



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr J Moulton

v

**The Chief Constable of Norfolk
Constabulary**

Heard at: Bury St Edmunds

On: 19 April 2018

Before: Employment Judge Laidler

Appearances

For the Claimant: In person

For the Respondent: Ms K Balmer, Counsel.

RESERVED JUDGMENT

The terms of a COT3 Agreement entered into on the 27 January 2018 prevent the Claimant from bringing this claim. The Tribunal does not have jurisdiction to hear the claims which are dismissed.

RESERVED REASONS

1. The ET1 in this matter was received on 14 November 2017 by which the claimant brought a claim of discrimination on the grounds of sexual orientation against the respondent. In its response received on 2 January 2018 the respondent argued that the tribunal does not have jurisdiction to deal with these claims on the basis that the claimant had waived any claim against the respondent pursuant to the terms of a COT3 agreement. It further argued that the allegations were time barred under s.123 of the Equality Act 2010.
2. This hearing was listed solely to deal with the issue of whether the tribunal had jurisdiction to hear the claim. Having heard the submissions on behalf of both parties the decision was reserved and these are the written reasons.

3. At the outset of the hearing consideration was given to the claimant's emails of 16 and 18 April 2018 in which he suggested he had not received all relevant documentation. The claimant stated that he had requested but had not been provided with: -
 - 3.1 CTIU collaboration agreement with the correct entities.
 - 3.2 Confirmation of the correct legal entities described in the COT3.
 - 3.3 Respondent's actions and timeline of the fairness at work process.
 - 3.4 Respondent's 'delays' with ACAS.
 - 3.5 Statement from Mr Steve Fernandes.
4. Whilst arguing that these documents were not relevant to the proceedings counsel for the respondent stated that the claimant had been informed the day before this hearing that if he considered any documents were relevant he should bring them to the hearing. The claimant stated that these were not documents in his possession so he had not been able to do so.
5. Having heard arguments in relation to these documents it did not appear to the tribunal that they were crucial to the issues it had to determine, and even without them the claimant could make submissions on the points that he sought to raise where he said that these documents would be relevant. This was a preliminary hearing and not the full merits hearing and the matter could be dealt with on submissions. Having heard all the submissions it was quite clear to the tribunal that these documents were not relevant to the issues before it.

The procedural history

6. The previous proceedings which were issued in this matter are as follows:-
 - 6.1 ET1 – 9 January 2015, case number 3400039/2015.
 - 6.2 ET1 – 22 October 2015, case number 3401952/2015.

These were subject to several preliminary hearings to clarify the issues in the claims and at one of those hearings on 25 January 2016 a COT3 was entered into settling the claims.

7. A bundle containing the previous proceedings was provided to this tribunal but the Judge asked the Respondent to send in copies of the Preliminary Hearing summaries from the previous proceedings. These were received on the 2 May 2018 whilst these reasons were still being drafted. It could be seen that:

- 7.1 In case number 3400039/2015 there was a Preliminary Hearing before Employment Judge Sigsworth sitting at Huntingdon on the 12 March 2015. Orders were made for the Claimant to provide further information.
- 7.2 There was subsequently a Preliminary Hearing before Employment Judge Snelson sitting at London Central on the 5 October 2015 when various orders under Rule 50 were made. A further Preliminary Hearing was listed for the 25 January 2016 to consider:
- 7.2.1 Whether any or all of the Claimant's complaints should be struck out under rule 37 of the ET Rules on the grounds that they have no reasonable prospect of success;
- 7.2.2 Whether a deposit order should be made in respect of any or all of the Claimant's complaints under rule 39 of the ET Rules on the grounds that they have little reasonable prospects of success;
- 7.2.3 Whether the Tribunal has jurisdiction to hear the Claimant's complaints given that some or all of his claims are out of time under section 123 of the Equality Act 2010; and
- 7.2.4 If any claims remain, ongoing case management and listing for a full hearing.
8. It was at that hearing that the claims were compromised by the COT 3 Agreement.

