EMPLOYMENT TRIBUNALS

Claimant: **Ms M Korczak & 16 others**

Respondent: **The House of Commons Commission**

Heard at: London Central via CVP **On:** 28 April 2022

Before: Employment Judge Wisby (Sitting Alone)

Representation

Claimants: Ms Korczak in person, and as lay representative of the other claimants

Respondent: Ms Hicks (Counsel)

JUDGMENT

The complaints of unlawful deductions from wages are struck out on the ground that the Employment Tribunal does not have jurisdiction to hear them by virtue of Section 195 of the Employment Rights Act 1996.

REASONS

Preliminary Matters

1. This 3 hour open preliminary hearing was listed to consider the sole issue of whether the Employment Tribunal has jurisdiction in these claims.

2. The respondent asserts that by virtue of section 195 of the Employment Rights Act 1996 that the Employment Tribunal has no jurisdiction to hear claims under Part II of the Act. Part II concerns protection of wages.

3. The claimants assert that section 195 of the Employment Rights Act is subject to

section 39(2) of the Employment Tribunals Act 1996, and that this confers jurisdiction.

Papers before the Tribunal

4. The tribunal was presented with:
   - 4.1. A written skeleton argument from the respondent;
   - 4.2. A bundle of authorities from the respondent;
   - 4.3. A written skeleton argument from the claimants;
   - 4.4. A bundle of authorities from the claimants;
   - 4.5. The Employment Tribunal Judgment in the case of Millett v House of Commons Commission;
   - 4.6. A bundle of statutes from the claimants;
   - 4.7. A bundle of parliamentary papers from the claimants;
   - 4.8. A bundle of supplementary authorities from the claimants; and
   - 4.9. A bundle of sample Visitor Assistant contracts from the claimants.

The Law

5. The Employment Rights Act 1996 ("ERA 1996") provides, so far as is relevant at section 195:

> **"195 House of Commons staff.**
>
> (1) The provisions of this Act to which this section applies have effect in relation to employment as a relevant member of the House of Commons staff as they have effect in relation to other employment.
>
> (2) This section applies to -
> (a) Part I,
> (b) Part III,
> (c) in Part V, sections 43M, 44, 45A, 47, 47C, 47D and 47E, and sections 48 and 49 so far as relating to those sections,
> (d) Part VI, apart from sections 58 to 60,
> (e) Parts 6A, 7, 8 and 8A,
> (f) in Part IX, sections 92 and 93,
> (g) Part X, apart from sections 101 and 102, and
> (h) this Part and Parts XIV and XV.
>
> …
>
> (3) For the purposes of the application of the provisions of this Act to which this section applies in relation to a relevant member of the House of Commons staff -
> (a) references to an employee shall be construed as references to a relevant member of the House of Commons staff,
> (b) references to a contract of employment shall be construed as including references to the terms of employment of a relevant member of the House of Commons staff,
> (c) references to dismissal shall be construed as including references to the termination of the employment of a relevant member of the House of Commons staff, and
> (d) references to an undertaking (other than in section 98B) shall be construed as references to the House of Commons.
>
> (4) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Commons staff from bringing before the High Court or the county court -

(a) a claim arising out of or relating to a contract of employment or any other contract connected with employment, or
(b) a claim in tort arising in connection with employment"

6. Section 13 of the ERA 1996, which deals with the right not to suffer unauthorised deductions, falls within Part II of the Act (Protection of Wages). It is that Part of the ERA 1996 that the claimants wish to bring their claims under.

7. The Employment Tribunals Act 1996 ("ETA 1996") makes provisions for the establishment, procedure and jurisdiction of employment tribunals.

8. Section 2 of the ETA 1996 (as amended) provides that the jurisdiction of tribunals is statutory, as follows:

"**2 Enactments conferring jurisdiction on employment tribunals.**

Employment tribunals shall exercise the jurisdiction conferred on them by or by virtue of this Act or any other Act, whether passed before or after this Act."

9. Section 39 of the ETA 1996 provides, so far as is relevant, as follows:

"39 Parliamentary staff

(1) This Act has effect in relation to employment as a relevant member of the House of Lords staff or a relevant member of the House of Commons staff as it has effect in relation to other employment.

(2) Nothing in any rule of law or the law or practice of Parliament prevents a relevant member of the House of Lords staff or a relevant member of the House of Commons staff from bringing before an employment tribunal proceedings of any description which could be brought before such a tribunal by a person who is not a relevant member of the House of Lords staff or a relevant member of the House of Commons staff.

