



EMPLOYMENT TRIBUNALS

Claimant

Mr J. Esses

Respondents

v (1) The Metanoia Institute
(2) United Kingdom Council for
Psychotherapy
(3) Pamela Gawler-Wright

Heard at: London Central

On: 14, 15 and 16
June 2022

Before: Employment Judge B Beyzade

Representation

For the Claimant: Ms A Reindorf, Counsel
For the Respondents: (1) Ms C Goodman, Counsel (1st respondent)
(2) Mr T Brown, Counsel (2nd respondent)
(3) Ms R M White (3rd respondent)

JUDGMENT

The judgment of the tribunal is that:

1.1 The Tribunal does not have jurisdiction to hear the claimant's claims against the second respondent that were made pursuant to section 53 of the *Equality Act 2010* (section 54 of the *Equality Act 2010* being the relevant interpretation provisions);

- 1.2 the Tribunal has jurisdiction to hear the claimant's complaints brought against the second respondent on the basis that it is a trade organisation for the purposes of section 57(7)(c) of the *Equality Act 2010*;
- 1.3 the complaint for victimisation issued under claim number 2206708/2021 insofar as it was brought against the third respondent is struck out pursuant to Rule 37(1)(a) of Schedule 1 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* on the ground that it has no reasonable prospect of success. For the avoidance of doubt, the claim brought under claim number 2206708/2021 against the second respondent shall continue (parties are referred to the Tribunal's directions below in respect thereof);
- 1.4 The claimant's claim issued under claim number 2206164/2021 to the extent that this is made based on the claimant's contention that UKCP is liable for the termination of the claimant's contract with the first respondent as a principal of the first respondent under sections 109 and 110 of the Equality Act 2010 stands struck out;
- 1.5 Except as set out above, the remainder of the second respondent's application dated 7 December 2021 for a strike out order or a deposit order in respect of the claimant's claims lodged under claim number 2206164/2021 is dismissed.

REASONS

Introduction

The First Claim

1. By a complaint dated 8 September 2021 (assigned claim number 2206164/2021) the claimant presented a complaint of direct discrimination, harassment, and victimisation against the first and second respondent ("the First Claim").

2. The claimant relies on the protected characteristic of religion or belief (see section 10 of the Equality Act 2010 ["EqA"]). Paragraph 11 of the First Claim states:

11. The Claimant holds the following philosophical beliefs:

11. 1That sex is binary, immutable and biological and gender is a question of identity based upon a variety of factors, including culture and socialisation. It is a collection of attributes or traits typically associated with a particular sex. Although someone may exhibit more masculine or feminine attributes or traits, it does not change their biological sex. Gender identity and sex are independent of one another and separate. A person's gender identity may overlap or correspond with their sex; or alternatively the two characteristics may not overlap or correspond at all. Broadly, this may be described as "the gender critical belief".

11.2 That gender reassignment is not de facto the appropriate treatment for all individuals experiencing gender dysphoria and that there may be such individuals who ought not to be treated in this manner immediately and/or merely by fact of their gender dysphoria. Psychotherapists should explore by way of open-ended discussion the context and possible causes of a person's gender dysphoria, which may in some cases lead to the person desisting from a course of potentially irreversible and potentially damaging medical intervention such as puberty blockers, cross-sex hormones and sex-reassignment surgery. This therapeutic approach amounts to necessary, beneficial and responsible treatment. It should not be conflated with harmful conversion therapy, which seeks to divert or deny an individual from their sexual orientation or gender identity, and it must not be criminalised. This may be described as "the talking therapy belief".

12. The claimant contends that the first respondent and the second respondent are qualifications bodies which are defined at section 54 of the EqA. Alternatively, the claimant says that the second respondent is a trade organisation within s.57 of the EqA.

13. His complaints include the summary termination of his contract with the first respondent of the claimant's participation in a diploma programme through which he was training as a psychotherapist (he also claims that the second respondent instructed, caused, or induced the first respondent to terminate its contract with him under s 111 EqA) and also termination of his trainee membership with the second respondent in May 2021.

14. The First Claim is resisted by the first respondent and the second respondent. The second respondent has raised jurisdictional issues as to the standing of the Tribunal to hear these complaints

against it. These are set out in the draft list of issues for the First Claim.

The Second Claim

15. By a complaint dated 19 October 2021 (assigned claim number 2206708/2021) the claimant presented a complaint of victimisation against the second respondent and third respondent ("the Second Claim").

16. The claimant claims in the Second Claim that the First Claim was a protected act done by the claimant and a result of that protected act (and others particularised in his claim, see a list of these provided at paragraph 16 of the Second Claim) the claimant has suffered detriments by the second respondent and the third respondent.

17. Paragraph 18 of the Second Claim sets out the detriments relied upon by the claimant in the following terms:

18. The following were detriments done to the Claimant because of his Protected Acts:

*18.1 The comments made by Ms Gawler-Wright at the 20 September 2021 training. These were injurious and therefore detrimental to the Claimant. Both Respondents are liable for these: paragraph **Error! Reference source not found.** is restated.*

18.2 The failure or refusal of UKCP to:

(a) Respond to the Claimant's solicitors' letter of 30 September 2021, which indicated to the Claimant that he could and can expect further such damaging statements to be made about him from UKCP.

(b) (Subject to disclosure from the Respondents as to the steps taken or not taken), Take any steps to address Ms Gawler-Wright's conduct, including to correct the false statements that she had made in the 20 September 2021 training.

18. The claimant says that the second respondent is vicariously liable for any such conduct amounting to detriments.

19. The Second Claim is resisted by the second respondent and the third respondent.

Preliminary Hearing by CVP

20. A preliminary hearing was held between 14-16 June 2022. This was a hearing held by CVP video hearing pursuant to Rule 46. I was satisfied that the parties were content to proceed with a CVP hearing, that it was just and equitable in all the circumstances, and that the parties and their representatives attending the hearing were able to see and hear the proceedings.

