



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Arthur Badoo

**Respondent:** Guys & St Thomas NHS Foundation Trust

**Heard by CVP**

**On: 26-27 April 2021**

**Before:** Employment Judge Martin

## **Representation**

**Claimant:** In person

**Respondent:** Mr O'Dempsey - Counsel

## RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant's claims are not well founded and are dismissed.

## REASONS

1. By a claim form presented to the tribunal on the claimant brought claims of unauthorised deductions from wages, indirect discrimination on grounds of race (black African, Ghanaian nationality (s19 Equality Act 2010 ("EA"))) and direct discrimination on grounds of marital status (married).
2. The issues to be determined<sup>1</sup>

### **Summary**

The Claimant has brought claims of:

- a) Indirect discrimination on grounds of race (s19 Equality Act 2010 ("EA"))
- b) Unlawful deductions from wages
- c) Direct discrimination on grounds of marital status

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<sup>1</sup> The issues were not agreed. The parts in *italic* are from the Claimant

For the purposes of s9 EA the Claimant describes his race as Black African ethnicity with Ghanaian nationality.

Subject to the outcome of the Claimant's application to amend his claim at the substantive hearing the Tribunal is asked to consider the following issues:

**Indirect Discrimination - s.19 EA 2010**

1. Was the Claimant indirectly discriminated against contrary to section 19 EA?
  
3. Did the Respondent apply the provisions, criteria or practices ("PCP") identified by the Claimant in paragraph 1.2 of his further particulars of claim ("FPCs"), namely:
  - a. The requirement for a positive ECS (Employer Checking Service) check;
  
  - b. The insistence on ONLY accepting proof of right to work documents that produces a statutory excuse regardless of the rights/status and protection conferred on the employee by law.
  
3. Did the Respondent apply the PCP to persons who are not of the same race as the Claimant?
  
4. Does that PCP place (or would it place) those "with legal 'Rights'; British Nationals, EU nationals and family members of EU nationals who themselves are not EU Nationals" (para 1.3 of FPCs) at a particular disadvantage compared to others? [the particular disadvantages identified by the Claimant at paragraphs 1.4 a and b of FPCs require clarification]
  
5. Did it do so as a result of the group's characteristic?
  
6. Was the Claimant placed at the same significant disadvantage? In particular, was the Claimant placed at a significant disadvantage by the Respondent by being treated as someone "requiring a grant of permission to work instead of someone with the right to work by virtue of EU law who does not have to go to the Home office for any documents".
  
7. If so, what aim was the Respondent pursuing by applying the PCP?
  
8. In particular, was the Respondent's aim of employing employees lawfully and in line with immigration legislation and/or to ensure the Respondent had a statutory excuse against any potential penalty a legitimate aim?
  
9. If the aim was legitimate then was the PCP a proportionate means of achieving it?
  
10. When was the last time at which the PCP had the alleged disadvantaging effect?

11. Was the Claimant's claim presented within the relevant time limit?

### **Unlawful deductions from wages**

1. Did the Respondent withhold the Claimant's wages from 16 October 2019 to 12 November 2019?

2. Was the Respondent entitled to withhold the Claimant's wages during the above period?

3. In particular, was the Respondent entitled to withhold the Claimant's wages pursuant to the Claimant's contract of employment and/or due to the fact the Claimant had failed to produce satisfactory evidence of his right to reside and work in the UK?

*4. What is the legal definition of 'satisfactory evidence' of the claimant's right to work, armed with the knowledge of him being the direct family member of an EU national who had acquired permanent residence rights in the UK under pursuant to EU Directive 2004/38/EC (Freedom of movement directive)?*

*5. What is the strict legal position as to the claimant's entitlement to reside and work in the UK pursuant to EU Directive 2004/38/EC (Freedom of movement directive)*

*6. Is an employment contract NOT drawn under the remits of the law legally enforceable?*

*7. Why did the respondent not dismiss the claimant but decided to suspend him following the claimant's alleged 'failure' to produce satisfactory evidence of his right to work documents?*

*8. Whilst on suspension was the claimant considered an employee or not?*

*9. Did the respondent follow the Home office's "An employer's guide to Right to work checks" of 28 January 2019 when they dealt with the respondent?*

*10. If so, can the respondent adduce evidence to confirm they followed the guidance as laid out on page 38 under the subheading Additional information*

### **Direct discrimination - marital status s.13 EA 2020**

1. Did the Respondent treat the Claimant less favourably because of his marital status pursuant to s.13 EqA 2010 namely (as set out in the Claimant's FPC's) by wilfully and knowingly suspending the claimant on the bogus claim of not having the right to work despite being aware that the claimant was the spouse of an EEA national?