(3) For the purposes of the application of this Act in relation to a relevant member of the House of Commons staff -

(a) references to an employee shall be construed as references to a relevant member of the House of Commons staff, and

(b) references to a contract of employment shall be construed as including references to the terms of employment of a relevant member of the House of Commons staff.

….

(5) In this Act relevant member of the House of Commons staff has the same meaning as in section 195 of the Employment Rights Act 1996; and (subject to an Order in Council under subsection (12) of that section) -

(a) subsections (6) and (7) of that section have effect for determining who is the employer of a relevant member of the House of Commons staff for the purposes of this Act, and

(b) subsection (8) of that section applies in relation to proceedings brought by virtue of this section."

Legislative history

10. Both parties agree broadly on the history of the ETA 1996 and the ERA 1996, Acts which were brought into law at the same time as linked pieces of consolidation legislation. In broad summary, for the purposes of the issue before

the tribunal today, that history is set out below.

The Employment Protection Act 1975

11. The preamble of the Employment Protection Act 1975 ("EPA 1975") sets out amongst other matters that the Act is "*to provide for the extension of employment legislation to certain parliamentary staff*".

12. Section 121 EPA 1975 sets out the application of employment legislation to Crown staff and section 122 the application of employment legislation to House of Commons staff. Section 122, so far as is relevant (emphasis added), states:

> **"122 Application of employment legislation to House of Commons staff**
>
> (1) The provisions of this Act, Schedule 1 to the [1972 c. 53.] Contracts of Employment Act 1972 and Parts I and II of Schedule 1 to the 1974 Act shall apply to relevant members of House of Commons staff as they apply to persons in Crown employment within the meaning of section 121 above, and accordingly for the purposes of the application of those provisions in relation to any such members—
>
> (a) any reference to an employee shall be construed as a reference to any such member;
>
> (b) any reference to a contract of employment shall be construed as a reference to the terms of employment of any such member;
>
> (c) any reference to dismissal shall be construed as a reference to the termination of any such member's employment;
>
> (d) the references in paragraph 21(5)(c) of Schedule 1 to the 1974 Act and section 18(1)(e) above to any person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons; and
>
> (e)any other reference to an undertaking shall be construed as a reference to the House of Commons.
>
> (2) The provisions of section 1 of the [1970 c. 41.] Equal Pay Act 1970 and Parts II and IV of the [1975 c. 14.] Sex Discrimination Act 1975 shall apply to an act done by an employer of a relevant member of House of Commons staff and to service as such a member as they apply to an act done by, and to service for the purposes of, a Minister of the Crown or Government department, and accordingly shall so apply as if references in those provisions to a contract of employment included references to the terms of service of such a member.
>
> (3) **Nothing in any rule of law or the law or practice of Parliament shall prevent proceedings under any enactment applied by subsection (1) or (2) above being instituted before an industrial tribunal.**
>
> …

(8) If the House of Commons resolves at any time that any provision of subsections (4) to (6) above should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

(9) It is hereby declared that the powers of nominating or appointing and suspending or removing members of House of Commons staff conferred by sections 14 and 15 of the [1812 c. 11.] House of Commons (Offices) Act 1812 (clerks, attendants and messengers) and the power of Mr. Speaker to require the suspension or removal of any such member conferred by section 16 of that Act are exercisable subject to the provisions of the enactments applied by subsections (1) and (2) above to such members."

House of Commons (Administration) Act 1978.

13. The preamble of the House of Commons (Administration) Act 1978 ("HoCA 1978") states: "*An Act to make further provision for the administration of the House of Commons*.", Sch 2, para 5 sets out, so far as is relevant (emphasis added):

"5 (1) Section 122 of the Employment Protection Act 1975 (application of employment legislation to House of Commons) shall be amended in accordance with this paragraph.

(2) In paragraphs (b) and (c) of subsection (1), after the words " construed as", in each place where they occur, insert the word " including ".

(3) For subsections (3) to (7) substitute the following subsections—

"(3) **Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of House of Commons staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member.**

(4) In this section—

' relevant member of the House of Commons staff' means—

(a) any person appointed by the House of Commons Commission (in this section referred to as the Commission) or employed in the refreshment department; and

(b) any member of Mr. Speaker's personal staff;

' civil employment claim ' means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and

' the court' means the High Court or the county court.