Joint Bundle and further documents

21. The parties prepared and filed a Joint Bundle in advance of the hearing consisting of 771 pages, to which reference was made. Additional pages including pages 772-786 (a draft List of Issues) were added to the Bundle by agreement during the second day of the hearing. I read those documents to which I was directed.
22. Although there was a transcript relating to the Second Claim included at pages 467-507 of the Bundle, following discussions with parties' representatives and by consent parties' representatives indicated that this did not form part of the evidence that required to be considered during the Preliminary Hearing. This was agreed and removed from evidence before the Tribunal in order to ensure the third respondent could make an application (if so advised) for an order under Rule 50 of *Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* in respect of that document (which it was agreed would require to be considered at a further hearing). No Rule 50 application was made at or prior to the Preliminary Hearing.

Observers during Preliminary Hearing

23. At times there were over 200 observers including members of the public and journalists during the hearing. I am grateful that the majority of observers cooperated with each other, by providing links to hearing materials for those arriving late, and advising

each other on technical difficulties, such as opening the online bundles. Observers were asked to email the Clerk to the Tribunal if they had a request or any issues, and not to use the chat room except in relation to technical difficulties or if a parties' representative required to respond to a comment made by another representative. There were some observers who exhibited ill-discipline, using the chat room to comment on the proceedings, and counsel. Following a warning that I gave, there were some who were disconnected.

Public access to documents

24. At my direction a downloadable Bundle consisting of the pleadings, list of issues, and the skeleton arguments was made available to observers from shortly after the start of the second day of the hearing. The remainder of the Bundle and the witness statements were available to the public online during hearing sessions. Downloadable bundles were sent to journalists, to individual members of Tribunal Tweets, and to others who wished to report on the proceedings, provided they agreed to abide by the restrictions in the order.

Applications made by Tribunal Tweets

25. Permission was given to Tribunal Tweets from the outset of the hearing for live Tweets to be made online of proceedings by way of reporting.

26. An application was made by Tribunal Tweets, a collective which reports cases of interest, to make the Hearing Bundle and witness statements downloadable and available to all. The Tribunal heard an application on this point. An order was made during the hearing with oral reasons. The order permitted downloadable access to accredited journalists to inform their understanding of proceedings, provided they limited their publication of documents to those portions cited by a witness in

evidence in chief or in cross examination. Other observers could only read the materials during the hearing.

27. Following a further application by Tribunal Tweets, and submissions from parties' representatives, permission was granted for Tribunal Tweets to provide screenshots of documents from the Hearing Bundle which have been referred to during parties' evidence instead of a direct quotation. Tribunal Tweets had given reasons for their request in their application and the claimant's representative pointed out that the terms of the order sought were proper and reasonable in the circumstances. I agreed with their submissions and issued directions accordingly. I noted that the second respondent's representative (all other representatives did not oppose the application) adopted a neutral stance but did not proffer any reasons in terms of the Tribunal not granting the application.

Issues to be determined – Preliminary Hearing 1 February 2022

28. At an earlier Preliminary Hearing on 1 February 2022 before Employment Judge Nicklin a Preliminary hearing was listed to determine the following issues (which did not include consideration of issues concerning time limits):

28.1 Whether the tribunal has jurisdiction to hear the complaints brought against UKCP in both claims on the basis that it is a qualifications body for the purposes of sections 53 and 54 of the Equality Act 2010 ("the EqA");

28.2 Whether the tribunal has jurisdiction to hear the complaints brought against UKCP in both claims on the basis that it is a trade organisation for the purposes of section 57 of the EqA;

20.3 Whether the tribunal has jurisdiction to hear the complaint brought against Ms Gawler-Wright in the Second Claim having regard to the jurisdictional questions set out at paragraph 4 of the draft agreed list of issues prepared for the Second Claim;

28.4 UKCP's application dated 7th December 2021 to strike out the First Claim against it (as Second Respondent) and/or for a deposit order;

28.5 Any other application sent to the tribunal (and copied to the parties) by 22nd February 2022 (to include any prospective application by Ms Gawler-Wright to strike out the Second Claim against her). The decision as to the hearing of any such application is subject to the discretion of the judge at (or prior to) the hearing on 14th – 16th June and their view as to the appropriateness or otherwise of hearing any such application on that occasion.

Applications following Preliminary Hearing on 1 February 2022

29. In fact, no further applications were made by 22 February 2022 other than the third respondent seeking costs in her deposit order and strike out application dated 22 February 2022. The claimant's representative indicated at the hearing that the claimant may seek his costs. I directed that if a party insists on a costs application, that party must write to the Tribunal to set out the basis of their application following receipt of this judgment. It was not appropriate (nor was there time) to deal with costs during the Preliminary Hearing.

Consolidation

30. Employment Judge Nicklin ordered consolidation of the First Claim and the Second Claim (see paragraph 1 of the Case Management Orders dated 8 February 2022).

Issues to be determined at the Preliminary Hearing

31. At the outset of the hearing the parties were advised that the Tribunal would investigate and record the issues set out at paragraphs 28.1-28.4 as falling to be determined, all parties being in agreement with these.

Conduct of the Preliminary Hearing

32. The hearing started on the afternoon of the first day which was spent discussing issues during a private session relating to the Live Tweet application, public access, and issues in terms of the documents sent to the Tribunal. The discussions relating to documents took place in private as there were case management issues and a potential Rule 50 application which was not pursued at the hearing. It was agreed that further time would be needed on the second day for case management. Thereafter the public were updated and advised that the second day of the hearing would not start before 11am. The discussions relating to documents continued into the morning of the second day of the hearing, in addition to discussions relating to the list of issues.

Thereafter parties agreed to work to a timetable to ensure that the evidence could be completed within the remaining time allocated for the hearing. I started to hear evidence from the afternoon of day two of the hearing, and the evidence was concluded by the end of day three. Due to insufficient time, directions were made to allow parties to provide written closing submissions and written replies to other parties' submissions.