The COT 3 Agreement

9. The parties' names are stated at the top of the COT3 agreement prepared by ACAS and the respondent given as Bedfordshire Police Headquarters, Bedfordshire Police. The relevant clauses of the agreement are as follows:-

"1 The Claimant will withdraw the entirety of his Employment Tribunal claims (case number **3400039/2015 and 3401952/2015**) (the "**Proceedings**") in full as set out below, by sending the withdrawal notice set out at Schedule 1 to this Agreement by email to the London Central Employment Tribunal (londoncentralet@hmcts.gsi.gov.uk). The Claimant agrees that he will copy this withdrawal notice to the Respondent's representative (Annette.ryan@clydeco.com).

2 The Claimant confirms that he does not wish to reserve the right to bring a further claim under rule 52(a) of Schedule 1 to

the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the “**Regulations**”) against the Respondent and/or any other partner or related Police Force including, The Chief Constable of Norfolk Police, The Chief Constable of Essex Police, The Chief Constable of Hertfordshire Police, The Chief Constable of Cambridge Police and the Chief Constable of Suffolk Police (the “**Collaborated Forces**”) and accordingly the parties, in accordance with rule 52 of Schedule 1 to the Regulations, confirm their understanding that the Proceedings will, following withdrawal of the claims by the Claimant, be dismissed by the Employment Tribunal.

- 3 The Claimant undertakes and agrees that he will not reactivate the Proceedings or issue any further and/or new claim or claims of any nature against the Respondent and/or the Collaborated Forces directly or against any of their current or former officers, staff, directors, agents, employees or consultants in relation to or in connection with the subject matter of the Proceedings.
 - 4 The Claimant undertakes and agrees that he will not object to the Proceedings being dismissed or apply for the decision to dismiss the Proceedings to be reviewed or appealed and acknowledges the Respondent and/or the Collaborated Forces’ right to bring this Agreement to the attention of the courts or tribunals.
 - 5 The Respondent will pay to the Claimant without admission of liability the total sum of £5,000 (the “**Payment**”) in settlement of the Proceedings and the claims set out at clause 7 of this Agreement. The parties will also agree to bear their own costs...
 - 10 The parties agree that the Claimant’s secondment into CITU has ended and that the Claimant is an Officer of Norfolk Police under the direction and control of The Chief Constable of Norfolk Police.”
10. Attached to the COT3 at Schedule 1 was the letter from the claimant to the London Central Employment Tribunal giving notice of withdrawal of his claims. This provided as follows:-

“I hereby confirm that I wish to withdraw with immediate effect the claims set out above in their entirety against the Respondent in accordance with rule 51 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“Regulations”).

I also confirm that I do not wish to reserve the right to bring a further claim under rule 51(2) of the Regulations and I acknowledge that the Tribunal shall issue judgment dismissing the above claim under rule 52 of the Regulations”

The case numbers set out at the top of that letter were those in paragraph 6 above.

11. It is the respondent’s position that the claims that are now brought are in breach of that COT3 agreement under which the claimant agreed not to bring any further claims “in relation to or in connection with the subject matter of the proceedings”.

The first claim

12. This claim was issued against “Bedfordshire Police” which the respondent contended was not the correct name of the respondent. It pleaded at paragraph 5 of its grounds of resistance, that the claimant was employed in Norfolk Constabulary (referred to in its pleadings as “the Home Force”) but that he was currently working for the named respondent pursuant to “the Secondment Agreement which has been in place since 1 July 2014”. There was no such legal entity as Bedfordshire Police and the correct name of the respondent should be amended to ‘The Chief Constable of Bedfordshire Police’. The respondent however submitted that the correct respondent for the purposes of the proceedings was the Home Force.
13. Of relevance to the current application is the explanation in the grounds of resistance in the first claim (repeated in both the second claim and the current claim) about the Secondment Agreement. It was pleaded that the respondent along with the Home Force and four other police forces entered into a Collaborative Service General Agreement in 2012 which was updated in or around 18 June 2014 (“The Service Agreement”). Amongst other matters it provided that a number of Police Officers from across the six forces which were party to that agreement would be seconded to work for the Counter Terrorism Intelligence Unit (CTIU). Pursuant to that agreement the claimant was seconded to CTIU for an initial period of 5 years. The respondent however pleaded that the claimant continued as a sworn Constable of the Home Force irrespective of his work and that his pay, welfare, pension and terms and conditions remained the responsibility of that force. He worked however under the direction and control of the Chief Constable of Bedfordshire Police being the strategic lead for CTIU activities. He remained however an officer of the Home Force. There was therefore an issue in those proceedings as to the correct name of the respondent. This is reflected in the Case Management Discussion summary of EJ Sigsworth after his hearing on the 12 March 2015

