EMPLOYMENT TRIBUNALS

Claimant: **Miss C Francis**

Respondent: **The Priory Federation of Academies**

Heard at: Nottingham

On: 30 August 2022

Before: Employment Judge Smith sitting alone

Appearances

For the Claimant: Mr G Moment, Claimant's partner

For the Respondent: Mrs K Hindmarch, Solicitor

JUDGMENT

The Claimant's claims were subject to a conciliated agreement and are therefore dismissed.

REASONS

Introduction

1. The Claimant has presented a claim of "automatic" unfair dismissal, pursuant to **s.103A Employment Rights Act 1996** ("**ERA 1996**"), asserting she was dismissed because of having made a protected disclosure. The effective date of termination for the purposes of this claim is agreed as being 31 August 2021, when the Claimant's fixed-term contract came to an end. The **ERA 1996** deems that to be a dismissal for the purposes of the unfair dismissal legislation (**s.98(1)(b)**).

2. The Claimant has also presented a claim of detriment, pursuant to **s.47B ERA 1996**, asserting that after the termination of her employment with the Respondent she applied for a role but that application was turned down. She contends that this amounted to a detriment materially influenced by the fact that she had made a protected disclosure.

3. On 2 September 2021 the Claimant entered into a settlement with the Respondent, concluded with the assistance of an Acas Conciliation Officer and the terms recorded in a COT3 agreement. The Respondent contends that the claims cannot be permitted to proceed because they are caught within the terms of the COT3. The Claimant contends that the COT3 should be avoided for misrepresentation and the claims allowed to proceed, or in the alternative, that the **s.47B** detriment claim falls outside the terms of the COT3 and should in any event be allowed to proceed.

4. This preliminary hearing (PH) had originally been set down by Employment Judge M Butler to determine:

   4.1 Whether the Tribunal has jurisdiction to hear the claim in the light of the terms of the COT3 agreement and, if so;

   4.2 Whether the grievance raised by the Claimant on 20 June 2021 is a qualifying protected disclosure.

5. However, the parties informed me that this had been later varied so that the only issue to be determined at the PH was the first and not the second. Having checked the file I could see that Employment Judge Ahmed had indeed varied the original order and therefore this PH proceeded but in relation to the first issue only.

6. Having undertaken some preliminary reading into the case, it was unclear to me what misrepresentation the Claimant was relying upon in her contention that the COT3 should be avoided. With this in mind, at the start of the PH I asked Mr Moment (the Claimant's partner and the person representing her at the PH) what the misrepresentation was said to be. He confirmed that the misrepresentation relied upon by the Claimant was statement contained within the Claimant's grievance appeal outcome letter, authored by Mr Richard Trow (on behalf of the Respondent) and dated 6 August 2021. It was located on page 235 of the PH bundle and was the penultimate paragraph, reproduced as follows:

   "You stated in the hearing that you believed you had not been considered for one of the Student Support Assistant roles as you had raised your grievance. However, I have considered the timeline for the recruitment process and it is clear that the advert was originally advertised on 28 May 2021 with a closing date of 14 June 2021 invitations to interview were sent to shortlisted applicants on Wednesday 16 June 2021. With the interviews taking place on Monday 21 June 2021. Therefore, I conclude that the timeline was followed correctly and that your raising the grievance had no

bearing on you being offered a position, as you did not apply for one of the roles advertised."

7. I heard live evidence from the Claimant herself and from Mr Moment in support, and from Miss Rachel Amanda Wyles (Head Teacher at the Priory Ruskin Academy, one of the Respondent's schools and the school at which the Claimant worked) and Mrs Jayne Marie Wilson (the Respondent's then-Director of Human Resources) on behalf of the Respondent. I was also presented with a bundle of documents amounting to 293 pages, and was taken to some of those by the parties during the course of the evidence. Mr Moment also wished to rely upon a small number of additional documents and there was no objection to them being admitted by Mrs Hindmarch. I therefore looked at those documents during Mr Moment's cross-examination of the Respondent's witnesses.

