



## EMPLOYMENT TRIBUNALS

**Claimant**

Mr O Trotman

**Respondent**

v (1) Eden Brown Ltd  
(2) Hightown Housing Association Ltd  
(3) Helen Sedgeley (corrected from Sledgeley)

## PRELIMINARY HEARING

**Heard at:** London Central Employment Tribunal

**On:** 14 February 2018

**Before:** Employment Judge JL Wade

**Appearances:**

**For the Claimant:**

Not present

**For the First Respondents:**

Mr J Keeble (Solicitor)

**For the Second and Third**

**Respondents:**

Mr M Hill (Counsel)

## JUDGMENT

1. The following claims against the first respondent are dismissed because the Tribunal does not have jurisdiction:

1. Breach of duty of care and confidence
2. Breach of Data Protection Act
3. Fail to receive authorization to give verbal and written reference.

2. The following claims against the second respondent are dismissed because the Tribunal does not have jurisdiction:

1. Breach of duty of care and confidence
2. Breach of Data Protection Act
3. "Failure to investigate "unsatisfactory reference" before divulging any negative", and the remaining allegations in the final paragraph in the particulars of claim.

3. The two claims set out above are consolidated and will be heard together.

# CASE MANAGEMENT SUMMARY

## The hearing

1.1 The Hearing listed for **15-20 March 2018** is postponed. Following consolidation of the two claims, time must be allowed for the various directions below to be implemented.

1.2 The Hearing is now listed for **17, 18, 19, 20 and 21 September 2018**. The parties are to attend by 9.30 am.

1.3 The second respondent may apply by 28 February to vary the September dates having collected available dates from the other parties.

1.4 The hearing will decide liability and, if relevant, remedy. Should the time estimate change the parties are to inform the Tribunal immediately.

1.5 The Tribunal regrets that the hearing cannot be until September, but that is the first available date.

## The claimant's non-attendance

2.1 The claimant did not attend the hearing and emailed at 10.30, half an hour before it was due to begin, to say he unfortunately had the flu. He had not copied in the respondents and their representatives attended. The Tribunal decided to proceed with the hearing today to the extent that it could without disadvantaging the claimant.

2.2 The claimant may apply, with reasons, to vary the orders if necessary. The aim is to avoid a further in-person preliminary hearing for case management but a telephone hearing may need to be convened, for example further to clarify the issues.

2.3 The second respondent wished to apply for a deposit order. The claimant had not been served was not present and so I did not agree to consider it today. The second respondent may re-apply.

## The claims

2. All the claims were discussed are summarised below insofar as they are understood.

### ***Issues over which the Tribunal does not have jurisdiction***

3.1 In the judgment above certain claims are dismissed. This is because the Tribunal has no jurisdiction. Submissions were not heard from the respondents and the claimant was not at a disadvantage by not attending as it was plain from his particulars of claim that there was no jurisdiction.

3.2 The Tribunal can only consider claims over which there is jurisdiction and these are of race discrimination and protected disclosure detriment against the first respondent and race discrimination only against the second and third.

***Race discrimination***  
***Direct discrimination, Equality Act section 13***

4.1 The claims are hard to understand and I have made orders below for more information. In order to succeed in a discrimination claim the claimant MUST be able to show that he was less favourably treated than a white comparator in the same material circumstances BECAUSE OF his race.

4.2 The only personal injury claim which the Tribunal can consider is of injury arising out of discrimination.

4.3 In case against the first respondent the comparators are Debbie Jones and Chris Davis.

4.4 In case against the second and third respondents the claimant has named "John Doe" which appears not to be the real name. He must name any comparators. Hypothetical comparators are permitted.

***Protected disclosure detriment***

5. The issues are set out below and the claimant needs to ensure that he can provide the necessary information to clarify his claim.

5.1 What did the claimant say or write?

5.2 In any or all of these, was information disclosed which in the claimant's reasonable belief tended to show one of the following? Identify only the one/s upon which the claimant relies.

- 5.2.1 A criminal offence had been committed
- 5.2.2 A person had failed to comply with a legal obligation to which he was subject
- 5.2.3 A miscarriage of justice had occurred
- 5.2.4 The health or safety of any individual had been put at risk
- 5.2.5 The environment had been put at risk
- 5.2.6 Or that any of those things were happening or were likely to happen, or that information relating to them had been or was likely to be concealed?

