis for this claim arose from the fact that the Respondent was not offered an interview for the role of chef, notwithstanding he had explained that "*unless I was offered an interview I would take the matter to an Employment*

Tribunal". At section 6 of the ET1 form, the Respondent claimed the sum of £1,000, albeit he also indicated he would be "*willing to accept an out of court settlement of £250*".

26. Orchid lodged an ET3 response form, explaining that the Respondent was not invited to interview because of the "*pushy and insistent nature*" of his emails, denying that his sexual orientation, race, and age had been known when that decision was taken, and saying the claim was "*transparently speculative and vexatious*". Orchid also made an application to strike out the claim, supported by a "*Schedule of Unreasonable Correspondence/Contact/Behaviour*", which identified a number of threatening requests made by the Respondent for settlement of his claim.

27. That application came before EJ Hill, who, for reasons set out in a Judgment sent to the parties on 27 September 2013, struck out the Respondent's claim "*as the manner of pursuing the claims has been vexatious and unreasonable*". At paragraph 12 of the Judgment, EJ Hill referred to the fact that the Respondent's behaviour had been "*so serious that he received a 28 day sentence of imprisonment*". It is Mr Adjei-Sarpong's understanding that this refers to the fact that the Respondent was found guilty of harassing Orchid's representative in August 2013 and was sentenced to imprisonment for 28 days, with a restraining order to prevent the Respondent contacting that representative for two years. The Respondent objects to any reference being made to this conviction on the basis that it is now "*spent*"; it is, however, part of the record of the litigation relevant to this application.

28. On 23 October 2013, the Respondent emailed the ET, asserting that the strike out of his claim breached his human rights. This was treated as an application for reconsideration and the Respondent sought a hearing, albeit this took place by telephone given the terms of the restraining order. The Respondent did not attend the hearing of his application on 29 November 2013 and it was duly dismissed.

Case No. 2704056/2012 (The Star Inn)

29. On 16 November 2012, the Respondent instituted these proceedings in the Reading ET, claiming he was discriminated against on grounds of "*race, age and sex!*" because he was not offered an interview for bar work and seeking "*at least £5000 for loss of wages and for violation of my human rights*", although indicating he was "*willing to accept a Pre-Tribunal settlement of £500*". In due course an ET3 response form was filed, denying the Respondent's claims and pointing out that his race was unknown and that a number of men over 40 (the ET1 gave the Respondent's date of birth as 5 June 1959) were employed. It appears this case was settled through ACAS, although I do not know on what terms.

Case No. 2700864/2013 (Mileta Sports Limited; Mileta)

30. On 20 March 2013, the Respondent brought these proceedings in the Reading ET, complaining that he suffered age discrimination when he was not offered part-time sales work with this retailer of outdoor wear, and claiming £5,000 "*for a years [sic] part time wages*". The Respondent instituted proceedings on the day he received email confirmation that he had been unsuccessful in his application "*due to a lack of relevant experience*". Mileta filed an ET3 response form, denying the claim, stating that the Respondent appeared to be acting "*irrationally*," inviting settlement by way of payment of an "*out of court figure*!", and describing how he had turned up at one of Mileta's stores, "*angrily*" airing his grievance and (on other occasions) menacing staff by staring through the store window.

31. At a hearing on 10 January 2014, EJ Salter struck out this claim on the basis that the manner in which the Respondent had conducted the proceedings had been scandalous, unreasonable or vexatious. Subsequently, on 13 May 2014, EJ Salter heard an application by Mileta for its costs; EJ Salter's Judgment on the issue of costs is dated 16 May 2014

and, at paragraph 7, it is observed "*... it would seem that the Claimant was intent upon persuading the Respondent to settle an unmeritorious claim and, when his attempt was unsuccessful, he simply failed to pursue it.*".

Case No. 2701351/2013 (The Red Lion)

32. On 8 April 2013, the Respondent instituted this claim in the Reading ET, complaining of age and sex discrimination after it was said the employer failed to respond to text messages seeking to arrange a work trial, and claiming £5,000 for "*unpaid wages for a year and damages*". On 10 April 2013, the ET communicated a message from EJ Hill, who considered the claim was "*inadequately particularised*" since it contained "*no facts on which you could succeed*", observing that this was "*not a reasonable way of conducting litigation*" and directing the Respondent to "*set out the facts on which you rely by 24 April 2013*" failing which his case would be struck out.

33. The Respondent having not complied with EJ Hill's directions, on 26 April 2013, the ET recorded that this claim was struck out.

ET President Letter 6 November 2013

34. On 6 November 2013, the President of the ET for England & Wales wrote to (what was then) the Treasury Solicitor concerning the Respondent's activities, and describing how he "*seeks thousands of pounds but then writes to the Respondent's representatives repeatedly (20 or 30 times) demanding settlements of £500, and threatening to hold a press conference*".

35. It appears that no steps were taken as a result of that letter but the evidence also suggests that the Respondent did not institute any ET claims after 8 April 2013 for a number of years.

Case No. 3201591/2017 (Enviro Solar)

36. This claim appears to have been brought by the Respondent in early 2017, although the only evidence before me relating to these proceedings is in the form of an ET Judgment dismissing the claim following withdrawal on 12 March 2018.

Case No. 1800403/2017 (Wren Living Limited; "Wren Living")

37. On 15 March 2017, the Respondent lodged these proceedings in the Leeds ET, contending he had suffered age discrimination after he had attended an interview for a sales role with Wren Living but was not offered a job; he expressed his belief that "*the real reason for my rejection is the age which is 57*" and claiming that *"£5,000 would be a suitable award for damages*".

38. On 20 April 2017, Wren Living filed its response and on 1 May 2017, EJ Burton issued written case management orders, requiring (inter alia) the parties to disclose documents and exchange witness statements. On 9 June 2017, Wren Living made an application for an order striking out the claim on the basis that the Respondent had not provided any documents as the case management orders had required (that failure of disclosure extended to a covert video recording the Respondent had made at his interview). On 29 June 2017, Wren Living also wrote to the ET seeking an unless order in relation to the provision by the Respondent of his evidence and documents.