Witness Evidence

33. The claimant gave evidence at the hearing on his own behalf. He prepared a witness statement, which was exchanged before the Preliminary Hearing.

34. Ms S Thakore, Complaints and Conduct Manager of the second respondent gave evidence on behalf of the second respondent and a written witness statement was sent to the Tribunal on her behalf in advance of the Preliminary Hearing.

Submissions

35. Parties' representative provided Skeleton Arguments in advance of the Preliminary Hearing and copies of authorities, to which reference was made. Judgment was reserved. Therefore, in addition, parties' representatives provided further written submissions following the hearing and written replies. The careful written analysis has been helpful and informative in determining the issues before the Tribunal.

36. The second respondent set out the matters it relied on in terms of its strike out application in paragraph 2d. of its Skeleton Argument and developed the points further in their submissions.

37. The third respondent's representative emphasised that the third respondent's submissions focussed on the matter which could be dealt with in the time available (the jurisdictional Agency point) rather than the wider strike out application. The third

respondent considered it was not proportionate to deal with the wider arguments in the time available.

Findings in fact

38. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues –

Background

UKCP

39. The second respondent, the United Kingdom Council for Psychotherapy (“UKCP”) is a company limited by guarantee. Its Articles of Association state that its objects are to:

- (1) to promote the art and science of psychotherapy and psychotherapeutic counselling for the public benefit;*
- (2) to promote research in psychotherapy and psychotherapeutic counselling and to disseminate the results of any such research; and*
- (3) to promote high standards of education and training and practice in psychotherapy and psychotherapeutic counselling*
- (4) to promote the wider provision of psychotherapy and psychotherapeutic counselling for all sections of the public.*

40. Among other powers set out in their Articles of Association, the second respondent has the following powers:

- (a) to create and maintain registers and listings of properly qualified psychotherapeutic practitioners for the benefit of the general public;*
- (b) to encourage the exchange and understanding of the different theories and practices within psychotherapy;*
- (c) to represent the Charity’s members to other professions, institutions, the Government and the public;*
- (d) to publish guidelines for ethics and codes of practice, and to establish processes for the practice of psychotherapy and psychotherapeutic counselling for the protection of the public;*
- (e) to make available to other professions, to the public and to the Government knowledge and understanding of the theory and practice of psychotherapy and psychotherapeutic counselling, including the diversity of approaches and their applications;*
- (f) to disseminate information through publications, meetings and conferences on the nature of psychotherapy and its application;*

41. The second respondent is a membership and regulatory body for psychotherapists in the UK which maintains a voluntary register of accredited psychotherapists.
42. The second respondent is the leading professional body for the education, training, accreditation and regulation of psychotherapists and psychotherapeutic counsellors. It is governed by a Board of Trustees which is made of members elected by its membership, as well as lay Trustees, who are not psychological professionals.
43. The second respondent also operates a Members' Forum comprising representatives from colleges, geographical regions and honorary fellows who get together to debate issues relating to the profession of psychotherapy and to the future direction and strategy of the second respondent. Attendance at Members' Forum meetings is open to all UKCP members, but only elected members have the right to vote.

Membership of UKCP

44. UKCP's members include individual and organisational members and there are different membership categories. Individual members are also members of one of ten colleges. Colleges consist of assemblies of UKCP members with a shared psychotherapy or psychotherapeutic counselling philosophy and practice (modality). UKCP sets general standards of education, training, and practice. In addition to these, colleges may provide further requirements relevant to practitioners in their field.
45. Thus, the second respondent specifies minimum requirements that any course must meet to be awarded accreditation. This is contained within the '*UKCP Standards of Education and Training.*'

46. The first respondent sits within the '*Humanistic and Integrative Psychotherapy College*' ("HIPC"). The HIPC has set its own standards in the '*Humanistic and Integrative Psychotherapy College Standards of Education and Training*.'

47. According to the UKCP Byelaws, the membership categories of UKCP include student membership, trainee membership and full clinical membership. Those categories are defined as follows:

6.2. Full Clinical Membership of UKCP is open to those who meet UKCP requirements for accreditation and re-accreditation as a practitioner.

...

6.4. Therapist-in-Training Membership is open to individuals registered with a UKCP-accredited Organisation, working as a trainee therapist and working towards UKCP accreditation;

6.5. Student Membership is open to individuals registered with a UKCP-accredited Organisation and not working as a trainee therapist.

Claimant's membership of UKCP

48. The claimant was following a master's degree in Integrative Psychotherapy which lasts for 5 years at the Metanoia Institute, the first respondent and he was issued with a Therapist-in-Training Membership ("trainee member"). Thus, as a consequence of his vocational training course, the claimant was a trainee member of the second respondent.

49. The claimant made his application to the second respondent on 4 September 2020 by going to the relevant webpage on the second respondent's website (see Hearing Bundle Page 641), which details the process and minimum requirements for membership. The minimum requirements included "...*trainees who are in the process of completing a training course and the required clinical practice hours with a UKCP organisational member that takes supervisory responsibility for any clinical practice of the trainee.*"

50. The claimant duly completed the application form (see Hearing Bundle pages 614-623) and submitted it to the second respondent. He had to confirm that he agreed to the Terms and Conditions (see Hearing Bundle Page 619), which indicated that

membership was dependant on the training committee of the first respondent recommending him as a person who:

- (a) has shown good conduct and professional standing with their organisational member;*
- (b) is aware of and adheres to the organisational member's codes of ethics/practice/conduct;*
- (c) has completed coursework to a satisfactory level and demonstrated that they are ready to commence clinical work or have received a relevant certificate of training; and*
- (d) retains membership of their training or organisational member for the duration of UKCP trainee therapist membership.*

51.The Terms and Conditions state the following in relation to a trainee member:

- (i) They are eligible to be included in a listing by the UKCP as 'UKCP trainee therapist' only.*
- (ii) They do not have voting privileges at any UKCP elections.*
- (iii) Responsibility for adherence to codes of conduct and complaints processes and any other regulatory responsibilities lie exclusively with the trainee therapists training organisation.*

52.The claimant received an automated response from the second respondent's Membership Team on the same day (see Hearing Bundle page 461), acknowledging receipt of the application and informing him that they will begin processing it (by checking his details and contacting the UKCP organisational member through which he is joining so that they can confirm his application).