Findings of fact

8. In making my findings of fact I have restricted myself to making findings only in relation to matters relevant to the issue being determined in this PH. I have not, therefore, made any findings as to the wider claims. My findings have been reached according to the appropriate standard: the balance of probabilities.

9. The Claimant commenced employment with the Respondent on 4 January 2021 at the Priory Ruskin Academy, a school in Grantham and one which is part of the Respondent's federation. She was employed in the role of Student Support Assistant PP Intervention. The reference to "PP" in her job title is to the Pupil Premium, a source of funding available to the Respondent at the time and from which the Claimant's role was funded. The Claimant was employed on a fixed-term contract which she agreed was intended to come to an end with effect on 31 August 2021.

10. When job vacancies become available within the Respondent (at Priory Ruskin Academy and other schools who are part of the federation) they are generally circulated to all staff. I was shown such an example at page 141 of the bundle, referring to a permanent Administrative Assistant role being sent to "All Ruskin Staff" by email on 28 May 2021.

11. On the same date an advertisement was circulated amongst the Priory Ruskin Academy staff for three Student Support Assistant roles (page 143) at the school. These were temporary, part-time roles linked to SEN ("Special Educational Needs") funding, and it was intended that they commence as soon as possible or in September 2021. The closing date for applications was 14 June 2021. In Mrs Wilson's unchallenged evidence, these three posts were advertised again, on 8 June 2021 (page 176).

12. The Claimant accepted that she had received these advertisements at the time, but she did not apply for any of the three roles.

13. On 14 June 2021 – the closing date for applications – five individuals had applied for the three Student Support Assistant roles. On this date Mrs Wilson received

an email from the Respondent's Recruitment Administrator confirming this position and she replied stating that the five candidates would be interviewed on Monday 21 June 2021.

14. 18 June 2021 would turn out to be the last date upon which the Claimant attended work for the Respondent. On 20 June 2021 the Claimant raised a grievance with the Respondent. It is not necessary for me to go into the detail of that grievance in order for me to determine the preliminary issue, save to record that the Claimant thought that at the time she lodged the grievance that she was making what lawyers would call a "protected disclosure".

15. The interviews for the Student Support Assistant roles went ahead, as planned, on 21 June 2021. The three successful candidates were then made offers by the Respondent, and these were accepted by each of the three candidates on 22 June 2021 (pages 134, 137 and 140). Formal confirmation letters, containing statements of employment particulars, were issued to the three candidates by the Respondent on 22 June (page 181) and 25 June 2021 respectively (pages 192 and 202A). The start date for each candidate was to be 1 September 2021. Mrs Wilson confirmed in evidence that all three did in fact commence their employment on the intended date.

16. On 23 June 2021 Mrs Hannah Eves, Senior HR Business Partner at the Respondent, wrote to the Claimant in order to make arrangements for a grievance meeting (page 203). Within the same letter Mrs Eves also made the following material statements:

> *"Your current contract of employment dated 4 January 2021 for the role of Student Support Assistant – PP Intervention, states that this is temporary until 31 August 2021 due to this role being funded as part of the COVID Catch Up funds, this position was advertised as a temporary post, to which your application was successful. Due to the funding element of the role ending, there is no longer a position available in September which does mean unfortunately that your contract with the Trust will end on 31 August 2021.*
>
> *…*
>
> *The 3 positions for Student Support Assistants within the Academy were advertised 29 May 2021 with a closing date of 14 June 2021. All vacancies within the Trust are sent internally to all staff, who have the opportunity if they wish to apply for these roles. The interviews for the positions took place this week and were successfully appointed too* (sic.) *in line with the Trust's Recruitment and Selection Policy."*

17. In cross-examination the Claimant was asked whether she thought Mrs Eves was lying to her in this letter. She said that she did not believe what she was being told. Upon further questioning the offending part of this email was, in the Claimant's view at the time, that she did not believe that the Student Support

Assistant roles had in fact been appointed to. The Claimant provided no explanation as to why she believed at the time that Mrs Eves was lying to her, and no suggestion was made as to what reason Mrs Eves would have to lie about it.