39. On 25 July 2017, the matter came before EJ Franey, who dealt with various case management issues as well as an informal application by the Respondent to amend his claim to pursue complaints of race discrimination, and Wren Living's strike out application. The ET's Judgment was sent to the parties on 4 August 2017; relevantly, EJ Franey decided the claim should be struck out as vexatious, explaining that the Respondent "*was not bringing it because he genuinely believed there had been age discrimination.*

The age discrimination allegation was just a convenient device to give the Tribunal jurisdiction so that he could put pressure on the respondent to offer him compensation …" (paragraph 55) and referring to the Respondent's "*vindictive approach of causing the respondent trouble and expense*," by repeatedly making appointments with staff at Wren Living's Swansea store, which he then did not attend (paragraph 59) and "*resorting to threats of publicity and reputational damage … coupled with a theme of the claimant having evidence which he was withholding …*" (paragraph 60); overall, EJ Franey concluded that the Respondent had brought his claim "*for the improper purpose of vexing the respondent to obtain a payout*."

40. On 5 August 2017, the Respondent applied for reconsideration of the Judgment. That application was dismissed on 15 August 2017.

Case No. 2423664/2017 (Wren Kitchens)

41. On 13 November 2017, the Respondent sought to institute a further claim in the Manchester ET, claiming damages totalling £25,000 for age and race discrimination and stating "*I have made numerous applications to Wren Kitchens for Sales Consultant but they continue to discriminate against me. My previous claim against Wren Living was Struck [sic] by Judge Franey at Manchester Employment Tribunal Center [sic] this was a direct violation of my Human Rights and it is my assertion that the Judge colluded with Counsel to strike out my claim …*". On 20 November 2017, the Respondent was notified that his claim form had been rejected because he had not gone through the ACAS early conciliation procedure.

Case No. 2423985/2017 (Crown Energy Limited; "Crown Energy")

42. On 25 November 2017, the Respondent commenced these proceedings in the Manchester ET, claiming he had suffered age and race discrimination after he was rejected for the role

of Energy Sales Consultant and sought compensation of £5,000. Crown Energy filed grounds of resistance and made an application to strike out the claim as scandalous or vexatious or having no reasonable prospects of success. That application came before EJ Ross on 15 March 2018. In a Judgment sent to the parties on 23 March 2018, EJ Ross declined to strike out the claim (albeit he made a deposit order given that there was little reasonable prospect of success) but expressed concerns about the way in which the Respondent had acted, finding his behaviour to be "*improper and unreasonable*"; this had included "*copying correspondence between the parties and correspondence to the Tribunal to a 3rd party media organisation, threatening the respondent's representative and also reporting the respondent's representative to a regulatory authority …*". On 18 April 2018, EJ Holmes dismissed the proceedings after the Respondent withdrew his claim following settlement.

Case No. 3303673/2018 (Parkdean Resorts UK Limited; "Parkdean")

43. On 31 January 2018, the Respondent lodged this case in the Watford ET, claiming age and race discrimination on the basis that "*I have been in touch with Park Resorts for since [sic] June last year and despite 2 interviews I have been fobbed off again and again"*, and sought "*To be offered a Sales job as previously promised along with compensation of at least £10,000*". Parkdean filed a response in which it explained that the Respondent attended two interviews (on 22 June 2017 and 8 July 2017) and on 9 July 2017, feedback was provided to him "*to confirm a position was not available due to full staffing levels at that time.*" For various reasons, Parkdean asserted that the claim ought to be struck out (not least, as it had been brought out of time). On 19 July 2019, the case was partially dismissed upon withdrawal and partially struck out on the grounds that it had no reasonable prospects of success by EJ Ryan. The Respondent went on, however, to make further claims against Parkdean, as detailed below.

Case No. 1803914/2018 (Stoneacre Limited; "Stoneacre")

44. On 28 February 2018, the Respondent commenced proceedings in the Leeds ET, claiming "*At least £25,000 plus*" compensation for age and race discrimination, arising out of an unsuccessful application for a sales position. The case was settled on 10 April 2018 before a response from Stoneacre was filed.

Case No. 2600879/2018 (Wilson & Co (Motor Sales) Limited; "Wilson & Co")

45. On 28 February 2018, the Respondent lodged this claim in the Nottingham ET, seeking "*At least £25,000 plus*" compensation for alleged age and race discrimination and describing how he had been invited to a second interview, where he said he was "*quizzed on my Ethnicity which is Iranian and my age 58*" maintaining that he was unsuccessful in his job application "*purely due to my Ethnicity and Age*." On or about 19 April 2018, Wilson & Co filed a form ET3, acknowledging that the Respondent had attended two interviews, but refuting his version of the second interview and describing how the Respondent had sought to extract payment of £100 prior to instituting the case.

46. The case was transferred to the Manchester ET and a preliminary hearing took place by telephone, on 22 October 2018, before EJ Holmes. The Respondent did not attend and was directed to provide medical evidence to explain his non-attendance; he was also directed to provide further particulars in respect of a proposed application to amend. Meanwhile, Wilson & Co appears to have made an application to strike out the claim on the basis it was vexatious, which was ultimately heard by Regional EJ ("REJ") Parkin on 7 February 2019, when both applications were refused. It appears the case was subsequently withdrawn.

Case No. 3304326/2018 (Perry Motor Sales Limited; "Perry Motor")

47. Also on 28 February 2018, the Respondent commenced proceedings in the Watford ET against Perry Motor, claiming "*£25,000 plus*" compensation for alleged age and race discrimination on the basis that he had attended an assessment day for a sales role but was unsuccessful due to his ethnicity and age. On 9 April 2018, Perry Motor submitted its response and, in its covering email, intimated an application to strike out the claim alternatively for a deposit order. Perry Motor described how the Respondent failed the first group exercise on the assessment day owing to his overbearing manner and a failure to engage appropriately. Subsequently, it was said that he sent an email threatening to litigate unless he was re-interviewed and paid £100 to cover his costs of attendance.