53.On 19 September 2020, the claimant received a further email from the second respondent (see Hearing Bundle page 464), informing him that they are in the midst of approving his trainee application, an approval had been received and the second respondent now required payment details, in order to complete the process. The annual membership fee was £71.50.

54.On 21 September 2020, the claimant telephoned the second respondent's Membership Team, to make payment. The same day, the claimant received an email from the second respondent (see Hearing Bundle page 465), informing him that his application had been accepted. He was provided with his UKCP membership

number, membership expiry date and his direct debit information. He was informed he now had access to the UKCP members' area of the website and the digital version of the New Psychotherapist magazine, and that he will be able to see his name on the UKCP List of Trainees.

55. Within a few days, the claimant's details were shown on the second respondent's List of Trainee Therapists (see Hearing Bundle page 642).

56. The claimant was considering joining a pre-existing therapeutic practice or online platform, which he believed would enable him to receive client referrals. He considered joining 'Harley Therapy'. However, a requirement for being able to join the organisation was that *"...therapists must be registered to at least one of the following accredited bodies UKCP..."* (see Hearing Bundle page 647). There were numerous other accredited bodies listed.

The second respondent's trainee register

57. Under UKCP Byelaws, a trainee member is only eligible to become a trainee member of UKCP while they are enrolled and undertaking relevant training with an organisational member. Trainee members are listed in a list of trainee members, which is separate from the directory of those who have attained full clinical membership (see Hearing Bundle page 642).

UKCP's register

58. Registration with UKCP is voluntary. Therapists who are not registered with UKCP may register with other organisations (with whom registration is also voluntary). The second respondent also manages the UK's national register for psychotherapists, and practitioners must meet their requirements to be listed. They state: *"We hold the UK's national register of psychotherapists...It only includes*

practitioners who meet our exacting standards, robust training requirements and abide by our ethical and professional code.”

59. Full clinical membership of the second respondent, to which a therapist is entitled after graduation from a ‘UKCP-accredited’ course, culminates in being listed on the second respondent’s ‘National Register’, which is accredited by the Professional Standards Authority (see Hearing Bundle page 638).

60. Therefore, if the claimant graduated from his course with the first respondent, he would then have automatically been entitled to be placed on the second respondent’s national register of Psychotherapists (this is acknowledged in the Metanoia MSc Handbook “*once a student has graduated from the course, he or she can automatically register with UKCP as a psychotherapist, through the HIPC*).”

Privileges and responsibilities of membership under Byelaws

61. However only Full Individual Members and Full Organisational Members are eligible to vote, and Full Organisational Members are eligible to sponsor individuals for membership of UKCP.

62. Under the heading Withdrawal of Membership, it is stated “*Where it has come to the attention of the Trustees that any member has failed to fulfil the conditions of Membership that Member will be required to withdraw from Membership of the Charity in accordance with the provisions of Article 10.*”

63. The Byelaws provide that the Board of Trustees may maintain a Complaints and Conduct Process for the purpose of considering clinical complaints against full individual members. There are also provisions relating to consideration of complaints against organisational members. However, there are no provisions relating to students and trainee members being subject to UKCP’s complaints and conduct processes. Complaints or concerns relating to students and trainee members fall under the

relevant training organisation's internal regulations. If UKCP receives complaints about a student or trainee member, these are signposted to the relevant training organisational member.

Additional benefits of UKCP membership

64. The claimant was able to avail himself (if he so wished) of the full range of benefits that came with a UKCP trainee membership (see Hearing Bundle Pages 643-645 and 624-628). These included, but were not limited to:

- (a) ability to use the UKCP logos as a UKCP trainee therapist;*
- (b) eligibility to apply for the UKCP Trainee Bursary Scheme;*
- (c) listing as a trainee therapist on the UKCP website;*
- (d) regional events, members' forum, and special interest groups;*
- (e) discounted professional conferences and events, discounted professional indemnity insurance and, in due course, 10% discount on full clinical membership in his first year following qualification;*
- (f) free subscription to 'The Psychotherapist' magazine;*
- (g) professional recognition, regulation, and support; and*
- (j) Email bulletins for professional news, campaign updates and developments within UKCP.*

65. Full Clinical Members are entitled to additional benefits.

66. The second respondent engages in public awareness and influencing the government, NHS, and other key organisations to improve and increase access to psychotherapy for all (see Hearing Bundle page 753).

67. The second respondent offers an annual bursary, determined by an internal panel, for trainee members. To apply for this, a person must be either a student or trainee member of the second respondent and must also be on a 'UKCP-accredited' course.

68. The UKCP operates a Policy for continuing professional development which provides guidance to colleges, organisational members, and individual members. In respect of UKCP registrants the policy provides expectations in terms of minimum hours and requirements for colleges and organisational members (see Hearing Bundle pages 198-202).

69. Upon graduation from the MSc programme the claimant would receive a Clinical Diploma from the first respondent and would be automatically entitled to Full Clinical Membership of UKCP (see Hearing Bundle page 527).

70. To gain employment as a psychotherapist within the NHS, it is a requirement that the applicant must have completed a qualification which is usually accredited by the second respondent, the BACP or BPC (see Hearing Bundle pages 673-675).

The first respondent's course requirements

71. The first respondent's course requirements mirror those that the second respondent has set under its 'Standards of Education and Training.' These include requirements to be in personal therapy with a 'UKCP Registered Psychotherapist' (see Hearing Bundle page 521), to be in regular fortnightly supervision (see Hearing Bundle page 522), to be established in practice with a regular caseload (see Hearing Bundle page 522), to have a 'UKCP qualified integrative supervisor' (see Hearing Bundle page 523 and 653), and to undertake a Mental Health Familiarisation Placement (see Hearing Bundle pages 238-240).