14. Counsel who appeared at this hearing had also appeared in the original proceedings. She submitted that the following key allegations were identified in the first claim:-
 - 14.1 Alleged homophobic incident reported in 2013 which became referred to as the “graffiti incident”.
 - 14.2 An allegation of gross misconduct against the claimant in relation to a piece of information which came in and which the respondent alleged the claimant had failed to pass on. It is alleged that this was substantial and very significant, and an individual was killed. The claimant denied he was at fault.
 - 14.3 The manner in which the claimant’s fairness at work grievance in relation to the above was handled.
 - 14.4 The failure to promote the claimant to Chief Inspector identified actually as the loss of an opportunity as he had not in fact applied (paragraph 29 of the amended Grounds of Resistance).
 - 14.5 The occupational health reports recommendations and how these were dealt with.

The allegation of gross misconduct

15. This is dealt with at paragraphs 59 – 65 of the Respondent’s amended response to the first claim. This makes it clear that:
 - 15.1 In or around July 2014 the Respondent was provided with information from another force which indicated that the Claimant may have acted in a manner which breached the Standards of Professional Behaviour applicable to him. It served a Regulation 15 Notice upon him. This advised that Detective Inspector Matt Thompson of Bedfordshire Police would be investigating.
 - 15.2 The Claimant was informed that pending the investigation he would be returned to the Home Force.
 - 15.3 The misconduct was ‘evaluated by the **Home Force PSD** who made the decision to return it to the Respondent (Bedfordshire) to investigate and deal with by way of appropriate management action.’ (emphasis added)
 - 15.4 This led to a Performance Development Plan being put in place with effect from 9 February 2015 and the Claimant returned to his position with CTIU pursuant to the Secondment Agreement on 15 December 2014.

The second claim

16. Whilst the parties were still trying to clarify the first claim the second claim was issued and consolidated with the first. In the details of complaint, the claimant pleaded that a “loss of opportunity arises from being removed from his post in counter terrorism policing which he aspired to spend the next 5 years under contract”.
17. In the further details provided by the claimant he sought to challenge the Performance Development Plan and the circumstances of his return to the Home Force. He catalogues emails and discussions about the Plan in June 2015 and a meeting about it on the 1 July 2015. The claimant took issue with a letter he received on 11 July 2015 following that meeting asserting that there was no ‘requirement for any person to willingly participate in an action plan’ as he had been requested to do. He asserted his secondment was terminated immediately without notice and any right of appeal. He also referred to lack of support and the occupational health recommendations.
18. It was submitted at this hearing on behalf of the respondent that it had always alleged that the claimant remained employed by the Home Force, and that the representatives acted on behalf of both the named respondent Bedfordshire and the Home Force, Norfolk.

The COT3

19. Details of the relevant clauses have already been set out, but counsel drew the tribunal’s attention to the fact that this settlement agreement always intended, and indeed records that the claimant did not reserve his right to bring a further claim under rule 52(a) of the Employment Tribunal Rules against the respondent and/or any other partner or related police force including; The Chief Constable of Norfolk Police, The Chief Constable of Essex Police, The Chief Constable of Herefordshire (which it is believed was a typing error and should have referred to Hertfordshire) Police, The Chief Constable of Cambridgeshire Police and The Chief Constable of Suffolk Police referred to as the “Collaborated Forces.” This it is argued on behalf of the respondent covers the proceedings now brought.