18. In my judgment it is abundantly clear that Mrs Eves was, in that latter passage, accurately recording the position in relation to the three Student Support Assistants. The documentary evidence that was presented to me amply demonstrated that the three roles had in fact been appointed to at the time of writing.

19. The mistake made by Mrs Eves was not in relation to the latter paragraph but the former, where she referred to the Claimant's role as having been funded by Covid Catch Up funding. It was not: the Claimant's role was funded by Pupil Premium funds, which was apparent not only from her job title but also from her contract of employment (page 76) which expressly stated that *"This post is linked to PP funding"*. I accepted that the reference to Covid Catch Up funding in the email of 23 June 2021 was an error, but I noted that this false statement was not the one which the Claimant relied upon in these proceedings as a misrepresentation.

20. Miss Wyles explained in evidence that Pupil Premium and Covid Catch Up are separate funding streams that were made available to the school at the material time in this case. Pupil Premium funding is available in respect of pupils from low-income family backgrounds. Pupil Premium funding varies and the needs of the particular pupils for whom that funding is allocated also varies from year to year. As its name suggests, Covid Catch Up funding was a temporary measure introduced to ameliorate the impact of the Covid-19 pandemic on children's education. As Miss Wyles explained, whilst there would be an overlap in terms of which children would be eligible both for Pupil Premium and Covid Catch Up funding, they remain separate sources of funding. As an experienced Head Teacher I considered that Miss Wyles was in the best position to explain these concepts and I accepted her evidence in relation to the distinction.

21. At paragraph 76 of her witness statement the Claimant stated that her role appeared on a Covid Catch Up planning document for 2020/21 disclosed by the Respondent (page 211) and that as a result, it was evident that the funding for her role came from this particular stream (paragraph 74). The Claimant's suggestion – expressed through a rather convoluted series of assumptions and calculations in the paragraphs that followed – was that funding remained in place for her role even as it was coming to an end at the end of August 2021.

22. I rejected both that evidence and the Claimant's corollary suggestion. In cross-examination Mrs Hindmarch took the Claimant to the part of the Covid Catch Up planning document (page 212) where the Claimant had said her role featured. Whilst it did refer to the *"Employment of* [an] *Intervention SSA"*, this was in the next column identified as a Humanities-based support role. The Claimant was not employed in a Humanities-based role; her qualifications were in the entirely separate disciplines of French and modern foreign languages. Accordingly, it was plain to me that the reference to an Intervention SSA being funded by Covid Catch Up funds in that academic year was not a reference to the Claimant's job.

Her role, as I have found already, was funded through the discrete Pupil Premium funding stream.

23. I was not shown a copy of the Claimant's grievance or indeed an outcome letter, but it was apparent that the Claimant was unsatisfied by the outcome and decided to appeal. An appeal meeting took place on 30 July 2021. The Claimant was in attendance along with Mr Moment. The decision maker was Mr Richard Trow, Head Teacher of the Priory City of Lincoln Academy, another of the Respondent's schools. Mrs Wilson was also present in order to provide HR support and advice to both sides. The notes of that meeting are not agreed but it is not necessary for me, in this PH, to determine whose version is to be preferred.

24. The Claimant accepted that she had contacted Acas for advice prior to the grievance appeal meeting. Early Conciliation had in fact commenced on 20 July 2021.

25. Mr Trow wrote to the Claimant on 6 August 2021 to communicate the outcome of her grievance appeal (page 234). The overall decision was that the Claimant's grievance appeal was not upheld.