72. The first respondent's website states under 'Standards and Quality' that: "*Our professional training programmes lead to registration with the appropriate regulatory bodies, BACP, UKCP, HCPC and BPS. This means that our training programmes are monitored annually and re-accredited every five years*" (see Hearing Bundle page 655).

Application to Raphael Jewish Counselling

73. During his course at the first respondent, one of the clinical placements that the claimant applied for and received an offer from was 'Raphael Jewish Counselling'. The requirements to be

able to take up a placement with this service provider, include (among other criteria): *“to have completed a Foundation course and, preferably, to be in the second or further year of non-directive counselling/psychotherapy training, which leads to UKCP registration or is accredited by the BACP”* (see Hearing Bundle pages 662 and 265-269).

Placement at Mind in Haringey

74. The claimant also started a clinical placement with ‘Mind in Haringey’ during the second year of his study at the first respondent. Mind in Haringey required applicants to provide in its application form details of all counselling and psychotherapy training *“(which should be BACP or UKCP accredited. You must give the FULL name of the institution and date of your enrolment)”* (see Hearing Bundle page 663).

Claimant’s communications with the second respondent

75. On 31 January 2021, the claimant sent an email to the Communications Team at the second respondent (copying in the Complaints Team). He expressed his concern with a lack of balance in the discussion and debate around treatment of gender dysphoria, particularly for children. He also criticised the Memorandum of Understanding on Conversion Therapy (MoU), on the basis of its language and the risks it posed, along with the seeming insistence that gender dysphoria is not a mental health disorder. He attached a draft article that he had written, which was entitled *“The Real ‘Conversion’ Therapy: Puberty Blockers, Hormone Treatment and Sex Reassignment Surgery”*. He asked the second respondent to consider publishing this as an opinion piece, as part of its communications with its membership, *“to offer a different side of this nuanced discussion to UKCP members and colleagues.”* He sent a further email chasing up a response on 09 February 2021.

76. On 18 February 2021, the claimant received a holding response from the second respondent’s Complaints and Conduct Team

stating that his email and article had been referred to the Registrar who would contact him in due course (see Hearing Bundle page 715).

77. On 26 February 2021, the claimant received a further response from Mr A McConnon, UKCP Registrar (see Hearing Bundle pages 717-719). He stated that if the claimant wished to apply for full clinical membership of the second respondent he would have to abide by the *"...ethical framework including but not limited to the aforementioned documents"*. Mr McConnon also stated that he intended to provide a copy of the claimant's correspondence and his letter to the first respondent.

78. The claimant responded to Mr McConnon on 28 February 2021 expressing his disappointment with his refusal to engage with his points. He stated that he had not and did not ever intend to contravene any ethical framework. He requested that his correspondence was not shared with the first respondent.

79. The claimant escalated his concerns on 19 March 2021 to the second respondent's CEO, Ms S Niblock, and Chairman, Mr M Pollecoff. He sent a follow-up email on 8 April 2021.

80. Ms Niblock responded on 8 April 2021, referring the claimant to the first respondent and the fact that the UKCP had a Members' Forum which meets regularly.

81. The claimant requested by email of the same date that if she or her colleague did not have time to speak to him, the matter be delegated to one of her team who will hopefully have the capacity to speak to him.

82. Ms Niblock replied on 09 April 2021 explaining that she hears the claimant's point that he feels a member of staff should make time to speak to him, that the Code and MOU are matters of

governance not operations and that she had already suggested which she stated were “...the very best routes for you to discuss this and make your feelings heard. Your training organisation is an organisational member of one of the ten UKCP colleges and the Members’ Forum is the key representative channel.”

83. On 11 April 2021 the claimant sent an email to the secretary of the Forum, explaining that Ms Niblock had directed him to the Forum, and he requested information about how to raise his concerns and submissions through the Forum. He never received a response (see Hearing Bundle page 725).

84. By email dated 29 April 2021, a person at the second respondent, (whose identity is not known to the claimant), forwarded the correspondence detailed above to the first respondent’s Chief Executive Officer, Professor S Owen-Jones. The email stated: “We are greatly concerned by this situation and I would be grateful for your organisation’s views on this matter as soon as possible.”

85. On 4 May 2021, Professor Owen-Jones sent an email to her colleagues to state “I also think Gill Donaldson, who may have the ‘ear’ of UKCP help with this matter. I have asked for her thoughts” (see Hearing Bundle pages 727-728).

Termination of the claimant’s contract with the First Respondent

86. The claimant’s contract with the first respondent was terminated on 6 May 2021.

87. On 27 May 2021, the claimant was informed by email that his trainee membership of the second respondent had been terminated because he was no longer a student of the first respondent.

The third respondent

Background – qualifications & roles

88. The third respondent has been a UKCP Registered Psychotherapist since 1993. She is currently a UKCP Honorary Fellow and was, at the time of the events described in the Second Claim, Chair of the UKCP College of Outcome Oriented and Hypno- Psychotherapies. She has acted as a Psychotherapy Clinical Trainer for UKCP and has previously been a member of UKCP's Ethics Committee (2006-2013), a member of UKCP's Diversity and Equality Committee (2009-2014) and a member of UKCP's Education Training and Practice Committee (2012-2018). She is currently on the second respondent's Professional Regulatory Committee of the Colleges and Faculties (see Hearing Bundle pages 758-762).

89. The third respondent was also a leading writer of the Memorandum of Understanding on Conversion Therapy 2017 ("MoU").

Independent contractor status

90. The third respondent was invited to provide a quotation in relation to delivering training sessions by an email dated 15 June 2020 (which followed a conversation with the third respondent).

91. A quotation was sent from the third respondent for 'development and materials' and 'per webinar' on 26 June 2020 (see Hearing Bundle page 451). This included reading and recorded seminars, and 6 x 4-hour live seminars. The third respondent also mentioned the need for her to be flexible, depending on the number of attendees.