The current proceedings – issued 14 November 2017

20. These have been brought against The Chief Constable of Norfolk Constabulary and the respondent submits that that entity is covered by the COT3 agreement.
21. The respondent states at paragraphs 34 – 36 of its response to these current proceedings that it was advised by Bedfordshire Police that the Claimant was failing to engage in the Performance Development Plan which had ‘resulted in the working environment becoming untenable. As a consequence, on 2 July 2015 the secondment was terminated and the Claimant returned to the Respondent’.

22. On page 9 of the claim form the claimant sets out the compensation he is seeking to recover, and states that his injury to feelings award should be based on “two years of direct discrimination and/or victimisation including removal from a role”. In calculating interest on injury to feelings he has stated the date of the first act complained of was 23 September 2014. It is known from the background details included in the various responses that is when the respondent started commencing its investigation into the allegations of gross misconduct against the claimant.

23. More detailed particulars were provided by the claimant with his ET1. At paragraph 1.2 he stated:

“On 23 September 2014 the respondent conducted an investigation into the handling of intelligence on 1 November 2012 by the claimant. The Respondent made determination that on the balance of probabilities the claimant failed to deal appropriately with intelligence. The disciplinary finding was distributed to Norfolk Constabulary, Bedfordshire Police, MI5 and regionally. The claimant was given a performance action plan in which the finding is documented and detriment of the action plan is evidenced, see Appendix A”.

This the respondent submits is the gross misconduct allegation that is dealt with in the first claim and compromised in the COT3.

24. The Appendix A to which the Claimant referred was seen on the tribunal file as having been submitted with the current ET1. It is the Personal Development Plan on the headed paper of ‘Norfolk & Suffolk Police’. It expressly refers to the fact that:

‘Performance concerns have been raised following a PSD investigation in relation to the handling of intelligence and also by your line management in relation to your overall performance in role.

The PSD investigation related to a specific case and the handling of intelligence in relation to a particular named individual. The determination was that on the balance of probabilities you failed to deal appropriately with intelligence information that was sent to you in relation to a named subject...’

As can be seen the Claimant has virtually quoted verbatim from that in his paragraph 1.2 referred to above.

25. At page 15 of the bundle in new particulars of claim the claimant pleaded that

“On 9 July 2017 the Claimant discovered new and highly significant information in emails from 1 November 2012 that unequivocally showed he referred the information to an Intelligence Handling Model process, did forward the information to the Luton Prevent Team through the appointed person and did correspond and make requests in respect of the case in question”.

He then catalogues what the respondent could have done in its investigation and by way of example:

- 25.1 At para 1.4b) ‘the Respondent could have obtained details of telephone conversations the claimant had about the intelligence on 31st October 2012’,
- 25.2 At para 1.4c) ‘the Respondent failed to carry out a proportionate investigation to the detriment of the claimant’
- 25.3 At para 1.4d) ‘in the alternative, should the Respondent have known about the emails... it did not consider the information in its findings to the detriment of the claimant’
- 25.4 At para 1.4e) the Respondent did not interview the claimant about the allegations
- 25.5 Then the claimant continues with other assertions about what the Respondent failed to do. The respondent submits this is reference to the gross misconduct investigation. That concerned whether the claimant failed to pass on information. The claimant settled the claim regardless of whether he was guilty and is now seeking to point to new evidence that shows that he did nothing wrong. He is asserting that he passed the email on to the respondent now, and the complaint seems to be that they have not dealt with that timeously enough. That is again repeated at the top of page 17F. There the claimant stated; “despite this information and having had the emails directly sent to them by the claimant the PSD department and the respondent claimed not to be in possession of them four months later”.

- 26. The respondent submits there are only two new allegations contained in the new claim form. In a separate set of particulars of claim in the bundle for this hearing at pages 17A to G these were identified as follows:-

26.1 At page 17E:

(g) – “the claimant suffered direct impact on the selection process for Detective Inspector SB Norfolk on Wednesday 24 February 2016 when Supt Parkes made direct reference to conduct checks made following interview.