2. Was the Claimant treated less favourably than a hypothetical member of staff who is not married to an EEA national?
3. If so, has the Claimant provided primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of the claimant's marital status?
4. If so, what is the Respondent's explanation? Does it provide a non-discriminatory reason for any proven treatment?
5. *What special mention does my marital status deserve in this matter?*
6. *What was the sole aim of the respondent bringing in the subject of the claimant's marital status into this matter of breaching my legal rights?*

### **Remedy**

1. If all or any of the claims are successful, what, if any compensation is the Claimant entitled to?
2. What injury to his feelings has the Claimant sustained?

### **The relevant law**

#### Unauthorised deductions from wages

4. Section 13 of the Employment Rights Act 1996 states an employer shall not make a deduction from wages of a worker employed by him unless – the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or the worker has previously signified in writing his agreement or consent to the making of the deduction.

#### Direct discrimination

5. Direct discrimination is dealt with in sections 13 and 23 of the Equality Act 2010.
6. Section 13 provides that:  
*"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*
7. Section 23 provides that:  
*"On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case."*
8. In considering the claim of direct discrimination, the first task of the Tribunal is to decide whether on the primary facts as proved by the Claimant, and any appropriate inferences which can be drawn, there is sufficient evidence from which the Tribunal could (but not necessarily would) reasonably conclude that there had been unlawful discrimination. If the Claimant can prove such facts, then the burden of proof passes to the Respondent to show that what occurred to the Claimant was not to any extent because of the relevant protected characteristic as set out in

the Equality Act 2010. In each case, the matter is to be determined on a balance of probabilities. The fact that a claimant has a protected characteristic and that there has been a difference in treatment by comparison with another person who does not have that characteristic will not necessarily be sufficient to establish unlawful discrimination. In all cases the task of the Tribunal is to ascertain the reasons for the treatment in question and whether it was because of the protected characteristic. The provisions of section 136 of course apply to any proceedings under the Act, and not only to claims of direct discrimination.

### Indirect discrimination

9. Section 19 of the EqA provides:

*A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim."*

10. Indirect discrimination is when there's a provision criteria or practice which applies to everyone in the same way, but it has a worse effect on some people than others. i.e it puts the employee at a particular disadvantage. The provision criteria or practice can be formal or informal. It can be a one-off decision or a decision to do something in the future. A key characteristic of indirect discrimination is that it applies to everyone in the same way. Therefore, it follows that if something only applies to some people who all have the same protected characteristic, it would not be indirect discrimination. This type of discrimination can be objectively justified.

### Marital Status

11. Section 8 of the Equality Act 2010:

(1) A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

(2) In relation to the protected characteristic of marriage and civil partnership—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who is married or is a civil partner;

(b) a reference to persons who share a protected characteristic is a reference to persons who are married or are civil partners.

12. By section 13(4) if the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if

the treatment is because it is B who is married or a civil partner (in section 13(1)).

### **The hearing**

13. The Tribunal heard from the Claimant and from Mr Mark Hudson (Senior HR Consultant) for the Respondent. It had before it an electronic bundle of documents. The hearing was heard by CVP with the agreement of the parties due to the on-going impact of the Covid-19 pandemic.