48. On 24 August 2018 there was a preliminary hearing, after which the matter proceeded to a full merits hearing before a three-member panel (EJ Horne presiding) on 19 and 20 December 2018. The ET dismissed the claims and made a costs award against the Respondent in the sum of £1,000. In reaching its costs decision, the ET found that neither complaint had had any reasonable prospect of success but did not find that the claim of age discrimination had been brought vexatiously - the Respondent had mixed motives in bringing that complaint (paragraphs 25 and 54 ET Costs Judgment). That was not true of the race discrimination claim, which the ET found was vexatious as the Respondent had not believed that claim had merit, including it "*because of the extra leverage it would give him in extracting a settlement*" (paragraph 50 of the ET's Costs Judgment). It also took into account the fact that the Respondent had pursued a number of ET claims (on his evidence, between 20 and 30), including at least one vexatious discrimination complaint, which made it more likely that his main purpose was to achieve a financial settlement. That was also indicated by the fact that the Respondent had "*resorted to other methods of increasing pressure on [Perry Motor] to make an offer of settlement*", including threats to

go to the media and to make a regulatory referral against the solicitors (Costs Judgment, paragraphs 10, 16, 20 and 27.4). In giving evidence as to his ability to pay, the Respondent stated he would burn his house down rather than allow Perry Motor to secure a charging order on it, later moderating his reply to say he would make it uninhabitable (Costs Judgment paragraph 30).

Case No. 2404385/2018 (Better Bathrooms (UK) Limited; "Better Bathrooms")

49. On 1 March 2018, the Respondent lodged a claim in the Manchester ET, seeking "*£25,000 plus*" from Better Bathrooms for age and race discrimination: "*I have made numerous applications for Sales Consultant with Better Bathrooms on the Job Spec it states Bathroom Sales experience is not essential as I have Retail Sales experience then this is one of the criteria for the role. It is my belief that they are actively discriminating against me purely because of my Age (58) and my Ethnicity (Iranian)*".

50. On 12 March 2018, REJ Parkin directed the Respondent to provide full particulars of his claim, which he purported to do on 15 March 2018. The case was then recorded as having settled through ACAS on 21 March 2018.

Case No. 1301029/2018 (Walk in Showers and Baths Limited; "WSBL")

51. On 2 March 2018, the Respondent lodge this claim, seeking "*£25,000 plus*" compensation for alleged age and race discrimination arising out of an unsuccessful application for a sales consultant role. WSBL filed a response, stating that the Respondent had "*applied for a self employed sub contracted position as a sales adviser which never followed through beyond a telephone conversation, as [he] was not prepared to work in the location of where the advisors were required to work …".* It was complained that the Respondent "*became aggressive and tourmenting [sic]. We recorded messages and emails … as evidence he is blackmailing the company into paying him monies …*".

52. At some point thereafter, WSBL applied to strike out the claim and/or for a deposit order, and, the Respondent applied to amend his claim form to include a claim of disability discrimination. There was a telephone preliminary hearing before the Manchester ET on 29 October 2018, followed by a further preliminary hearing on 12 December 2018, at which the ET dismissed the complaint of age discrimination following withdrawal.

Case No. 1804010/2018 (Safeglaze UK Limited; "Safeglaze")

53. On 9 March 2018, the Respondent instituted this case in the Leeds ET, again claiming "*£25,000 plus*" compensation for age and race discrimination arising out of an application for a "Sales rep job." Safeglaze filed a response form, in which it stated: "*Mr Taheri never started with us, after he failed to attend the training course, he started to book fictitious appointments with head office, requested sales quotations for a 'DR D Taheri' or other family member names, on more than one occasion we attended properties that were empty … Mr Taheri failed to attend his training on two occasions and made excuses up for not returning calls …*".

54. On 2 May 2018, there was a telephone preliminary hearing before EJ Rostant, at which various directions were given and a Judgment recorded that the claims of direct discrimination because of race and age were dismissed upon withdrawal. A claim of disability discrimination was, however, permitted to proceed.

55. On 25 May 2018, Safeglaze filed an amended response, whereby it conceded that the Respondent was disabled (by reason of having been diagnosed with prostate cancer) but otherwise denied his claims. In addition to failing to attend the training that had been arranged for him, it was said that the Respondent (the Claimant in those ET proceedings) "*had started making enquiries through [Safeglaze's] web site, booking appointments for quotations for new windows and doors. Whilst these appointments were all made under*

different names, the mobile telephone number used on the booking request was the Claimant's number on each occasion. [Safeglaze's] sales consultants contacted the Claimant regarding these appointments and the Claimant said that he hoped that he had wasted their time and money on fuel in attending these fictitious appointments". The response explained that "*Given the Claimant's failure to attend the training and the Claimant's behaviour in booking fictitious appointments, [Safeglaze] took the decision … to withdraw the Claimant's offer of the self-employed sales consultant's position*.". On 14 August 2018, Safeglaze applied to strike out the claim in its entirety "*on the basis that the claim itself and the way in which proceedings have been conducted is both unreasonable and vexatious*".

56. On the same day, the Respondent emailed Safeglaze's solicitor stating "*I have a Prima Facie case and your clients are lying as they have discriminated against me*"; going on to say that he would accept £500 in full and final settlement of his claim, otherwise he would seek "*compensation of at least £25,000*".

57. On 17 August 2018, the ET directed there be a preliminary hearing to determine Safeglaze's strike out application but, in the event, on 11 October 2018, it was recorded that the proceedings were dismissed following withdrawal.