26. The Claimant's witness statement contained the following material paragraphs:

> *"37. During what became a very protracted grievance process, I eventually received confirmation in writing on 6 August in the form of the second stage hearing decision letter that those vacancies* (meaning the three Student Support Assistant roles first advertised on 28 May 2021) *had been filled.*
>
> *…*
>
> *39. On receiving written confirmation that there were no further opportunities for further employment I made the decision to progress to a settlement through ACAS.*
>
> *…*
>
> *41. As stated in the Claim form at part 8.2 on page 8 of the bundle, my sole reason for entering the COT3 was that there were no further opportunities for employment with the Respondent."*

27. In cross-examination the Claimant was asked where in the letter of 6 August the Claimant was positively told that there were, in her words, *"no further opportunities for further employment"* by the Respondent. She could not locate such a passage, and it is clear from the letter itself that this assertion was neither made nor inferred by Mr Trow in that letter. Instead, the Claimant changed her evidence and said that that was what she *"took away"* from the letter. She did not, however, take any steps to clarify with Mr Trow that what she had understood him to mean was actually what he meant.

28. It is not necessary for me to make a finding as to whether the Claimant's conclusion was a reasonable one to reach on the basis of the 6 August letter, but it is clear that no such statement of fact of the kind alleged by the Claimant was made by Mr Trow in that letter.

29. In cross-examination Mrs Hindmarch asked the Claimant to identify the particular statement within the letter of 6 August which, she said, amounted to Mr Trow making the misrepresentation she relied upon in these proceedings. She identified the following paragraph, from page 235:

> *"Again, I can confirm that the interviews did take place and were appointed to in line with the Trusts* (sic.) *Recruitment and Selection Policy."*

30. The passage identified by the Claimant in evidence was different to that identified by Mr Moment on her behalf at the start of the preliminary hearing. The passage was also very far from resembling her assertion (at paragraphs 39 and 41) that there were no further opportunities for employment with the Respondent, referring as it did to specific jobs that had been advertised and filled several weeks previously.

31. It was, in my judgment, very clear that that statement made by Mr Trow was unambiguous, and true in its entirety. I have already made findings about what actually happened in that regard (see paragraphs 15 and 18, above).

32. The Claimant's employment with the Respondent ended on 31 August 2021 at the expiry of her fixed-term contract.

33. Prior to the termination of employment taking effect the Claimant and the Respondent entered into negotiations with a view to reaching a settlement of some kind. The Claimant fairly accepted that she left the actual negotiations to Mr Moment to carry out on her behalf, but that she had read a draft COT3 agreement prior to signing it, and she was prepared to sign it. The final, signed version of the COT3 agreement between the parties was shown to me (pages 243 to 245). It involved the payment of the sum of £3,000 to the Claimant, and that sum has been paid. Despite the dispute in these proceedings about the validity of the COT3, those monies have not been returned by the Claimant to the Respondent.

34. Amongst the terms of the COT3 included the following material stipulations:

> *"2. The payment referred to in clause 1 is in full and final settlement of:*
>
> *2.1 Any and all claims which the Claimant has against the Respondent or its or their officers or employees whether arising from her employment with the Respondent or its termination on 31 August 2021 including, but not limited to, claims under… the Employment Rights Act 1996…*

2.2 The Claimant will withdraw any grievances and complaints currently raised with the Respondent and agrees that all such matters are hereby closed. The Claimant however reserves the right, should new rights of action become actionable, to take whatever action considered appropriate in respect of any future claim, but only if said future claim is not in any way linked to any and all current claims and grievances."

35. It is clear that prior to the COT3 being signed there was a concern on Mr Moment's part that the Claimant would be well-advised not to contract out of future claims (page 238 and document D1). Mrs Hindmarch suggested in her cross-examination of the Claimant that it was Mr Moment who insisted upon the insertion of clause 2.2 into the COT3. The Claimant was unsure, as she had left the conduct of the negotiations to Mr Moment.