### **The facts that the Tribunal found**

14. The tribunal has found the following facts on the balance of probabilities. All evidence was heard in full however the only recorded facts are those that are necessary to explain the decision reached, and relevant to the issues. Even if not specifically referred to below, all evidence was heard and considered.
15. The Claimant was employed by the Respondent on 13 May 2019 and remains in its employment. The Claimant was subject to immigration control and has a complex immigration history. At the relevant times he was living and working in the UK as the spouse of an EU citizen - albeit they were estranged.
16. Under s 15-25 of the Immigration, Asylum and Nationality Act 2006, the Respondent has a legal obligation to prevent illegal working. It must ensure that all its employees have the right to reside and work in the UK. It is a criminal offence to employ workers illegally and doing so may result in an unlimited fine or prison. There is a system relevant to time limited rights to work whereby an employer can be given a statutory defence by going to the Employer Checking Service (ECS).
17. When someone is employed by the Respondent their immigration status is noted on their file, and if there is a need for a further ECS check in the future this is also noted so that it is completed in good time. The Claimant was provided a contract of employment when he started work which he signed. This contract states:

#### ***“Visa/Sponsorship Expiry***

*The result of your ECS check is valid for 6 months, expiring on the 14<sup>th</sup> October 2019. Please note you will be required to show your new biometric card in person prior to this date, failure to do so may lead to the termination of your contract as you will not have the statutory excuse required for right to work”.*

#### ***“16 Eligibility to Work in the UK***

*If you are a non-resident of the United Kingdom or European Economic Union, you are required to have a valid work visa and leave to remain in the UK, which is renewed as required. The Trust is unable to employ or continue to employ you if you require but do not have a valid work visa and/or leave to remain in the UK.*

#### ***17 Immigration Permission: Notification Obligations***

*Where you require immigration permission to work in the UK, and in order to comply with its obligations as an employer, or sponsorship duties where the Trust acts as your sponsor, you must:*

*(a) On request, provide the Trust with such documentary evidence as it requires from time to time, to prove:*

*(i) your nationality and identity;*

*(ii) that you have relevant immigration permission and professional accreditations to work for the Trust in the role and for the period set out in section 1 and*

*(iii) that you have the appropriate leave to enter or remain in the UK and the date on which your leave expires.*

*(b) Notify the Trust immediately of any change to your immigration status.*

*(c) Notify the Trust immediately of any changes to your contact details, including your home address and phone number (including mobile phone number, if you have one). You should be aware that the Trust needs to maintain a record of all your previous contact details, not just your current details.*

*(d) Notify the Trust immediately if you are going to be absent from work for any period of time, with details of the reason for the absence and the anticipated length of absence. All absences should be notified in accordance with the relevant Trust policy that governs the reason for the absence, for example Sickness Absence, Maternity and Paternity Policies.*

*(e) Notify the Trust of any change in circumstances which may affect your right to work for the Trust or to live in the UK.*

*Failure to observe these obligations may lead to disciplinary action being taken against you under the Trust's Disciplinary Policy and Procedure.*

18. The Claimant did not correct this information or notify the Respondent that it was incorrect and explain fully what his immigration status was. The Claimant did not need an ECS to be able to work.

19. The Respondent has a suspension policy which states:

*"4.3 If there is reasonable evidence that an employee is not entitled to work in the UK, i.e. without valid documentation, the employee will be immediately suspended on no pay following consultation with the Workforce Relations Team".*

20. The Respondent has an Employment Checks Policy which includes right to work checks:

### **6.1.3 Right to Work Checks**

*"Changes to the Immigration, Asylum and Nationality Act (2006), which came into effect on 29 February 2008, introduced a new criminal offence for employers who knowingly employ illegal migrant workers and a continuing responsibility for employers of migrant workers to check their ongoing entitlement to work in the UK.*

*The Trust is required to undertake right to work checks for of its prospective employees and must therefore see the original documents in the presence of the individual and take copies of these in line with the Home Office's Right to Work Checklist. The appointee and Hiring Manager are facilitate to support the Recruitment team in undertaking these checks when requested. Failure by a candidate to provide documents in line with these requirements will lead to a withdrawal of conditional offer.*

*These checks are concerned only with an individual's right to work in the UK and must be done in conjunction with verification of identity checks so that the Trust can satisfy itself that the applicant is the rightful owner of the documents that they present.*

*If an illegal migrant is employed because the individual supplied fraudulent documents, which could not have been detected as fraudulent, the employer can establish a statutory excuse ('the excuse') against payment of a civil penalty. A statutory defence can be established if the employer can show that, at the time employment commenced, it had inspected and retained copies of documents evidencing that the person could work, in accordance with statutory criteria published by the Government, and had no reason to believe that evidence was false.*