92. By an email dated 16 June 2020, the third respondent had suggested the dates that she was available to undertake training (see page 449 of the Hearing Bundle). The third respondent made it clear that she retained copyright over her material (see

page 450 of Hearing Bundle). In the same email dated 16 June 2020 the third respondent said she would not be giving UKCP an exclusivity clause and made clear that she trained for many organisations and groups, although UKCP's training program would be very unique.

93. The third respondent sent invoices to the second respondent in respect of the services she provided (see page 454 of the Hearing Bundle).

94. In her email dated 11 August 2021 the third respondent said she was looking forward to the next set of MoU training, sent some revised material and she stated that the rest of the material would be ready early the following week. She requested the figures and stages of payment that were agreed so she could issue her invoice for the different stages of services she provided promptly.

95. The third respondent was sent an email on 12 August 2021 in relation to training she delivered up to that date and the related costs. The email stated the total amount invoiced (which was obscured) although the total to be invoiced by end of September was to be £3650.00. The email also contained suggestions in terms of further training she could deliver in 2021/2022 along with the relevant pricing (it was stated that a request could be put in for a greater budget if needed).

Training course in September 2021

96. During September 2021, the claimant became aware that the third respondent had delivered a training course on behalf of the second respondent for its members (particularly those with responsibility for training other psychotherapists). The training course in question took place virtually on 20 September 2021. This was one of a series of training courses that the third respondent conducted.

97. The course was titled '*Introducing the Memorandum of Understanding on Conversion Therapy 2017 to UKCP Member Organisations*'. In addition, the second respondent was responsible for publicising the event, the webinar technology and disseminating the training materials (see Hearing Bundle page 447).

98. The claimant says that having listened to an audio recording, he discovered that the third respondent had made a number of false statements about him and the First Claim he started against the first and the second respondents. He states that these included but were not limited to the matters set out in paragraph 9 of the Second Claim. The second and the third respondents have not agreed the accuracy of the statements that the claimant alleges were made, and they dispute the claimant's claim relating to the same.

99. The third respondent did not expressly name the claimant in any of the comments relied on by the claimant. The claimant contends in paragraph 10 of the Second Claim the matters which he considers made it clear she was speaking of the claimant and the First Claim.

100. The claimant points out that Christian Concern, who run the Christian Legal Centre, have publicly stated support for his case (see Hearing Bundle pages 763-771) and that the third respondent repeatedly made references to 'Thoughtful Therapists.' The claimant says he was a founding member of that group.

Events after the training course in September 2021

101. On 30 September 2021, the claimant's solicitors wrote to the second respondent, drawing its attention to the third respondent's conduct and asking for an undertaking to ensure no further commentary was made about the claimant or the claimant's claim and for the retention and protection of all relevant documents (see Hearing Bundle pages 729-730). The claimant's solicitors received an acknowledgement from the second respondent's solicitors on 4 October 2021 saying that they were taking instructions, but they did not receive a substantive response.

102. The third respondent subsequently launched a crowdfunding campaign on crowdjustice.com, titled '*Help Fund Defence for an LGBTQ+ Therapist*'. Her description is: "*UK therapist, who is LGBTQ+, faces legal action by gender critical campaigner*" (see Hearing Bundle page 743).

103. In an update posted on 21 March 2022, the third respondent wrote: "*It is the therapist's belief that this claim against her is vexatious and malicious and that it is the claimant's intention to silence critics of his views*" (see Hearing Bundle pages 743-746).

Online messages

104. A number of online messages were included in the Hearing Bundle at pages 549-565 and 696-700, including messages showing that a complaint was filed with the first respondent in relation to an online petition that the claimant had started (albeit it is acknowledged that the complaint made was dismissed).

105. According to a message from the Pink Talking Therapy Group on 08 May 2021, the ethics chair of the first respondent confirmed that the claimant had been terminated from his training programme (see Hearing Bundle pages 573-577). There was also a message from the third respondent which stated that UKCP had not "...shirked its duty in this area..." and that a training

organisation must use their internal education-appropriate processes, upholding UKCP standards (see Hearing Bundle page 580).

106. Thereafter there were a number of further messages in relation to the claimant and the claimant's claim, including a detailed post from the claimant and further messages from the third respondent relation to being "...*picked out for template letter-writing from him...*" (see Hearing Bundle pages 581-607).

Observations

107. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

108. In considering the evidence led before the Tribunal, and the various documents produced at the Preliminary Hearing, I have had to carefully review the whole evidence heard from both the claimant and the respondent and assess it.

109. The Tribunal made its essential findings of fact on the balance of probabilities.

110. The Tribunal observed that in terms of the witness evidence it heard, different witnesses were able to assist with or comment on specific aspects of this case. Where there was a conflict of evidence, the Tribunal made findings of fact on the balance probabilities based on the documents, and having considered the totality of the witness evidence, and accepted the evidence that set out the position most clearly and consistently.

Relevant law

111. To those facts, the Tribunal applied the law –

Qualifications bodies

112. By section 53 of the EqA:

53Qualifications bodies

(1)A qualifications body (A) must not discriminate against a person (B)—

(a)in the arrangements A makes for deciding upon whom to confer a relevant qualification;

(b)as to the terms on which it is prepared to confer a relevant qualification on B;

(c)by not conferring a relevant qualification on B.

(2)A qualifications body (A) must not discriminate against a person (B) upon whom A has conferred a relevant qualification—

(a)by withdrawing the qualification from B;

(b)by varying the terms on which B holds the qualification;

(c)by subjecting B to any other detriment.

(3)A qualifications body must not, in relation to conferment by it of a relevant qualification, harass—

(a)a person who holds the qualification, or

(b)a person who applies for it.

(4)A qualifications body (A) must not victimise a person (B)—

(a)in the arrangements A makes for deciding upon whom to confer a relevant qualification;

(b)as to the terms on which it is prepared to confer a relevant qualification on B;

(c)by not conferring a relevant qualification on B.