(h) The claimant has suffered a loss of a chance to permanent Detective Chief Inspector opportunities and ongoing development to Superintendent between 13 October 2015 and 9 July 2017.

It is submitted on behalf of the respondent that this is the matter raised in the second claim in 2015. When the respondent believed the claimant not to be engaging with the Performance Development Plan the secondment was terminated by Bedfordshire and the claimant returned to his Home Force, this respondent. He is saying exactly the same thing in these proceedings. At (f) on page 17D he pleads that he suffered a direct impact on his health at a return to work interview on 13 October 2015 when Ruth Hassall, HR business partner recorded that he was now deployed to custody in Kings Lynn and felt that that seemed to be a punishment posting. That is the context of this pleading and something that happened after the COT3 but in the respondent's submissions is exactly what the wording of the COT3 was designed to cover. This is the ongoing consequence of the Performance Development plan.

27. The respondent submits that this is all part and parcel of the original proceedings and the claimant cannot attempt to re-litigate it. Counsel gave the example of this being akin to someone who settles an unfair dismissal claim and then seeks to re-open it on receipt of new documents that show that they did not commit the offence with which they were accused. The respondent says that the claimant's case is no different, he has settled these issues.
28. Further, the respondent believes it is important to state that the claimant has not shown any reason why these matters have anything to do with his sexual orientation. They took that point in relation to the other earlier proceedings that right from the outset the claims had no merit. The case was settled at a preliminary hearing at which the respondent was seeking to strike out or obtain a deposit order.

Submissions on behalf of the claimant

29. The claimant submits that the facts in his new ET1 are not the same. They involved different legal entities, persons and acts. There may be a passing reference to the Norfolk Professional Standards Department, but there is a minor overlap only. The other ET1s were against Bedfordshire and the personnel are different. There is reference to the development plan that Norfolk compiled, but it is the actions that are the subject of that claim and not the development plan itself.
30. The matters the claimant has described in his current ET1 were not known to him earlier and could not have been known. He should not be estopped

from raising these matters now. Also, he refers to acts which have occurred since the COT3 was entered into.

31. The claimant submits that the gross misconduct allegations were investigated by Bedfordshire and are not what he is now referring to as against Norfolk. He could not have known that the Norfolk investigation was flawed until he found the emails on 9 July 2017.
32. The claimant says that he is not arguing about his return to the Home Force, but the lost promotion opportunity which was a separate process.
33. In summary the claimant says that his new claim arises from the fact that emails he found on 9 July 2017 led him to believe the investigation by Norfolk treated him unfairly.
34. It is not the case that the respondent's representatives were acting for both constabularies. The claimant stated he separated his claim which was only about Bedfordshire in the earlier claims and not Norfolk.
35. The claimant disputes that the names stated in paragraph 2 of the COT3 are actual legal entities. There is no such entity as The Chief Constable of Norfolk Police. Also, the parties are referred to as Collaborated Forces and that does not exist as a group. The legal entities stated are incorrect. The claimant gave the example that if a claimant made a claim in relation to the wrong respondent, the claim would be struck out, so he should be treated fairly, and as the wrong entities were described in the COT3 his claim should be allowed to continue.
36. In relation to the signing of the COT3 agreement, the claimant accepted that he did sign it, but did not have the information about the emails which he now has. He accepted he spoke with ACAS before signing the agreement.
37. In claiming two years injury feelings, that is about the posting to the Norfolk Custody Unit.
38. The conduct checks carried out on 24 February 2016 are separate.
39. The investigation referred to in the ET1 at paragraph 1.2 on page 15, namely the investigation of 23 September 2014 into the handling of intelligence on 1 November 2012 is the claimant submits a separate investigation to the one in the previous claims. It is an investigation by Norfolk only.