Case No. 2410119/2018 (Rossendale Transport Limited; "Rossendale")

58. On 13 April 2018, the Respondent lodged this claim in the Manchester ET, seeking £25,000 compensation and stating that he had been discriminated against "*on the grounds that I have an unspent Criminal Conviction.*" In giving particulars of his claim, the Respondent explained that he had applied for the role of Trainee Bus Driver, answering "*no*" to the question whether he had any unspent criminal convictions, although in fact he had a criminal conviction that was unspent. The manager dealing with the Respondent's

application had told him that "*as [he] had lied on application [Rossendale] would be withdrawing their offer of employment*".

59. On 18 April 2018, REJ Parkin rejected the claim on the basis that the complaint was one which the ET had no jurisdiction to consider. The Respondent responded by letter of the same date, which was treated as an application for reconsideration of the decision to reject his claim. That application was dismissed on 20 April 2018.

Case No. 2410302/2018 (The Car People Limited; "TCPL")

60. On 17 April 2018, the Respondent lodged this claim, describing how he had attended an assessment day with TCPL, at which the other individuals in attendance were "*all younger*", and contending that the fact that he was unsuccessful in his application for a job (as were two Asian women candidates) was "*purely … to my Age and Race*", claiming compensation of £25,000. On 25 May 2018, TCPL filed a form ET3 in response to the claim, explaining that the Respondent had applied for a sales role and, along with 11 other candidates, attended an assessment day at which he and those others were marked on a number of tests, the Respondent scoring 67 points, which was neither the highest nor the lowest result, but the job was offered to someone who scored higher than him (86 points), which had nothing to do with the Respondent's age or nationality.

61. On 3 July 2018 there was a preliminary hearing which came before REJ Parkin at the Manchester ET. At that hearing, the Respondent intimated that he wished to make an application to amend his claim, so as to include a claim of disability discrimination. Counsel for TCPL anticipated a future application to strike out the claim or for a deposit order. Those applications were listed to be heard at a further preliminary hearing to be held on 8 August 2018.

62. At some point around mid-July 2018, it appears that the Respondent offered to settle his claim for £300 but his offer was rejected and, on 30 July 2018, TCPL made an application to strike out the claim on the basis that it was "*scandalous or vexatious*" or had been conducted in such a manner. In the latter respect, TCPL referred to the following conduct: "*The Claimant raised his voice to the Judge in the previous hearing, cut the Judge off at the end of the case and has complained about the Judge's perfectly reasonable behaviour effectively alleging bias with no grounds. He has repeatedly tried to rely on an alleged violation of Human Rights, made a complaint about the Respondent's solicitor on no reasonable grounds other than the Respondent was not going to settle his case. This has included the Claimant calling these offices and pretending to be someone else, making vague threats* …". In response, on the same day, the Respondent sent an email to the ET with his own application for TCPL's defence to be struck out.

63. On 1 August 2018, the case was settled.

Case No. 2410837/2018 (Revival Books Limited; "Revival Books")

64. On 12 May 2018, the Respondent brought a claim, in the Manchester ET, against Revival Books, stating that he had "*applied to Revival Books 3 times and received no reply*" and alleging "*they have discriminated against me because of my Age, Ethnic background, Sex and Disability*." The claim was again for £25,000.

65. On 29 May 2018, the ET (REJ Parkin) directed the Respondent to provide further particulars of his case, which seem to have been provided on 31 May 2018. Revival Books then filed a response form ET3, in which it was said that the Respondent had submitted his CV on an unsolicited and speculative basis on three occasions. This notwithstanding, Revival had invited him to attend a job fair at which it would be present and, on another occasion, telephoned the Respondent to invite him to interview; he did not attend the first

and failed to respond to the second. Revival Books invited the ET to list the matter for a preliminary hearing to consider whether (inter alia) the claim should be struck out "*on the basis that it is scandalous, vexatious and has no reasonable prospect of success* …"; it was said that the Respondent's "*bare assertions*" were intended to cause nuisance and/or to harass and/or to pressure.

66. The case was listed for a preliminary hearing on 22 October 2018 but, on 13 October 2018, the Respondent withdrew his claim following settlement through ACAS, and the proceedings were dismissed by the ET on 16 October 2018.

Case No. 2411529/2018 (Aprite (GB) Limited; "Aprite")

67. On 8 June 2018, the Respondent instituted this claim in the Manchester ET, again claiming "*at least £25,000*" compensation for alleged age, race and disability discrimination. The claim arose out of the Respondent's attendance at a recruitment day on 25 May 2018, and it was contended that "*The Motor Industry is well known as only employing young White people if your [sic] older with cancer and Middle Eastern you don't stand a chance*."

68. Aprite filed an ET3 in which it was stated (in summary): (i) the recruitment day was organised by a third-party recruitment consultancy; (ii) prior to the event starting, the Respondent approached one of the recruiters in "*an aggressive confrontational manner*", demanding the air-conditioning be turned off; (iii) he was otherwise disruptive and aggressive (beyond anything previously encountered by the recruiters), "*shouting down*" other candidates and "*making rude and intimidating comments towards them*"; (iv) following the first recruitment exercise, the decision was taken not to allow him to continue to participate; and (v) when that was communicated to the Respondent he "*immediately stormed out of the room*". Aprite further explained that some hours after the Respondent had been informed of the decision he had texted one of the recruiters

"*demanding he paid [the Respondent] £100 otherwise he would go to ACAS*". Further, on 8 June 2018, it was said the Respondent had telephoned the recruiter, stating "*I want £20,000 from [Aprite] and you should ensure that they pay otherwise I will come after you for £20,000 for age discrimination*". It was requested that the matter be listed for a preliminary hearing to consider striking out the claim/making a deposit order.