…….

(4**)** In subsection (8) (power to amend subsections (4) to (6)), for the words " subsections (4) to (6) " substitute the words " subsections (4) to (7) ".

Employment Protection (Consolidation) Act 1978

14. The preamble of the Employment Protection (Consolidation) Act 1978 ("EPCA 1978") states "*An Act to consolidate certain enactments relating to rights of employees arising out of their employment; and certain enactments relating to the insolvency of employers; to EPCA industrial tribunals; to recoupment of certain benefits; to conciliation officers; and to the Employment Appeal Tribunal*." Section 139 EPCA 1978 when enacted, so far as is relevant, stated:

"139 Provisions as to House of Commons staff

(1) The provisions of Parts I (so far as it relates to itemised pay statements), II, III (except section 44), V and VIII, and this Part and section 53 shall apply to relevant members of House of Commons staff as they apply to persons in Crown employment within the meaning of section 138 and accordingly for the purposes of the application of those provisions in relation to any such members—

(a) any reference to an employee shall be construed as a reference to any such member;

(b) any reference to a contract of employment shall be construed as including a reference to the terms of employment of any such member ;

(c) any reference to dismissal shall be construed as including a reference to the termination of any such member's employment;

(d) the reference in paragraph 1(5)(c) of Schedule 9 to a person's undertaking or any undertaking in which he works shall be construed as a reference to the national interest or, if the case so requires, the interests of the House of Commons ; and

(e) any other reference to an undertaking shall be construed as a reference to the House of Commons.

(2) Nothing in any rule of law or the law or practice of Parliament shall prevent a relevant member of the House of Commons staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member.

(3) In this section—

" relevant member of the House of Commons staff " means—

> (a)any person appointed by the House of Commons Commission (in this section referred to as the Commission) or employed in the refreshment department; and
>
> (b)any member of Mr. Speaker's personal staff;
>
> " civil employment claim " means a claim arising out of or relating to a contract of employment or any other contract connected with employment, or a claim in tort arising in connection with a person's employment; and
>
> " the court " means the High Court or the county court.
>
> ……
>
> (9) If the House of Commons resolves at any time that any provision of subsections (3) to (6) should be amended in its application to any member of the staff of that House, Her Majesty may by Order in Council amend that provision accordingly.

15. For reference purposes, the originals parts of the Act were as follows:
    - PART I Particulars of Terms of Employment;
    - PART II Rights Arising in Course of Employment;
    - PART III Maternity;
    - PART IV Termination of Employment;
    - PART V Unfair Dismissal, PART VI Redundancy Payments;
    - PART VII Insolvency of Employer;
    - PART VIII Resolution of Disputes Relating to Employment; and
    - PART IX Miscellaneous and Supplemental.

16. The tribunal was informed that the provisions of the Act did not contain provisions regarding unlawful deductions from wages.

Wages Act 1986

13. Specific protection against unauthorised deductions for wages was brought in by the Wages Act 1986 (“WA 1986”), s1 of which is the predecessor of s.13 ERA 1996.

14. The WA 1986 applied to “workers”, as defined in section 8.

> **“8 General interpretation of Part I**

(1) In this Part—

…..

" worker " means an individual who has entered into or works under (or, where the employment has ceased, worked under) one of the contracts referred to in subsection (2), and any reference to a worker's contract shall be construed accordingly.

(2) Those contracts are—

(a)a contract of service ;

(b)a contract of apprenticeship ; and

(c)any other contract whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual,

in each case whether such a contract is express or implied and, if express, whether it is oral or in writing."

15. Section 9(5)(a) WA1986 expressly brought Crown employment into the definition of "worker" but only for the limited purposes.

16. The WA 1986 made no reference to House of Commons staff.

Employment Rights Act 1996 and Employment Tribunal Act 1996

17. The ERA 1996 and ETA 1996 were brought into force at the same time and consolidated previous legislation. Under those Acts s.139 EPCA 1978 was split between s.39 ETA 1996 and s.195 ERA 1996.

18. It is noted by the tribunal that in section 191 ERA 1996, which applied to Crown employees, Part II (Protection of Wages) is expressly included, in contrast with the wording in section 195 ERA 1996 where Part II is not expressly included in relation to House of Commons staff.