5.3 If so, did the claimant reasonably believe that the disclosure was made in the public interest?

5.4 If so, was that disclosure made to:

- 5.4.1 the employer
- 5.4.2 to another person whose conduct the claimant reasonably believed related to the failure
- 5.4.3 another person who had legal responsibility for the failure

- 5.4.4 a legal advisor
- 5.4.5 a Minister of the Crown
- 5.4.6 a prescribed person?

5.5 If not, was it made in circumstances where:

- 5.5.1 it was made other than for personal gain and
- 5.5.2 the claimant reasonably believed that the information disclosed and any allegation contained in it were substantially true and
- 5.5.3 it was reasonable for him/her to make the disclosure and where:
- 5.5.4 it was likely that s/he would be subject to a detriment by the employer or
- 5.5.5 that evidence would be concealed by the employer if the disclosure was made to him, or
- 5.5.6 the employer had failed to respond appropriately to an earlier disclosure.

#### **Time limit**

6. The Tribunal will need to consider whether some of the claims are out of time.

#### **Disability discrimination**

7. In his email to the Tribunal of 14 December 2107 (which the claimant failed to copy to the second respondent) the claimant says that he is claiming disability discrimination but this is not referred to in his claim form, the ET1. This claim will not proceed, and cannot do so without an application to amend.

8. I made the following orders and varied the orders made on 17 October 2017.

## **CASE MANAGEMENT ORDERS**

### **Made pursuant to the Employment Tribunal Rules 2013**

#### **Consolidation**

1.1 Having considered the application of the respondents and the objections of the claimant in his email of 14 December the two cases are consolidated, see the list of respondents above.

1.2 The reasons are that the claims disclose one continuous narrative and that the disadvantage to the claimant in having to cope with two sets of respondents is offset by his only having to go through one hearing.

#### **Copy correspondence**

2. All parties must comply with the Tribunal rules by always copying one another into communications with the Tribunal.

### Details of the claim

3.1 **By 7 March** the claimant is to write to the respondents naming each person in his particulars of claim who he says caused him a disadvantage because of race or protected disclosure.

3.2 In respect of each name he is to write no more than one A4 side, 12-point font with margins and short, numbered paragraphs, a summary of:

- a. What he says each alleged perpetrator has done wrong by acting unlawfully and
- b. When this act was done.
- c. He is to cross-refer to the paragraph in his particulars of claim to show where this is mentioned.
- d. He may not refer to events unless they are already in her particulars of claim.

3.3 He is to answer all the questions about his protected disclosure detriment claim by going through and responding to paragraph 5 above.

### Schedule of Loss

4.1 The claimant has supplied a Schedule of Loss to the first respondent. He is to send the second and third respondents a Schedule of Loss **by 28 February**. The claimant is to provide his calculations and set out the figures claimed.

4.2 **By 21 March** the respondents are to serve a counter-schedule on the claimant.

### Disclosure

5.1 Disclosure between the claimant and the first respondent has taken place although Mr Keeble tells me that further disclosure has been identified. Disclosure (or further disclosure) between all parties is to take place by list and copy **by 11 April**.

5.2 The parties are ordered to give disclosure of documents relevant to the issues. This order is made on the standard civil procedure rules basis which requires the parties to disclose all documents relevant to the issues which are in their possession, custody or control, whether they assist the party who produces them, the other party or appear neutral.

5.3 The parties shall comply with the dates for disclosure but if despite their best attempts, further documents come to light (or are created) after that date, then those documents shall be disclosed as soon as practicable in accordance with the duty of continuing disclosure.

### Bundle

6.1 The first respondent has provided a bundle to the claimant but it needs to be revised following consolidation of the two cases.

6.2 **By 17 July** the first respondent will provide one copy of the consolidated bundle to the claimant. This should be arranged with a contents page and shall contain a

copy of each document, with each (double sided) page numbered, avoiding duplication and be so bound or otherwise held together so as to open flat.

6.3 The first respondent shall bring five identical bundles of the copy documents to the Tribunal hearing.

### **Witness statements**

7.1 The current agreement to exchange witness statements **by 21 February** is revoked. It is ordered that oral evidence in chief will be given by reference to typed witness statements from parties and witnesses.

7.2 The facts must be set out in numbered paragraphs on numbered pages, in chronological order.

7.3 If a witness intends to refer to a document, the page number in the bundle must be set out by the reference.

7.4 It is ordered that witness statements are exchanged so as to arrive on or before **28 August**.

7.5 Five copies of each witness statement should be provided at the hearing.

## **CONSEQUENCES OF NON-COMPLIANCE**

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

**Employment Judge Wade on 15 February 2018**