69. Aprite's application was refused by EJ Sherratt at a preliminary hearing on 4 January 2019 and directions were given to bring the matter to a final hearing, which took place before EJ Franey on 11-12 September 2019. The Respondent withdrew his race discrimination claim at the outset and his claims for age and disability discrimination were dismissed. In its reasoned Judgment, the ET explained that it had found the Respondent to be an unreliable witness, who had lied in his evidence regarding the telephone call on 8 June 2018. It accepted that Aprite's decision was taken due to the Respondent's behaviour at the training day, which was similar to his conduct six months earlier at the Perry Motor selection day. The ET also made a costs order against the Respondent, recording in its Judgment that, during the course of submissions on costs, he had turned to Aprite's witnesses saying "*in a threatening manner that "The ball is still rolling*""; this, the ET inferred, was a reference to a further case against Aprite relating to another unsuccessful job application by the Respondent (he applied for further jobs with Aprite on 14, 15, and 27 September and on 15 October 2019 and issued further claims against Aprite, as detailed below).

70. In his affidavit, Mr Adjei-Sarpong states that, on 21 March 2020, the Respondent wrote to the Manchester ET asking to strike out Aprite's application for costs, saying "*Let me make this blatantly clear The Respondent will never get a penny out of me and an attempts [sic] will be met with extreme force*"; no document to this effect is, however, exhibited. On the other hand, it is apparent that the Respondent sought to appeal both the ET's Judgment

reached after the full merits hearing and its subsequent refusal of his application for reconsideration. On 24 May 2020, the EAT wrote stating that HHJ Barklem had concluded that no reasonably arguable error of law had been identified and no further action would be taken on the appeals.

Case No. 2413650/2018 (R&J (Builders Hardware) Limited; "R&J")

71. On 24 July 2018, the Respondent instituted this claim in the Manchester ET, seeking compensation of £30,000 on the grounds of age and disability discrimination, and stating that he had two interviews with R&J and that "*on the last occasion [an agent/employee of R&J] told me he was looking for a younger candidate*". The matter was listed for a preliminary hearing on 29 October 2018 but on, 19 September 2018, the Respondent withdrew his claim following a settlement reached through ACAS and the ET issued a Judgment dismissing the claim on 26 September 2018.

Case No. 1304305/2018 (Swansway Group Limited)

72. On 21 September 2018, the Respondent brought this claim in the Midlands (West) ET, seeking £35,000 in respect of alleged disability discrimination. It seems the parties reached a settlement and, on 2 November 2018, the proceedings were dismissed following the Respondent's withdrawal of his claim.

Case No. 2416404/2018 Carfinance247 Limited

73. On 23 October 2018, the Respondent instituted this case in the Manchester ET, seeking £35,000 for perceived disability and age discrimination. On 19 November 2018, the claim was dismissed on withdrawal as a settlement had been reached.

Case No. 2416405/2018 (Goodwin Barrett Limited; "GBL")

74. Also on 23 October 2018, the Respondent lodged this case in the Manchester ET, claiming £35,000 for what he said he believed to be disability and age discrimination arising out of an unsuccessful application for a telesales role. On 12 December 2018, REJ Parkin granted GBL an extension of time for presenting a response, and on 14 December 2018, GBL filed its ET3 and particulars of response in part noting that it had gone on to offer a role to a candidate who was older than the Respondent. Subsequently, it appears that this case was also settled through ACAS.

Case No. 2416801/2018 (Harley Botanic Limited)

75. On 9 November 2018, the Respondent instituted this case in the Manchester ET, seeking damages of £40,000 in respect of disability discrimination following unsuccessful applications for sales executive posts. On 23 November 2018, REJ Parkin directed the Respondent to provide full particulars of each act of unlawful disability discrimination alleged. According to the ET schedule, it appears that this claim was subsequently dismissed on withdrawal.

Case No. 1405169/2018 (Virgin Media Limited; "Virgin Media")

76. On 13 December 2018, the Respondent lodged this claim in the Bristol ET, seeking damages of £50,000 for alleged disability discrimination after he was unsuccessful in applying for a sales adviser post. On 29 May 2019, EJ Ross refused Virgin Media's application to strike out the claim but noted there were features of the case which suggested that the basis on which it was brought was vexatious. In particular, it was recorded that the Respondent had "*agreed that when he received an email on 27 November 2018 at 8.25am rejecting his application for employment with [Virgin Media], he replied almost immediately at 09:41 the same morning stating "this is disability discrimination", copying*

in BBC Watchdog and ACAS." As the ET noted (paragraph 20 of its Judgment sent out on 25 June 2019), "*It is difficult to understand why an unsuccessful applicant would immediately copy in a media organisation with such an allegation unless it was to pressurise [Virgin Media] into settlement*". Concluding that the claim had little reasonable prospect of success, the ET made a deposit order against the Respondent of £750. The Respondent's proposed appeal against that order was held by the EAT to be totally without merit (see the Order of Choudhury P of 21 October 2019) and the ET schedule records that the claim was struck out after the Respondent failed to pay the deposit.

Case no. 2500128/2019 (Parkdean)

77. On 23 January 2019, the Respondent brought a second action against Parkdean, claiming disability discrimination arising from four unsuccessful applications for employment. On 29 May 2019, EJ Ryan, sitting in the Manchester ET, refused Parkdean's application to strike out the claim but, after receiving evidence of the Respondent's means, on 31 May 2019, made a deposit order, requiring him to pay a deposit of £600 (£150 in respect of each complaint of discrimination). According to the ET schedule, the claim was subsequently struck out on the basis that the Respondent failed to pay the required deposit.

Case nos. 2411005/2019 and 3323665/2019 (Aprite)

78. The Respondent presented further claims against Aprite, on 22 August 2019 (2411005/2019) and 1 October 2019 (3323665/2019). An in-person hearing was listed in respect of both claims for 31 January 2020, to which the Respondent objected, stating (by email of 17 December 2019): "*It would be prudent for me not to attend in person as there is a very strong likelihood that I will lose my temper when coming face to face again when [sic] the vexatious lying Respondents witnesses and counsel.*" By letter of 10 January 2020, REJ Parkin noted that the Respondent's communication "*involves an implicit threat*

which could in itself be regarded as unreasonable or vexatious conduct of the proceedings". On 18 February 2020, both cases were dismissed following withdrawal by the Respondent after a settlement reached through ACAS.