Submissions

19. The respondent directed the tribunal in respect of the meaning of "rule of law" to Daniel Greenberg's definition of rule of law under Westlaw UK's Key Legal Concepts resource which sets out:

"1. A legislative use of this term is not generally in the sense in which it is widely used outside legislation — the general jurisprudential principle that the State should be governed in accordance with the law and not arbitrarily — but in the more specific sense of a rule that owes its existence to the common law and not to statute.

2. A particular rule may be described either by the title by which it is most commonly known to

lawyers (such as the rule against "'perpetuities") or by reference to the judicial decision which laid it down (such as the rule in "Shelley's Case" or "the rule in Pepper v Hart"). Statute may identify a particular rule of law for the purpose of invoking it, modifying it or abolishing it.

3 . A general reference to any "rule of law" may be apt to catch provisions of statute law as well as rules of the common law."

20. The respondent also submitted (amongst other matters):

20.1. The ERA 1996 does not apply to House of Commons staff except where expressly provided for in s.195(2). That is plain from the wording of the statute. This reading is correct: (1) when viewed in the context of the House of Commons own well established right to determine its own affairs (*Chaytor* at [63], cited above); (2) when considered within the context of the employment tribunals, which are creatures of statute; and (3) is supported by (inter alia): (a) *Harvey on Industrial Relations and Employment Law* at 1178 and 327.11; and (b) the IDS Employment Law Handbook, Volume 3, Chapter 2, at 2.22.

20.2. The Claimant's case that s39(2) of the ETA 1996 confers jurisdiction on the tribunal to consider employment tribunal claims brought by House of Commons staff is misconceived for the following reasons.

20.3. First, s 39(2) refers to any "rule of law" or Parliamentary practice. Within the legislative context, this refers to a rule that owes its existence to common law as opposed to statute (see above). This interpretation is supported by s.195(4) ERA 1996. Section 39(2) does not state that <u>legislation</u> cannot prevent House of Commons staff from bringing employment tribunal proceedings of any description. The correct reading of s.195 ERA 1996 is that the tribunal's jurisdiction is so restricted.

20.4. Secondly, the Claimants' interpretation of 39(2) ETA 1996 cannot be right as it contradicts the express wording and meaning of s.195 ERA 1996, rendering the section otiose, which cannot have been Parliament's intention.

20.5. Thirdly the claimant's interpretation contradicts Parliament's intention in enacting s.195 ERA 1996, which was to provide limited inroads into its right to determine its own affairs (*Chaytor* at [74]).

20.6. Finally, that it was not Parliament's intention to confer jurisdiction via s.39(2) ETA 1996 where s.195 ERA 1996 had provided for limited jurisdiction is plain from s.2 ETA 1996, which states that employment tribunals shall exercise the jurisdiction conferred on them by virtue of this Act <u>or any other Act</u>. Not only does it not say that the ETA 1996 takes precedence but it expressly contemplates that the tribunal's jurisdiction may be expanded or curtailed by another Act. That Parliament had the ERA 1996 in mind when drafting s.39(2) ETA 1996 is plain from s.39(5), which relies on, and refers back to, s.195 ERA 1996.

20.7. Put simply, the fact that s.39 ETA 1996 refers to s.195 ERA 1996 but does not amend it, puts it beyond doubt that it is not intended to disturb

the specific provisions of that section, including its express limitations.

21. The claimants submitted (amongst other matters):

21.1. A literal reading of s195(4)(a) ERA 1996 implies that Parliamentary staff have no statutory right to take contractual claims to ET. However, the ERA 1996 must be read with ETA 1996, which confers jurisdiction upon the ET, in any event at s2, and for parliamentary staff in particular at s39(2) ETA 1996. The claimants rely upon the tribunal's jurisdiction under the Employment Tribunals Act s.39.

21.2. s195 ERA 1996 and s39 ETA 1996 derive from s122 Employment Protection Act 1975 via s. 139 Employment Protection (Consolidation) Act 1978 and Schedule 2 paragraph 5 of House of Commons (Administration) Act 1978.

21.3. There has only once been a debate on the application of employment legislation for parliamentary staff in the modern age, which took place on 29 October 1975 on the Employment Protection Bill. The result was that for the first time House of Commons staff had employment rights drafted into law with s122 Employment Protection Act 1975. This is the genesis from which all references to parliamentary staff or House of Commons staff in subsequent employment consolidation acts derive. There have been no further debates nor legislative changes to the application of employment legislation to parliamentary staff in 47 years, nor to the jurisdiction of the ET, previously known as the Industrial Tribunal, to hear cases.