36. On 6 September 2021 the Respondent advertised for two temporary Student Support Assistant roles at the Priory Ruskin Academy, with the advertisement being circulated internally (as usual) the following day (pages 252 and 254). The advertisement stated that the posts were linked to SEN funding, and intended to start as soon as possible. The closing date for applications was 17 September 2021. The Claimant originally contended that these jobs were the same as those from May/June 2021, but under cross-examination admitted that she did not really know whether they were. It was clear that preparatory steps for advertising these roles (including approval) were taken prior to 6 September 2021 and including the days immediately prior to the Claimant signing the COT3 agreement.

37. The Claimant applied for one of these two roles on 14 September 2021 (page 260). On 21 September 2021 the Respondent informed her that her application was not being taken forward because, the letter said, she did not meet the *"key relationships"* requirement within the job description for the role (page 270). Whilst neither of the Respondent's witnesses commented upon the reasons why this decision was made and neither were cross-examined on the point, the Claimant's own evidence to the Tribunal (paragraphs 114 and 115) was that in her view, that decision was *"a detriment suffered for having made the complaints which lead* (sic.) *to the grievance process what had happened as outlined and lead* (sic.) *to the signing of the COT3…* [It] *was caused directly as a result of negative attitude towards me by reason of me having brought legitimate complaints forward which are admitted by the Respondent…"*.

The law

Misrepresentation

38. In this case the Claimant's first contention is that the COT3 is to be avoided in its entirety, because of misrepresentation.

39. As a general principle, settlements of employment-related claims reached through the assistance of an Acas Conciliation Officer ("COT3s") are very difficult to challenge. That said, one of the avenues through which they may be set aside

is where there has been a misrepresentation, within the common-law meaning of that concept and not in the general sense. It is now established law that a COT3 may be voidable at common law, in common with other contracts (**Hennessy v Craigmyle & Co Ltd [1986] IRLR 300**, Court of Appeal, and **Industrious Ltd v Horizon Recruitment Ltd [2010] IRLR 204**, Employment Appeal Tribunal).

40. The body of case law in relation to misrepresentation is considerable, but in summary form in order for a misrepresentation to be established at common law four essential criteria must be satisfied. These are:

    40.1 There must be a false statement of fact. This is assessed not simply by looking at the words used but objectively, as to how the reasonable person would have understood the words to mean when put in their proper factual context. A statement will be treated as true if it is substantially correct and the difference would not have induced a reasonable person to enter into the contract (**Avon Insurance Plc v Swire Fraser Ltd [2000] 1 All ER (Comm) 573**, High Court, Queen's Bench Division).

    40.2 The statement must be known to be false by either the party making it (**Hasan v Willson [1977] 1 Lloyd's Rep 431**, QBD) or their agent acting within their authority.

    40.3 The statement of fact must also be one upon which the recipient was intended, and entitled, to rely (**Cassa di Risparmio della Repubblica di San Marino SpA v Barclays Bank Ltd [2011] EWHC 484 (Comm)**, QBD).

    40.4 In reliance upon the false statement of fact, the recipient was induced to enter into the contract. The statement must therefore operate on the mind of the recipient; if they did not know of it or were not influenced by it, the test is not satisfied (**Brown v InnovatorOne Plc [2012] EWHC 1321 (Comm)**, QBD). Equally, if the recipient already knows the statement to be false then the test is not satisfied (**SK Shipping Europe Plc v Capital VLCC 3 Corp [2020] EWHC 3448 (Comm)**, QBD). The statement need not be the only inducement so long as it is one of the inducing causes (**Hayward v Zurich Insurance Co Plc [2017] AC 142**, Supreme Court).

Contracting out of future claims

41. In the event that the COT3 is not avoided for misrepresentation, the Claimant's secondary contention is nevertheless that its scope does not cover her **s.47B Employment Rights Act 1996** claim as the facts upon which this is based only occurred after the COT3 had been concluded.