Case no. 2413870/2019 (Glenoaks Estates Ltd; "Glenoaks")

79. On 16 October 2019, the Respondent issued this claim, alleging he had suffered disability discrimination in relation to an application he had made for a sales role, and claiming *"£3,500 per calendar month a combination of a basic salary plus potential commissions. £10,000 for Disability discrimination*". From the ET schedule, it appears that this claim has since been struck out.

Case no. 2404604/2019 (Car Time Motor Company Ltd; "Car Time")

80. It is unclear when this claim was lodged, but there was a hearing on 19 October 2019, before EJ Hoey sitting at the Manchester ET, when Car Time's application for the case to be struck out was refused but a deposit order of £750 was made on the basis that the claim showed little reasonable prospect of success. Subsequently, on 3 December 2019, the claim was struck out after the Respondent failed to pay the deposit.

Case no. 2415029/2019 (Handepay Ltd; "Handepay")

81. On 29 November 2019, this was received by the Manchester ET, in which the Respondent claimed *"... potential commissions From August 2019 to final date of hearing and remedy Damages of at least £25,000*" for what was contended to be age and disability discrimination arising from the Respondent's unsuccessful application for a sales role. Handepay lodged a response denying the claim of discrimination and contending it had been brought out of time.

82. The ET listed this matter for a preliminary hearing on 9 March 2020, which was converted to a telephone hearing at the Respondent's request (the Respondent having submitted a print-out of his medical record and a GP fit note, which referenced his suffering from anxiety and depression and from prostate cancer). It is unclear what happened in these proceedings, albeit I note that on 21 January 2020 the Respondent forwarded an email from Handepay to the ET which he stated was "*further evidence of discrimination*". The email in question thanked the Respondent for his application but stated that he was not in the right postcode location for the position he had applied for and his details would be retained for when a suitable vacancy in his location arose.

Case no 33264230/2019 (Parkdean)

83. On 3 December 2019, the Manchester ET received a third case from the Respondent against Parkdean (see also case nos. 3303673/2018 and 2500128/2019 above). It appears that the claims of age and disability discrimination raised in those proceedings were subsequently considered by EJ Warren to have no reasonable prospects of success, and were duly struck out by Judgment dated 2 July 2020.

Case no. 16008888/2020 (Trade Centre Group)

84. Mr Adjei-Sarpong further attests to a claim being brought by the Respondent in this case against Trade Centre Group, which related to a group assessment day on 4 March 2020. The matter had been listed for a preliminary hearing to assess the Trade Centre Group's strike out application but appears to have been settled through ACAS.

Other Claims

85. The schedule drawn up by ET staff further refers to a number of other claims, in respect of which I have not seen any supporting documentation. Case no. 3202320/2018 is stated

to have been lodged by the Respondent in the London East ET, claiming against Eco Build Partners Limited t/a Senergy Direct. It is recorded that this claim was withdrawn by the Respondent. Case no. 2301765/2018 is recorded as brought against Evans Cycles in the London South ET and as having been struck out. Two claims are also recorded as having been brought by the Respondent against Prosurance Limited (case no. 2416405/2018, which is said to have been settled; case no. 2405468/2019, which is said to have been struck out). As I have already recorded, the Respondent does not accept he brought two claims against Prosurance.

Ongoing Conduct

86. After 3 July 2020, Mr Adjei-Sarpong states that the records demonstrate that further claims have been brought by the Respondent and subsequently withdrawn (case nos. 2600161/2019, 3303573/2019, 1400729/2019, 2413732/2019, 2414042/2019, 2502500/2019, 2405469/2020, and 2408126/2020).

87. The Respondent draws my attention to the fact that in case no. 1400729/2019 the ET refused to strike out his claims or to make deposit orders, the EJ observing (at paragraph 10 of the Case Management Summary sent out on 3 October 2019) that "*it [was] not proper to conclude that someone of the claimant's age and with his medical problems may not have experienced a series of discriminatory events when attempting to seek employment in the competitive environment of sales jobs; and in any event I know nothing about the particular claims brought and their strengths and weaknesses.* …". It is also right to note, however, that the EJ went on to make the point (at paragraph 11 of the Case Management Summary) that *"… there are avenues that can be followed to declare an individual a vexatious litigant on the basis of a history of litigation but that was not a matter for me.*"

Discussion and Conclusions

88. Having thus considered the evidence of the Respondent's litigation in the ET since 2012, I return to the conditions laid down by section 33 **ETA**.

89. The first question is whether the Respondent's conduct has been habitual and persistent. On the material before me, I am satisfied that this condition is met. Accepting that there is some duplication in the ET schedule, even on the Respondent's case he has brought 41 claims in the ET over the last decade. Although there appears to have been a gap in his pursuit of claims between 2013 and 2017, the Respondent then resumed his practice of seeking redress in the ET on what can only be described as an habitual and persistent basis. Thus, in 2018, he filed at least one claim every month, save for August, lodging three claims on one day in February, three further claims in the first nine days of March, and two claims on one day in October. There is, moreover, a degree of repetition to the Respondent's claims (which, in his oral submissions, he described as his "*normal approach*") whereby he makes very similar allegations against the would-be employers, seeking very similar sums by way of compensation (albeit without any clear justification) and adopting similar tactics in his conduct of the proceedings (often withdrawing parts of the case at an early stage in the litigation).

90. The Respondent makes the point that he has not commenced any new ET proceedings since February 2021 and presently has only three claims outstanding (two of which he says he is unlikely to pursue as the companies in question appear to have gone into liquidation), but I cannot see that these are matters that should cause me to infer that his previous habitual and persistent conduct has come to an end. First, I do not derive any comfort from the Respondent's assurance that he has "*only*" three claims outstanding; that remains a not insignificant number. Second, I note that the present application was made in April

2021 and provides an alternative explanation as to why the Respondent might have chosen to pause in lodging ET claims at present.