*Right to Work checks must be repeated as in line with expiry dates of right to work documents. , If the right to work is withdrawn or not renewed, the employee cannot continue to work legally for the Trust and their contract must be terminated”.*

21. There is guidance issued by The Home Office “An Employer’s Guide To Right To Work Checks” which states:

**“Certificate of Application**

*Where a valid application for a Residence Card, Permanent Residence Card or Derivative Residence Card is submitted to us, the applicant is issued with a 'long' Certificate of Application which states that the individual has a right to work in the UK whilst their application for the card is being considered. A Certificate of Application which includes a right to work will give you a statutory excuse if it is less than 6 months old and is accompanied by a Positive Verification Notice that you have obtained by contacting the Home Office Employer Checking Service. stating that the holder has permission to work in the UK. The excuse will last for six months from the date of the Positive Verification Notice.*

*If you are presented with a 'short' Certificate of Application that does not state that work is permitted. this will not demonstrate a right to work and the Home Office Employer Checking Service will provide a Negative Verification Notice.*

*If the Certificate of Application is more than 6 months old. but the individual's application for a Residence Card or Derivative Residence Card has not been finally determined, they can apply to the Home Office for a replacement Certificate of Application which will again be valid for six months. If their work entitlement is extended. you will need to contact the Employer Checking Service again to receive a new Positive Verification Notice verifying this.*

**Additional information**

*Non-EEA nationals may claim that they have a right to work in the UK as a family member of an EEA national. or because of a derivative right. but do not hold a*



*Residence Card, Permanent Residence Card or 'long' Certificate of Application with a right to work issued by us.*

*There is no mandatory requirement for non-EEA nationals who are resident in the UK as a family member of an EEA national, or who have a derivative right of residence in the UK, to register with us or to obtain documentation from us.*

*Consequently, it is open to any non-EEA national who has an enforceable European Union law right to work in the UK - as a direct family member of an EEA national or because of a derivative right of residence – to demonstrate the existence of that right in a different way to those documents in Lists A and B as explained in the preceding sections.*

*In such cases, you may choose to accept alternative evidence. You should ask to see the following, however, if so doing you will not establish a statutory excuse against a penalty should the individual be found to be working illegally”.*

22. Rather than explaining his immigration status properly, the Claimant relied on a certificate of application dated 20 /07/ 2018. This contained the following: *“this document may form part of a statutory defence against liability to pay a civil penalty under section 15 of the Immigration Asylum and Nationality Act 2006 for employing an illegal worker. However, it should only be accepted for this purpose if presented within six months of the date of issue and provided you can demonstrate that the document has been verified by the Home Office employer checking service.”*
23. The Respondent contacted ECS and on 15 April 2019 was told that the Claimant had the right to work in the UK subject to the restrictions in section 4 of which there were none. This document said this was a time limited statutory defence: *"the result of this check is valid for 6 months. It expires on 14/10/2019. You should carry out a follow-up right to work check on this person on or before this date."* These dates were noted by the Respondent so it could ensure that it did its ECS in good time on the expiry of the statutory notice in accordance with its policies.
24. The Respondent was particularly vigilant about immigration status and ensuring that checks were done at the appropriate time as it had been the subject of a previous investigation and had been found to have been in default. Therefore, the Respondent took steps to get another statutory defence by approaching the ECS.

On 20 August 2019 the Respondent wrote to the Claimant saying:

*"Please contact me via email or phone... In regard to your right to work. ...Please note that your right to work is expiring. If you have a new right to work or are in the process of applying please let me know."*

25. On 21 August 2019 the Claimant replied: *"it is important we remind ourselves of the following and how it actually works in law. My right to work is enshrined in EU law as having the same rights as any EU passport holder, being the spouse of an EU person with permanent residence in the UK. It is not expiring. Rather it is the statutory excuse you have for me that is expiring. It is my right to work that generates a statutory excuse for yourselves.... I have made a new application to the Home Office my permanent residence card. The*

*application was posted yesterday 20 /08/ 2019. I will let you know when I hear from the Home Office."*