42. Settlements reached through the actions of a Conciliation Officer (in the form of a COT3) are not subject to the rule set by **s.203(3)(b) Employment Rights Act 1996**, which introduces a stipulation that the settlement must *"relate to the particular proceedings"*. In **Hilton UK Hotels Ltd v McNaughton [2005] UKEAT 0059/04/2009** the majority of the Employment Appeal Tribunal determined that there was no reason why, in principle, the parties to a COT3 could not contract

out of future claims of which they have no knowledge, irrespective of whether they have come into existence at the time of the agreement.

43. However, whilst reaffirming this general principle, in the case of **Royal National Orthopaedic Hospital Trust v Howard [2002] IRLR 849** the EAT went on to clarify that in the case of future claims, this must be done *"in language which is absolutely clear and leaves no room for doubt as to what it is* [the parties] *are contracting for"*. This principle was cited in the recent case of **Arvunescu v Quick Release (Automotive) Ltd [2022] EAT 26**. In **Arvunescu** Michael Ford KC summarised the critical tests:

> *53. The second and most difficult question is, on that premise, was the claim caught by the COT3 agreement? The parties do not disagree about the relevant legal test which I have to apply. It is summarised in* **Royal Orthopaedic Hospital v Howard [2002] IRLR 849** *at* [6]*, even if the EAT was there recording a submission from counsel for the respondent. The EAT cited the familiar approach to construction from* **Investors Compensation Scheme Ltd v West Bromwich [1998] 1 WLR 896** *in which a court must ascertain:*
>
> > *"the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract."*
>
> *That is the ordinary rule for construing a contract. It is common ground that that same rule of construction applied to COT3 settlement agreements: see* **BCCI SA v Ali [2001] ICR 337***.*
>
> *54. As it was put by the EAT in* **Howard** *at* [9]*:*
>
> > *"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, objectively looking at the compromise agreement, 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."*

Analysis and conclusions

44. Both Mr Moment and Mrs Hindmarch prepared comprehensive skeleton arguments in advance of the preliminary hearing and were naturally permitted to supplement these with oral submissions at the PH itself. I was greatly assisted by both of them and record specifically my gratitude to Mr Moment, whose submissions were particularly impressive given that he was acting as a non-legal representative. He represented his partner with admirable force and clarity. It is not necessary for me to rehearse each party's submissions in full but, where necessary, I have referred to them in the analysis that follows.

Misrepresentation

45. The first stage in determining any assertion of misrepresentation is to determine whether there has been made a false statement of fact. In my judgment, the Claimant's argument that there has been a misrepresentation made by the Respondent (meaning that the contract can be avoided) could not be sustained. She was clear in her evidence as to what the misrepresentation she was relying upon was (*"Again, I can confirm that the interviews did take place and were appointed to in line with the Trusts Recruitment and Selection Policy"*). The words used by Mr Trow were clear and unambiguous and, as I have found, entirely true. The reasonable person would have had no difficulty in concluding that the words meant that there had been a job application process in which certain people had been interviewed and offered jobs. That is precisely what happened. Mr Moment accepted in submissions that Mr Trow's statement was in fact true. The Claimant's contention that there was a misrepresentation avoiding the COT3 was entirely misconceived.

46. Whilst the Claimant's case was confined by the evidence she gave, the outcome would have been exactly the same if the Claimant had relied upon the statement cited by Mr Moment in the preliminary discussions at the PH (see paragraph 6). Whilst expressed in longer form, on the basis of my findings of fact that statement was also true in its entirety and Mr Moment accepted as much in his submissions. Had the Claimant relied upon that statement by Mr Trow (within the same latter) as amounting to a misrepresentation, the argument would also have been misconceived.

47. In submissions Mr Moment attempted to argue that there had in fact been a *"huge number"* of representations made to the Claimant which led her to believe that there were no further employment opportunities for her with the Respondent, and which in turn led her to enter into the COT3. That was not an argument that had been foreshadowed in the claim form or in any subsequent document produced by the Claimant's side, and the Respondent had no notice of it until it was made in the closing stages of the PH. This was unsatisfactory.