91. I turn therefore to the second condition, that the Respondent's claims have been brought without any reasonable grounds. As is clear from the history I have set out, in a number of cases the ET has determined that claims made by the Respondent should be struck out (see, for example, case no. 1800403/2017 (paragraph 39 above), case no. 3303673/2018 (paragraph 43), case no. 2413870/2019 (paragraph 79), case no. 33264230/2019 (paragraph 83), and case no. 2301765/2018 (paragraph 85 above)). To the extent that the Respondent seeks to suggest that he has been treated unfairly by the striking out of some of his claims, that is not a submission that I can afford any weight: as was made clear in **Wheen**, where the decisions in question have not been the subject of any successful challenge, it is not open to the Respondent to seek to go behind those rulings.

92. For completeness, I also note that the Respondent sought to pursue an appeal in case no. 1405169/2018, which was ruled to be totally without merit (see paragraph 76 above).

93. There are, further, a number of examples of cases where the Respondent has filed or included claims which he has then proceeded to simply withdraw before there can be any determination on the merits. Thus, in case no. 3201591/2017 the record indicates that the claim was dismissed on withdrawal (see paragraph 36 above); in case no. 3303673/2018 the Respondent withdrew some claims, others were struck out as having no reasonable prospect of success (see paragraph 43); in case no. 1301029/2018 the Respondent withdrew a claim of age discrimination some ten months after commencing the proceedings, and after an application for a strike out or a deposit order had been made (see paragraph 52); in case no. 1804010/2018 the Respondent withdrew claims of age and race discrimination at an early preliminary hearing (some two months after commencing the proceedings) and then went on to withdraw his remaining claim of disability

discrimination some five months later, after an application to strike out had been made; and in case no. 2411529/2018 the Respondent withdrew a claim of race discrimination at the outset of the full merits hearing, over a year after he had commenced the proceedings in that case (see paragraph 69).

94. In addition, there are a number of cases where, although the ET might not have been prepared to strike out the Respondent's claims, it considered they had little reasonable prospects of success such that a deposit order should be made. In each instance, the ET had regard to the Respondent's means but he then failed to comply with the order and the claim was struck out, suggesting that these were not claims that he had pursued with any serious intent (see case no. 1405169/2018, in which the EJ observed that there were features of the case that suggested that the basis on which it was brought was vexatious (paragraph 76 above); case no. 2500128/2019 (paragraph 77); and case no. 2404604/2019 (paragraph 80)).

95. More generally, the fact that ETs have declined to allow applications to strike out in some cases does not establish that the Respondent had reasonable grounds for bringing the proceedings in question. An ET will only strike out a claim of discrimination as having no reasonable prospect of success in the very clearest circumstances, see **Anyanwu v South Bank Students' Union** [2001] UKHL 14, [2001] IRLR 305, HL; a refusal to take such a course at a preliminary stage in the proceedings does not demonstrate that the claim in fact has any reasonable prospects. Notably, the evidence before me demonstrates that in not one of over 40 claims brought before the ET has the Respondent gone on to achieve a successful outcome after a full merits hearing. Indeed, in the two claims that did proceed to trial, not only did the Respondent fail on the merits but costs awards were made against him; see case no. 3304326/2018, where the ET was satisfied that neither claim had had any reasonable prospects of success and that the complaint of race discrimination had been

brought vexatiously, "*because of the extra leverage it would give … in extracting a settlement*" (see paragraphs 47-48 above); and case no. 2411529/2018, where the ET found the Respondent had lied in his evidence regarding one of the incidents in issue (see paragraph 69 above).

96. Finally, there is also one example of a case brought in respect of which the ET had no jurisdiction, see case no. 2410119/2018 (paragraphs 58-59 above).

97. On the evidence before me, I am therefore equally satisfied that the Respondent has habitually and persistently brought proceedings without any reasonable grounds.

98. There is a degree of overlap between the second and third conditions and I consider that the material that demonstrates an absence of reasonable grounds also supports a finding that the proceedings brought by the Respondent were vexatious. There is, however, yet further evidence that demonstrates that this third condition is made out on this application. As the Applicant has pointed out, there is a pattern to the Respondent's conduct of ET litigation, whereby he institutes proceedings in which he seeks substantial sums in damages for alleged acts of discrimination as a means of extracting a nuisance payment (in the low hundreds of pounds) from the potential employers involved. Where the would-be employer refuses to countenance settlement, the Respondent either withdraws his claim and/or makes threats of adverse publicity or (as against the legal representatives involved) of a regulatory referral, or engages in other conduct that might be perceived as harassment of the other party.

99. Even if I discount the Respondent's conviction for harassment relating to case no. 2703084/2012 (paragraphs 25-28 above), that claim provides evidence of vexatious and unreasonable conduct of proceedings in other respects, for example: in the imprecise particularisation of the protected characteristics relied on and in the reliance on

characteristics that were not even known to the employer at the relevant time; in the offer to settle whilst pursuing a claim for an unexplained higher sum; and in the Respondent's failure to attend the reconsideration hearing he had himself requested. The other claims brought in 2013 also provide further examples of unreasonable conduct on the Respondent's part, similarly supporting the Applicant's characterisation of the Respondent's use of ET proceedings as a way of extracting a nuisance-value settlement. In case no. 2704056/2012, the Respondent again indicated a willingness to settle for a low sum, whilst claiming damages at a much higher level, and pursued claims for race and age discrimination when the would-be employer had not known his race and had a number of employees within the Respondent's age group (see paragraph 29, above). In case no. 2700864/2013, the Respondent instituted proceedings on the same day that he received confirmation that he had been unsuccessful in his application for employment and subsequently attended the employer's stores in a way that seemed intended to intimidate its employees (see paragraphs 30-31 above). And in case no. 2701351/2013, the claim was inadequately particularised and the Respondent then failed to comply with the ET's direction to provide further information (see paragraphs 32-33).