26. The Claimant knew that the statutory excuse was expiring that he was familiar with how slowly the Home Office works as he had extensive experience of interaction with them. He also knew that he needed to make an application to the Home Office in order to receive a positive ECS check.
27. The information that the Respondent had from the ECS notice was that an alternative to a certificate of application (which enables and ECS to be issued) other documents could be produced to show a right to work in the UK. The Code of Practice, which is referred to above, was not complete in the bundle and the full list of documents did not appear. The Respondent's evidence which was not challenged is that Upper Tribunal immigration decisions are not on these lists. The Claimant had a decision from the Upper Tribunal saying he had the right to work in the UK and sought to rely on this. Without the documentation contained in the guidance the Respondent considered that there may be a civil penalty against them if they continued to employ the Claimant.
28. The Claimant was suspended by the Respondent on 16 October 2019. The suspension policy states that *"if there is reasonable evidence that an employee is not entitled to work in the UK, i.e. without valid documentation, the employee will be immediately suspended on no pay following consultation with the workforce relations team."* The Respondent considered that because there was no positive ECS check, and that they did not have a statutory excuse, they could not employ the Claimant until this had been sorted out.
29. The Claimant's suspension was confirmed in writing by letter dated 16 October 2019 and set out the reason for suspension as: *"because the trust has received confirmation from the Home Office that you do not have the legal right to work in the UK (see attached)"*.
30. The Claimant complained to the Respondent on 24 October 2019 saying that the Respondent had *"made a procedural error by not waiting for the certificate of application, a prerequisite for conducting this check in my case"* and that the result was a *"false negative"*. The Claimant was very upset and spoke to the HR team in forceful terms. In an email from Ms Firth to her managers dated 17 October 2017 relating to that meeting she said:

*"Yesterday lunchtime, Patrick attended the HR offices at GDS stating that his manager had told him to speak to us. I met with Patrick and understandably, he was very upset. I spent some time trying to explain the position with the checks and Home Office. He did become quite angry but we managed to discuss his concerns and after some time he left and I agreed that I would forward the documentation so we could try and progress this with the Home office.*

*I have today been advised that yesterday afternoon he called one of my team and again raised his concern. I have been advised that he became quite angry and abusive.*

*Whilst I understand that this is stressful time for him, it is unacceptable that he is inappropriate so you may want to advise him that this behaviour is not in line with the Trust values”.*

31. The Claimant was sent an email about these issues and responded on 24 October 2017:

*“Thanks for your email. I am keeping well. I am very taken aback by the contents of your email about abusing a HR staff.*

*To set the record straight, I did not abuse anybody. I made it clear in no uncertain terms that they were wrong with regards to the conduct of the ECS check- they made a procedural error by not waiting for the certificate of application, a prerequisite for conducting this check in my case. Hence the result is a false negative. Thus enforcing a false negative result just because it came from the Home office is wrong as the results is invalid in reality.*

*I therefore would request you ask HR to present me with evidence of the alleged abuse and for a full and thorough investigation to be launched into this.*

*I look forward to hearing back from you soon.*

*Many thanks”.*

32. The Claimant’s email was investigated by Mr Hudson. Mr Hudson interviewed Ms Firth and the members of staff who he spoke to afterwards. They described the Claimant as being angry and shouting. Given that the Claimant himself says he spoke to them in ‘no uncertain terms’ on balance the Tribunal find that he was angry and at the least raised his voice forcefully.
33. Mr Hudson also investigated the reasons for the Claimant’s suspension. After interviewing various members of staff, he concluded that the Trust and acted appropriately by checking the Claimant’s right to work status based on its understanding of the Claimant’s immigration status at that time. This was conveyed to the Claimant by letter dated 3 March 2020. The Claimant’s behaviour did not form part of this letter. Although given the right to appeal, the Claimant did not do so.
34. On 5 November 2019 the Claimant received the certificate of application from the Home Office and carried out an ECS check on 11 November 2019. This was a positive check and the Claimant’s suspension was lifted, and he returned to work. The Respondent having received its statutory defence.
35. Mr Hudson investigated matters further on receipt of this Tribunal claim and now accepts that the Claimant had the right to work in the UK in 2019 by virtue of his marriage to an EU citizen. However, his position is that at the time, the Respondent was not aware of this. The Claimant’s personnel file had been set up as that of a person with a time limited right to work as a result of the documentation in his passport and the ECS check of 15.4.2019 which was time limited to 14.10.2019. As already noted, the Claimant did nothing to say that this was wrong and that by virtue of his marriage to an EU citizen he had the automatic right to work in the UK. He signed his contract with out pointing out it was incorrect.