48. In any event, as a submission it was fundamentally undermined by the Claimant's own evidence. She relied upon one representation only, in both her witness statement (albeit without directly citing the specific passage) and in her oral evidence (identifying it with precision). It was not the Claimant's case that had been put in Mr Moment's well-researched written submissions, which instead stated the following:

> *8. The statement that all job vacancies had been filled as included in the letter dated 6 August 2021 was a fundamental fact relied upon by the Claimant in arriving at the decision to commence and conclude the COT3 agreement.*

> *9. The alleged misrepresentation concerns the availability of any relevant job opportunities with the Respondent towards the end of August 2021, none of which were made aware to the Claimant at any time.*

49. There was simply no evidence of any further representations being made by anyone from the Respondent upon which Mr Moment could base this submission. Regrettably, I reached the conclusion that this argument was only sought to be advanced because of the realisation that the Claimant's principal case had been exposed as hopeless during the course of her evidence.

50. It follows from this analysis that the Claimant's case on misrepresentation falls at the first hurdle. It is not necessary for me to go on to consider the other elements of the test for misrepresentation. Therefore, in my judgment, the COT3 agreement reached between the parties on 2 September 2021 is not avoided for misrepresentation.

51. The Claimant's claim of unfair dismissal is a claim brought under **s.103A ERA 1996** and one which existed at the time the agreement was reached, it comes within the scope of clause 2.1 of the COT3. It further follows that because the Claimant's claim of unfair dismissal is the subject of a conciliated agreement, it must be dismissed.

Scope of the COT3

52. In reaching my decision as to whether the remaining **s.47B** detriment claim is caught up in the terms of the COT3 I have reminded myself that although as a matter of principle future claims can be contracted out of by way of a COT3, the case of **Howard** sets a relatively high bar in terms of the circumstances in which this can be validly done.

53. Mrs Hindmarch submits that the **s.47B** claim is caught up within the terms of the COT3 not because of paragraph 2.1, but because of paragraph 2.2. Her point, in essence, is that the Claimant was agreeing as part of the COT3 contract not to sue the Respondent unless she had a *"future claim, but only if such future claim is not an* (sic.) *any way linked to any and all current claims and grievances."*

54. Following **Howard**, the first question I should ask myself is whether the language used was absolutely clear. In my judgment, it did have that necessarily high degree of clarity. The material passage in paragraph 2.2 is refreshingly clear in its wording.

55. I then turned to interpret this clause according to the test set out by Lord Hoffmann in **Investors Compensation Scheme**, to which the EAT referred in **Arvanescu**. In my judgment, considered objectively, the reasonable person in possession of the background knowledge reasonably available to the parties would have known of the detail of the Claimant's grievance and of the dispute that had led to the Claimant instigating Early Conciliation with Acas. They would also have known that this was an employer which advertises vacancies on a fairly regular basis, for roles that were similar to the Claimant's. They would also

reasonably have appreciated that an extant employment dispute apparently involving protected disclosures might not fully end with the termination of employment.

56. In my judgment, from the words used, the reasonable person in possession of the background facts would understood that clause 2.2 was referring to the possibility of the Claimant bringing future claims based on matters that were part of the originating dispute, and that in carefully demarcating the boundary between those future claims which might have been related to the existing dispute between the parties and those which did not, she was agreeing to forego any right to bring a claim in respect of matters linked to the existing dispute.

57. It follows that, in my judgment, the terms of clause 2.2 of the COT3 are apt to cover future claims arising from the Claimant's original grievance, as any such claim would be *"linked"* to that grievance. As the Claimant's **s.47B** claim does arise out of the original grievance, it is covered by the terms of the COT3 and was duly compromised.

58. It further follows that because the Claimant's **s.47B** detriment claim is also the subject of a conciliated agreement, it too must be dismissed.

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Employment Judge Smith

Date: 29 September 2022

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

……………………….....……………..

FOR SECRETARY OF THE TRIBUNALS