(5)A qualifications body (A) must not victimise a person (B) upon whom A has conferred a relevant qualification—

(a)by withdrawing the qualification from B;

(b)by varying the terms on which B holds the qualification;

(c)by subjecting B to any other detriment.

(6)A duty to make reasonable adjustments applies to a qualifications body.

(7)The application by a qualifications body of a competence standard to a disabled person is not disability discrimination unless it is discrimination by virtue of section 19.

113. A Qualifications body is defined in section 54 of the EqA in the following terms:

54Interpretation

(1)This section applies for the purposes of section 53.

(2)A qualifications body is an authority or body which can confer a relevant qualification.

(3)A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for, or facilitates engagement in, a particular trade or profession.

(4)An authority or body is not a qualifications body in so far as—

- (a) it can confer a qualification to which section 96 applies,
 - (b) it is the responsible body of a school to which section 85 applies,
 - (c) it is the governing body of an institution to which section 91 applies,
 - (d) it exercises functions under the Education Acts, or
 - (e) it exercises functions under the Education (Scotland) Act 1980.
- (5) A reference to conferring a relevant qualification includes a reference to renewing or extending the conferment of a relevant qualification.
- (6) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.

114. A “qualification” in s.54 EqA was broadly defined and was concerned with the effect of the qualification and whether as a matter of fact it was needed for or facilitated engagement in a particular trade or profession: *Pemberton v Inwood* [2017] ICR 929 EAT at §106. It was held in that case that permission to officiate ministerial services was not a relevant qualification because it was not necessary to obtain, and did not facilitate the granting of, an extra-parochial ministry licence (which was a relevant qualification).

115. In *Kelly v Northern Ireland Housing Executive* [1998] ICR 828 Lord Slynn said at page 838, “I agree that the wording of the Fair Employment (Northern Ireland) Act 1976 is wider than that of the Race Relations Act 1976 and that the emphasis on “status” in *Bone* may be subject to further argument though the word “status” may give some indication of the essence of a “qualification.” He cited the case of *Department of the Environment for Northern Ireland v Bone* (1993) 8 NIJB 41. In *Kelly* it was held that “qualification” does not cover the appointment of a duly qualified professional person to carry out remunerated work on behalf of a client.

116. The authorities have referred to “confer” as meaning “specifically declare” (*Kulkarni v NHS Education Scotland* UKEATS/0031/12/BI (16 October 2012, unreported at paragraph 24 per Lady Smith) or “vouches” (In *Watt (formerly Carter) and others v Ahsan* [2008] 1 AC 696 HL at §18 Lord Hoffman states

“The qualifying body vouches to the public for the qualifications of the candidate and the public rely upon the qualification in offering him employment or professional engagements.”).

117. As stated in *Kulkarni* at paragraph 24 per Lady Smith:

“Where an issue arises as to whether or not a respondent is a “qualifications body”, the tribunal's task is, essentially, set by the words of the statute. It requires first to decide what are the facts in the particular case. That involves determining what as a matter of fact was the interrelationship between the claimant and respondent, if any. Then, applying the statutory terminology, the tribunal requires to ask whether, in the context of that interrelationship, there was anything that the respondent could do which amounted to granting to the claimant an authorisation, qualification, recognition, registration, enrolment, approval or certification? The contextual setting for that list is clearly one of formality and connotes B (as referred to in section 53) being specifically declared by A as having attained a particular set standard. If A does not have the power to set such a standard and make such a declaration then A cannot be a qualifications body within the meaning of section 53 .”

118. “It is to be noted that the expressions “*is needed for*” and “*facilitates*” are disjunctive.”: (see *Patterson v Legal Services Commission [2004] ICR 312 CA* at paragraph 75).

119. As to the meaning of “*facilitates*”, the Explanatory Notes to the EqA state that a qualifications body is a body which can confer “*any academic, medical, technical or other standard which is required to carry out a particular trade or profession, or which better enables a person to do so by, for example, determining whether the person has a particular level of competence or ability.*”

120. In *British Judo Association v Petty [1981] ICR 660, 664, Browne-Wilkinson J (President)*, giving the judgment of the Employment Appeal Tribunal, said, with regard to the similar provision in section 13 of the *Sex Discrimination Act 1975*, that the section covers all cases where the qualification in fact facilitates the woman's employment.

Trade Organisations

121. By section 57 of the EqA:

57 Trade organisations

(1) A trade organisation (A) must not discriminate against a person (B)—

(a) in the arrangements A makes for deciding to whom to offer membership of the organisation;

(b) as to the terms on which it is prepared to admit B as a member;

(c) by not accepting B's application for membership.

(2) A trade organisation (A) must not discriminate against a member (B)—

(a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;

(b) by depriving B of membership;

(c) by varying the terms on which B is a member;

(d) by subjecting B to any other detriment.

(3) A trade organisation must not, in relation to membership of it, harass—

(a) a member, or

(b) an applicant for membership.

(4) A trade organisation (A) must not victimise a person (B)—

(a) in the arrangements A makes for deciding to whom to offer membership of the organisation;

(b) as to the terms on which it is prepared to admit B as a member;

(c) by not accepting B's application for membership.

(5) A trade organisation (A) must not victimise a member (B)—

(a) in the way it affords B access, or by not affording B access, to opportunities for receiving a benefit, facility or service;

(b) by depriving B of membership;

(c) by varying the terms on which B is a member;

(d) by subjecting B to any other detriment.

(6) A duty to make reasonable adjustments applies to a trade organisation.

(7) A trade organisation is—

(a) an organisation of workers,

(b) an organisation of employers, or

(c) any other organisation whose members carry on a particular trade or profession for the purposes of which the organisation exists.

122. In *Medical Protection Society and ors v Sadek* [2004] ICR 1263 CA at paragraph 18:

"18. When the Employment Appeal Tribunal considered this submission it concluded, at para 18:

"In our opinion, the focus of the language is not so much on whether the organisation exists for the purpose of the profession of its members but rather on whether the organisation exists for the purpose of enabling or assisting its members to carry on their profession. We can think of no rational reasons why Parliament would have wanted to extend the statutory protection from discrimination in section 11 to members of only those professional bodies which seek to advance the interests of the

profession as a whole and not to members of professional bodies which enable or assist its members to carry on their profession."