21.4. Only Crown Servants as a body of employees is expressly provided for in WA 1986 at s9 and subsequently consolidated into s191(2)(i) ERA 1996.

21.5. Parliamentary staff, whether that is House of Commons staff or House of Lords staff separately or together as parliamentary staff were not expressly included as benefiting from the legislation. This is not the same as being expressly excluded from the legislation, excluded employments provided for under s30 WA 86. The absence of having an express section under WA 1986, has resulted in what appears to be no payment protection being extended to parliamentary staff on consolidation of the WA 1986 into ERA 1996.

21.6. No other types of employment were expressly drafted for in WA 1986, parliamentary staff or otherwise. On a literal reading of WA 1986, it would suggest that only Crown Servants were entitled to the benefit of payment protection which s1. WA 1996 established. This creates an absurdity. Numerous s13 ERA 1996 claims have been bought before the ET from employees who are not employed by the Crown despite never having been expressly included in the drafting of WA 1986.

21.7. In Raymond v Honey Lord Bridge of Harwich at pg. 12 para 1 states and citing Chester v. Bateson [1920] 1 K.B. 829 ; R. & W. Paul Ltd. v. the Wheat Commission [1937] A.C. 139: *that a citizen's right to*

unimpeded access to the courts can only be taken away by express enactment.

21.8. In all relevant employment legislation, the draftsman has expressly included excluded classes of employment, under which parliamentary staff or House of Commons staff are not listed:

i) Employment Protection Act 1975, s119 – Excluded classes of employment
ii) Employment Protection (Consolidation) Act 1978, ss141-147 – Excluded classes of employment
iii) Wages Act 1986, s30 – Excluded employments
iv) Employment Rights Act 1996, ss 196-200 – Excluded classes of employment

21.9. It was not Parliament's intention to restrict the payment protection rights of parliamentary staff but the consolidation of WA 1986 and drafting ERA 1996 has created the scenario whereby a Member of Parliament's own staff have the benefit of payment protection rights despite not being expressly included into WA 1986 or ERA 1996, yet the employee in the vote or table office employed directly by the Respondent, does not.

21.10. Should parliamentary staff be denied access to bring payment protection claims before the ET, their access to justice is in impeded. The claim would ultimately be withdrawn by the claimants, some of the lowest paid staff employed by the respondent, should the only option be to take it to the civil courts. The costs involved in doing so, the procedure and rules which were not established with litigants in person in mind, creates an obstacle to accessing justice or basic employment rights. It is an absurdity that Parliamentarians would have ever intended to deny the payment protection rights of the very staff who assist them in their day-to-day business in the House.

Discussion and Conclusions

22. There was little dispute that the language of Section 195 ERA 1996 in isolation is plain and that as a result the protections set out in Part II of the ERA 1996 are not expressly given to House of Commons Staff. The key question therefore is should s.39 ETA 1996 override the wording of section 195 ERA 1996 and confer on the employment tribunal a more extensive jurisdiction.

23. The tribunal is not bound by the Employment Tribunal decision in Millett (under which an unlawful deduction from wages complaint was struck out against the respondent on the basis that the tribunal did not have jurisdiction to hear it. No written reasons were prepared for that decision.

24. A contract between the parties cannot determine whether the employment tribunal has jurisdiction to hear a claim or not. The employment tribunal is a creature of statute and can only exercise the powers given to it by Parliament. Accordingly, the wording of the sample visitor contracts cannot assist the tribunal in relation to the question before it today, as those contracts cannot confer a

jurisdiction upon the employment tribunal that has not been provided for by Parliament.

25. Both parties are aligned in respect of the principle that for claims concerning the jurisdiction of the House of Commons, that the House of Commons has the exclusive right to manage its own affairs without interference from the House of Lords or from outside Parliament: see R v Chaytor and ors [2010] UKSC 52, [2011] 1 AC 684 Chaytor at 712, per Lord Phillips at [63]. This has been called "exclusive cognisance".

26. Both parties agreed that it is open to Parliament "*to provide for the courts to encroach on matters falling within its exclusive cognisance*" per Lord Phillips at [67]. Therefore, it is agreed by the parties that for House of Commons staff to be able to brings complaints about unauthorised deductions from wages in the employment tribunal, legislation would have had to have been passed to allow that encroachment on the House of Commons excusive cognisance.