36. Mr Hudson said that immigration checks were undertaken for all non-UK employees/

### **The Tribunal's conclusions**

37. The Tribunal accepts that the Respondent was mistaken in its belief that the Claimant's right to work was time limited but also accepts that it genuinely believed that the Claimant did not have the right to work in the UK and that it could be fined if it continued to employ him. The Respondent had already been investigated about having the correct evidence of right to work and was concerned that a further investigation would result in them not being able to employ staff from overseas. The Respondent needed the comfort of the ECS certificate which gave it a statutory excuse. The Claimant did not help himself by not correcting his immigration status when he received his contract of employment and instead signing it. This led to his personnel file being set up in a way that prompted the Respondent to make the ECS checks.
38. The Claimant has claimed that the Respondent's actions amounted to indirect discrimination on the protected characteristic of race and that he is owed arrears of pay. The Respondent's policy authorises it to make deductions in pay in these circumstances, and hence there is no unauthorised deduction from pay. In any event the Respondent has made good the pay he did not receive in his period of suspension and this part of his claim is dismissed.
39. The Claimant has claimed indirect discrimination on the grounds of race. The PCP's relied on by the Claimant are the requirement for a positive ECS check and the insistence on ONLY accepting proof of right to work documents that produces a statutory excuse regardless of the right/status and protection conferred on the employee by law.
40. The Respondent accepts it applied a PCP requiring a positive ECS check, but does not accept it applied a PCP of only accepting proof of right to work documents that produce a statutory excuse regardless of the rights/status and protection conferred on the employee by law. The Tribunal finds that the Respondent required a positive ECS check in order to protect itself from potential penalties. The Respondent submits that the only requirement was to undergo an ECS check and for the ECS service which is external to the Respondent to return a positive verification that was applied by the Respondent. It submits that the documents the Home Office required for a positive ECS check were not mandated by the Respondent. The Tribunal accepts this submission.

### **Did the Respondent apply the PCP to persons who are not of the same race as the Claimant?**

41. The Tribunal finds that the Respondent did apply the PCP to all other non-EU or non-UK nationals.

## Justification

42. The Respondent submits that it was justified in using the PCP it applied and the legitimate aim was (a) to employ employees lawfully and in line with immigration legislation and/or (b) to ensure the R had a statutory excuse against any potential penalty. The Tribunal accepts that the Respondent has a duty to ensure that all employees have the right to work in the UK and that it can be fined if it is found that employees do not have such a right. The Tribunal finds that the Respondent used proportionate means to achieve its legitimate aim given that here is a defence - the statutory excuse - that protects employers against penalties if it is found later that an employee does not have the right to work.
43. The Tribunal finds that these are legitimate aims in that the Respondent was concerned to minimise the risk of being subjected to a civil or criminal penalty for employing workers who did not have the right to work in the UK.
44. The means adopted and their appropriateness
45. Were the means reasonably necessary?

## Marriage

46. The Claimant claims direct discrimination for the protected characteristic of marriage. The only relevance of the Claimant's marriage was that it was to an EU citizen which gave him the right to live and work in the UK. The Claimant was not suspended because he was married and there was no evidence that an unmarried person would have been treated differently. The Claimant's marital status was never questioned.
47. This part of the Claimant's claim is dismissed.

## Freedom of movement

48. The Claimants claims of breach of legal rights under EU Directive 2004/38/EC (Freedom of Movement Directive) is not within the jurisdiction of the Employment Tribunals and is dismissed.

## Time limits

49. The Claimant was suspended on 16 October 2019. The ACAS early conciliation process was started on 13 January 2020 with the certificate being issued on 13 February 2020. His claim form was presented to the Tribunal on 29 February 2020. The Claimant therefore entered the early conciliation process within three months of the act of suspension. Given the early conciliation process, the new limitation period was 13 March 2020 and his claim was consequently brought in time, even if the act of suspension was a one-off act with continuing consequences. It is the act of suspension that gives rise to his claims.

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Employment Judge Martin  
Date: 28 July 2021

Sent to the parties on  
Date: 29 July 2021