Submissions in response on behalf of the Respondent

40. The respondent submitted that it was a particularly underhand and disingenuous point for the claimant to now argue that the legal entities in the COT3 were not correctly described. The claimant entered into the COT3 understanding that he was settling his claims against Bedford and

Norfolk, and the other entities named, and if the description was not correct then he should have said so at that time. The respondent does not accept that it is the wrong entity, but argues that the claimant is just seeking to get around the COT3 by trying to raise this point now. He has further suggested that they had no authority to settle for Norfolk, and again that was not raised at the time. The representatives did have Norfolk's authority, the same solicitor and counsel acted for both forces. The claimant did believe all claims against Norfolk were being settled at the time when he signed the COT3.

41. There is a considerable overlap with the original claims and obviously they are about the same things. The investigation that is being referred to is about the gross misconduct. All these historic matters have been settled and the claimant is trying to re-open them after the event which cannot be done.
42. The conduct check was all part and parcel of the claimant's return from secondment and the allegations of gross misconduct. The claimant was going to have that on his records, and he knew that when he settled the claim. If he had not wanted that on his record then he should have continued with the claim; that was his choice. He chose to settle. The claimant should not be permitted to get around the COT3 on a technicality.
43. It was further submitted that the claimant had signed the rule 52 consent to dismissal judgment making it clear that he was not seeking to argue that the claim should not be dismissed.

Relevant Law

44. Clause 3 of the settlement must be construed according to ordinary contractual principles. The tribunal was not referred to any case law in relation to the interpretation of clauses in such agreements but has taken assistance from the following.
45. In Royal National Orthopaedic Hospital Trust v Howard [2002] IRLR 849 the EAT held that:-

“As a matter of public policy, there is no reason why a party should not contract out of some future course of action. The law does not decline to allow parties to contract that all or any claims, whether known or not, shall be released. The question in each case is whether, looking at the compromise agreement objectively, that was the intention of the parties; or whether in order to correspond with their intentions some restriction has to be placed on the scope of the release. If the parties seek to achieve such an extravagant result that they release claims of which they have and can have no knowledge, whether those claims have already come into existence or not, they must do so in language which is absolutely clear and leaves no room for doubt as to what it is they are contracting for.”

On the facts of that case the court found that there was nothing in the compromise agreement to indicate any intention to contract out of future claims. The wording that the settlement was 'in full and final settlement of these proceedings and of all claims which the applicant has or may have against the Respondent' did not preclude the Claimant from bringing a claim for victimisation under the Sex Discrimination Act in relation to a later matter. The alleged conduct of the hospital had occurred after the date of the agreement it was not precluded by the terms of the compromise agreement.

46. In McLean v TLC Marketing plc and others UKEAT/0429/08 the EAT referred to the above decision. In this case the term of the agreement was that:-

“Without any admission of liability, the Respondents will pay the total sum of £28,000 to the Claimant who will accept it in full and final settlement of her Employment Tribunal claims against the Respondent and of any other claim whatsoever arising out of or connected with her employment with the Respondents and its termination.”

47. The issue was whether a fresh claim of post-termination and post-COT3 victimisation, brought under ss4 and 20A of the Sex Discrimination Act 1975, was precluded by the terms of the agreement. The EAT held:-

“Applying *Royal National Orthopaedic Hospital Trust v Howard*, clear words are needed in a COT3 to preclude claims in respect of which an agreement to contract out is otherwise rendered void by statute. In my judgment, the construction contended for by the Respondents does not accord with what objectively would be regarded as being in the reasonable contemplation of the parties. If the parties are taken to be bound so that a Claimant would be precluded from pursuing any claim arising from facts which had not arisen at the date of the agreement, but which may arise at any time thereafter, applying the expression used in *Howard*, such a result would be extravagant. Clear words would be required in a COT3 to achieve such a result. In my judgment the language of the clause does not lend itself to such a construction...”