27. Where the parties disagree is whether such a statutory "inroad" has been made in respect of complaints that can be raised under Part II of the ERA 1996.

28. Having considered both parties submissions, I am persuaded, for the reasons set out below, that the respondent is correct and that the Employment Tribunal does not have jurisdiction to hear the claimants' complaints of unauthorised deductions from wages. However, I can understand why the wording in s39(2) ETA seemed incongruous and accordingly why the claimants considered the tribunal did have jurisdiction. I also understand the point made by the claimants regarding the rights of different employees who work in the Houses of Commons but the Employment Tribunal only has the powers Parliament has given it and I have concluded that Parliament has not given the Employment Tribunal the ability to hear claims made by House of Commons staff under Part 2 ERA 1996.

29. Section 121 EPA 1975 provided specific and limited in roads into the House of Commons excusive cognisance, I have not been persuaded by the claimants' verbal submission that that section provided an inroad in respect of all potential employment claims provided by statute from that time onwards.

30. I am persuaded that the reference to "*rule of law*" in section 121(3) EPA 1975 (my emphasis) – "*Nothing in any **rule of law** or the law or practice of Parliament shall prevent proceedings under any enactment applied by subsection (1) or (2) above being instituted before an industrial tribunal*". Is a refence to a rule that owes its existence to the common law and not to statute.

31. This language is amended under the HoCA 1978 to: "*Nothing in any **rule of law** or the law or practice of Parliament shall prevent a relevant member of House of Commons staff from bringing a civil employment claim before the court or from bringing before an industrial tribunal proceedings of any description which could be brought before such a tribunal by any person who is not such a member."* I do not consider that this amendment changed the meaning, as set out above, of *"rule of law"* (being a refence to a rule that owes its existence to the common law and not to statute) in the context of this provision.

32. This interpretation is supported by the drafting in section 139 EPCA 1978, which

brings together the specific statutory inroads in section 139(1) and the statement of principle in section 139(2) within the same provision. If section 139(2) was intended to have the broad and far-reaching implications for House of Commons staff employment rights that the claimants submitted it does, there would have been no need to set out the specific provisions applicable to House of Commons staff immediately above in section 139(1) EPCA 1978.

33. The WA 1986, which is the genesis of the protection of wages provisions in Part II of the ERA 1996 that the claimants' wish to rely on in the Employment Tribunal, did not, as per the claimants' submission only apply to Crown employees. Certain provisions of the WA 1986 were also extended to Crown employees (as another unique class of employees analogous to House of Commons Staff, in that specific legislation was required to extend that protection to them). No statutory 'inroad' however was made under the WA 1986, for the provisions of that Act to be extended to House of Commons staff. This explains the difference in treatment in the ERA 1996 between Crown employees under s191 (where Part II is expressly included) and House of Commons Staff under s195 (where Part II is not expressly included as being applicable).

34. When the ETA 1996 and ERA 1996 were enacted, statements of principle were placed in the ETA 1996. Section s139(2) was therefore restated at s39(2) ETA 1996. I am satisfied that the interpretation of "*rule of law*" in s39(2) however remains that intended in the previous legislation, being a rule that owes its existence to the common law and not to statute.

35. I also accept the respondent's position that it was not Parliament's intention to confer jurisdiction via s.39(2) ETA 1996 where s.195 ERA 1996 had provided for limited jurisdiction and that this is supported by s.2 ETA 1996, which states that employment tribunals shall exercise the jurisdiction conferred on them by virtue of this Act or any other Act. The ETA 1996 does not state that it takes precedence.

36. It is also noteworthy in support of the position that s39(2) ETA 1996 does not take precedence over s195 ERA 1996, that Parliament had the ERA 1996 in mind when drafting s.39(2) ETA 1996 as shown by s.39(5), which relies on, and refers back to, s.195 ERA 1996.

37. The claimants raised concerns about access to justice however the tribunal finds Parliament expressly dealt with the issue of access to justice by provision of access to county and high courts in section 195(4) ERA 1996.

38. I have therefore concluded that without further legislation providing the required statutory inroad, the Employment Tribunal does not have the jurisdiction to consider unlawful deduction from wages claims under Part II ERA 1996 by House of Commons staff.

Case No: 2207327/2021

Employment Judge Wisby

5 May 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

06/05/2022.

FOR THE TRIBUNAL OFFICE