100. There is, further, documentation I have seen relating to the claims brought in more recent years that supports the conclusion that the Respondent is abusing the ET process to put undue pressure on the would-be employers to enter into low-value settlements with him. For example, in case no. 1800403/2017, EJ Franey concluded that the Respondent had not brought his claim of age discrimination because he genuinely believed that had been the reason for his non-appointment: it was "*a convenient device to give the [ET] jurisdiction so that he could put pressure on the [employer] to offer him compensation*", and reference was made to the Respondent's making appointments with the company which he did not attend and "*resorting to threats of publicity and reputational damage*" (see paragraph 39

above). Similarly, in case no. 1804010/2018, there was again reference to the Respondent making fictitious appointments with the would-be employer, as well as accusing the company of "*lying*", whilst offering to settle for a low-level sum (£500) notwithstanding his claim for *"£25,000 plus*" see paragraphs 53-57). In case no. 2410302/2018, there is evidence of the Respondent's unreasonable conduct before the ET, and of his making nuisance calls to the company and an unwarranted complaint against its solicitor (see paragraphs 60-63). There is material to suggest that the Respondent's conduct at the recruitment exercise giving rise to case no. 2411529/2018 was entirely inconsistent with his suggestion that he was genuinely seeking employment and the ET's decision records the implied threat made to the employer's witnesses at the full merits hearing (see paragraphs 67-70), and in case no. 2416405/2018, the Respondent was apparently content to file a complaint of unlawful age discrimination notwithstanding the fact that the post in question had been given to an even older candidate (see paragraph 74). Case no. 1405169/2018 provides another example of the Respondent immediately lodging an ET claim when rejected for a sales adviser post and copying in BBC Watchdog at the same time, suggesting that he was seeking to "*pressurise [Virgin Media] into settlement*" (see paragraph 76), and in case no. 2415029/2019 the Respondent was prepared to represent an entirely innocuous email from the company in question as amounting to "*further evidence of discrimination*" when it manifestly was not (see paragraph 82).

101. This is, moreover, an abuse of the ET process that has been the subject of express findings adverse to the Respondent when ETs have gone on to consider the merits of his claims at final hearing: see case no. 3304326/2018 where a race discrimination complaint was found to have been pursued for "*extra leverage*" (see paragraphs 47-48 above), and case no. 2411529/2018, where the ET concluded that the Respondent's comment that "*The ball is*

still rolling" was an express reference to the further claims that he had made against the company (see paragraph 69).

102. Given the evidence before me, I am clear that the Respondent has habitually and persistently, and without any reasonable grounds, pursued proceedings that have little or no basis in law, which subject would-be employers to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the Respondent, and that have involved a weaponization of the ET process that is significantly different from the ordinary and proper use of that process.

103. Having thus found that the conditions laid down by section 33 **ETA** have been met on this application, it is right that I now consider whether it is, nevertheless, appropriate to exercise my discretion to make the order sought in all the circumstances of this case. In considering this question, I can allow (as did the EJ in case no. 1400729/2019, see paragraph 87 above) that it might be naïve to discount the possibility that someone of the Respondent's age, with his medical problems, might not experience discrimination when seeking employment in a competitive labour market. That said, there can be no infringement of an individual's rights under Article 6 **ECHR** or under the **EqA** where there is simply no proper basis for considering that there has been any act of unlawful discrimination.

104. Notably, in many of the proceedings brought by the Respondent, the available evidence would not support the drawing of an inference of unlawful discrimination: thus, in case no. 2703084/2012, the would-be employer had not known of the relevant protected characteristics possessed by the Respondent before deciding not to offer him a position, and, in responding to a claim of age discrimination in case no. 2416405/2018, the would-be employer explained how an older candidate had been offered the position for which the Respondent had applied (see paragraph 74 above). Moreover, in the two cases that have

been considered at a full merits hearing, the claims made by the Respondent have been found to have been baseless (see case no. 3304326/2018, paragraphs 47-48 above, and case no. 2411529/2018, at paragraphs 67-70).

105. The material available further suggests that particular companies have been targeted by the Respondent; see, for example, the descriptions of his conduct in relation to Wren Living and Wren Kitchens (paragraphs 37-40 and 41 above), Aprite (paragraphs 67-70 and 78) and Parkdean (paragraphs 43, 77 and 83). More generally, a very significant amount of judicial time has been required to deal with the Respondent's claims, which will inevitably have had an impact upon the judicial resource available to deal with other claims before the ETs in question.

106. It is true to say that, in a number of cases, the Respondent has settled or withdrawn his claims upon what is said to have been settlement with the other party. I have little evidence of such settlements (in some cases there is a confirmation from ACAS but in others I simply have evidence of the Respondent having notified the ET that he is withdrawing his claim upon settlement) and the terms have not been made available to me. Assuming, however, that there have been settlements in a number of cases, those might have been on a "drop hands" basis, costs in the putative employer's favour, or on the basis of some payment to the Respondent. As the Applicant observes, even if payments were made in the Respondent's favour, that would not necessarily mean that the claim was not vexatious: some employers might make the commercial decision to settle the claim for a small sum to avoid incurring a greater sum in costs. Such a course might seem all the more attractive where the claim has been brought by someone who has stated he has no means and that the would-be employer would get no money from him, and has threatened to seek publicity in relation to the proceedings, or to pursue other action against the company or its representatives.

107. Given the history of the litigation pursued by the Respondent, I am satisfied that this is a case where the balance falls firmly in favour of making an RPO of indefinite duration. That, it seems to me, is necessary for public protection against abusive claims and to ensure that the administration of justice is not impaired by the persistent pursuit of unmeritorious proceedings. In reaching this decision, I bear in mind that an RPO under section 33 **ETA** acts as a filter rather than a barrier. It will thus still be open to the Respondent to apply to the EAT for permission to institute or continue any proceedings, or make any application in the ET where the proposed matter does not amount to an abuse of process and where there are reasonable grounds for the proceedings or the application. I therefore grant the application.