CONCLUSIONS

48. The Collaborated Forces were clearly defined in the COT3 agreement as 'The Chief Constable of Norfolk Police, The Chief Constable of Essex Police, The Chief Constable of Hertfordshire Police, The Chief Constable of Cambridge Police and the Chief Constable of Suffolk Police' and the claimant took no issue with that description when he signed the COT3. The wording has to be read against the background of the Secondment Agreement under which the claimant remained employed by Norfolk but seconded to Bedfordshire. It is not now open to the claimant to seek to argue that the police forces were in some way wrongly described or that there is a slight difference such as to suggest that the current respondent was not a party to the COT3. The intention of the parties was clearly that not only would the named respondent, Bedfordshire but the other

collaborative forces including Norfolk, the claimant's Home Force, would be bound by the agreement.

49. Case law makes it clear that for such an agreement to prevent a claimant from bringing future claims the wording must be very clear. The relevant wording in this COT3 was:

'The Claimant undertakes and agrees that he will not reactivate the Proceedings or issue any further and/or new claim or claims of any nature against the Respondent and/or the Collaborated Forces directly or against any of their current or former officers, staff, directors, agents, employees or consultants ***in relation to or in connection with the subject matter of the Proceedings***' (emphasis added)

50. The claimant therefore expressly agreed not to 'reactivate' the proceedings or issue new claims 'of any nature' against the respondent or any of the Collaborated Forces, of which this tribunal is satisfied the current respondent was one, 'in relation to or in connection with the subject matter of the Proceedings'. Whether this new claim relates to or is in connection with the subject matter of the earlier two sets of proceedings is the key issue to be determined by this tribunal.
51. The tribunal is satisfied that the new claim does relate to or is connected with the subject matter of the earlier claims and the claimant is therefore prevented from bringing it by virtue of the COT3 agreement.
52. The claimant has sought to argue at this hearing that the investigation by Norfolk into the allegations against him is somehow different to the investigation by Bedfordshire. The chronology drawn from the various pleadings shows that they were being conducted if not simultaneously then sequentially and about the same matter. There was only one issue being investigated, namely whether the claimant had passed on intelligence received. The concerns were passed to the Home Force, Norfolk and it decided to refer it back to Bedfordshire, to deal with by way of performance management. The Performance Development Plan was put in place and the claimant returned to Bedfordshire for that to be managed. This was unsuccessful and the secondment terminated and the claimant returned to his Home Force, Norfolk, on the 2 July 2015. That had occurred therefore approximately 6 months before the claimant signed the COT3 agreement. He even makes reference to a meeting with an HR representative Ruth Hassall on the 13 October 2015 and her noting he felt his transfer back was a 'punishment posting'.
53. The investigations into the intelligence and the claimant's transfer back to Norfolk were all the subject of the earlier proceedings.
54. The claimant now seeks to argue that he could not have argued in the earlier proceedings that there were flaws in Norfolk's investigation until he was aware of the emails on 9 July 2017. If however consideration is given to how he now pleads his case as to the alleged flaws they are all

matters upon which he could have had a view when the earlier proceedings were issued i.e. that they could have obtained details of telephone conversations the claimant had had, that they did not interview him, they did not allow him to be legally represented.

55. When the claimant compromised the earlier proceedings, he did so in clear terms that he would not be able to bring further proceedings 'in relation to or in connection with the subject matter of the Proceedings'. The tribunal is satisfied it was the parties intention when entering into that agreement that even if, as did then happen, the claimant discovered fresh information he would not be able to reactivate those earlier proceedings.
56. The tribunal does not accept the claimant's assertion that he is raising new matters. They are all matters arising from the earlier investigations and their consequences to him. By settling his claims, the claimant gave up any argument that those matters had caused him further detriment.
57. The wording of the COT£ was clear enough to cover these future proceedings. In addition, the Claimant confirmed in his letter of withdrawal of those proceedings that he did not wish to reserve the right to bring a further claim. If the Claimant was unclear of the consequences of his return to his Home Force then he need not have entered into the COT3 or agreed to the dismissal of his claims. He chose to do so. These current proceedings are covered by the terms of the COT3 agreement, the tribunal has no jurisdiction to determine them and all the claims now brought are dismissed.

Employment Judge Laidler

Date: 4 June 2018

Sent to the parties on:

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For the Tribunal Office