I find myself in broad agreement with this approach. Indeed, it is a useful tool in considering where on the spectrum a particular organisation lies. I agree with the employment tribunal and the appeal tribunal that, assuming the MPS not to be within the first category, it would be an organisation "whose members carry on a particular profession ... for the purposes of which the organisation exists". This is apparent from the findings of the employment tribunal as to what the MPS does and the analytical approach of the appeal tribunal."

123. A distinction is drawn between organisations that serve the interests of their members and those whose primary or predominant purpose is to serve the interests of the public. Thus, the General Medical Council is not a trade organisation: *Cox v General Medical Council 70 BMLR 31 EAT* at paragraphs 16-17.

124. A Tribunal is required to take a broad look at the characteristics of the body in question in order to determine whether it is a 'trade organisation' (see *National Federation of Self-Employed and Small Businesses Ltd v Philpott [1997] ICR 518*).

125. An application to a set of chambers for pupillage was not an application for membership of the chambers and therefore fell outside the scope of the equivalent of s 57 (see *Higham v Horton [2005] ICR 292*).

126. The award of a football coaching licence was not the granting of membership of a trade organisation: although the award by the Football Association of an 'A' licence would have had a beneficial impact on the claimant's career, his membership status would have remained unchanged: *Kelly v Football Association EAT 0015/05*.

The claims against the second respondent

127. Section 111 of the EqA is headed "*Instructing, Causing or Inducing contraventions*". It says:

“(1) A person (A) must not instruct another (B) to do in relation to a third person (C) anything which contravenes Part 3, 4, 5, 6 or 7 or section 108(1) or (2) or 112(1) (a basic contravention).

(2) A person (A) must not cause another (B) to do in relation to a third person (C) anything which is a basic contravention.

(3) A person (A) must not induce another (B) to do in relation to a third person (C) anything which is a basic contravention.

(4) For the purposes of subsection (3), inducement may be direct or indirect. (5) Proceedings for a contravention of this section may be brought— ..(b) by C, if C is subjected to a detriment as a result of A's conduct;

(6) For the purposes of subsection (5), it does not matter whether— (a) the basic contravention occurs; (b) any other proceedings are, or may be, brought in relation to A's conduct.

(7) This section does not apply unless the relationship between A and B is such that A is in a position to commit a basic contravention in relation to B.

(8) A reference in this section to causing or inducing a person to do something includes a reference to attempting to cause or induce the person to do it.

(9) For the purposes of Part 9 (enforcement), a contravention of this section is to be treated as relating— ..(b) in a case within subsection (5)(b), to the Part of this Act which, because of the relationship between B and C, B is in a position to contravene in relation to C.”

128. In *NHS Development Authority v Saiger (2018) ICR 297*, it was held that there must be evidence of actual instruction, causation, inducement, or attempt to cause or induce. It was not sufficient to show that persons were in a position to do those things.

129. The burden of proof is on the claimant, on the balance of probabilities, and subject to the EqA provision on burden of proof.

Claim against the third respondent

s108 EqA

130. Section 108 of the EqA provides:

“108 Relationships that have ended

(1) A person (A) must not discriminate against another (B) if—

(a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.

(2) A person (A) must not harass another (B) if—

(a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and

(b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.

(3) It does not matter whether the relationship ends before or after the commencement of this section.

(4) A duty to make reasonable adjustments applies to A [if B is] placed at a substantial disadvantage as mentioned in section 20.

(5) For the purposes of subsection (4), sections 20, 21 and 22 and the applicable Schedules are to be construed as if the relationship had not ended.

(6) For the purposes of Part 9 (enforcement), a contravention of this section relates to the Part of this Act that would have been contravened if the relationship had not ended.

(7) But conduct is not a contravention of this section in so far as it also amounts to victimisation of B by A.”

131. S 108 of the EqA applies to victimisation claims (this is confirmed in *Jessemey v Rowstock Ltd* [2014] IRLR 368 CA).

s109 EqA

132. By section 109 of the EqA,

“(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.”

133. *Ministry of Defence v Kemeh* (2014) ICR 65 confirms that this does not mean the principal must authorise the act complained of; it is enough that he does something he has been authorised to do; it was also held that common principles of agency apply. That normally means an agent has been given the power to affect the principal's relations with third parties but could also include someone who did not – a canvassing agent, as in estate agency – who has a fiduciary relationship with the principal and limited to acts on his behalf. It is distinct from vicarious liability. There must be some degree of control - *Bowstead and Reynolds on Agency*. In *Kemeh*, the claimant's employer had

insufficient control over the contractor's employee for it to be said she was their agent.

134. In *Unite the Union v Naillard* [2018] EWCA Civ 1203, the test of agency was identified as whether the discriminator was exercising authority conferred by the principal. In that case, the trade union was held liable for the actions of two elected officials (their agents) who had harassed an employee of the union, as what they did was within the scope of their authority.

135. In *Uber BV v Aslam* [2021] ICR 657 SC at paragraph 53 the Supreme Court said: "An agency relationship need not be contractual. What is required is an overt act by the principal conferring authority on the agent to act on the principal's behalf. Even if lacking such actual authority, a person (A) who purports to act as agent for another (B) may still affect B's legal relations with a third party under the principle of ostensible or apparent authority, but only if B has represented to the third party that A is authorised to act as B's agent and the third party has relied on that representation." In paragraph 55 of *Uber* it was stated that "...it would be necessary to point, at the least, to a prior communication from Uber London to the individual concerned or other background facts known to both parties which would lead reasonable people in their position to understand that, by producing the documents required by Uber London, an individual who did so was thereby authorising Uber London to contract with passengers as his agent..."

136. As stated in *Bowstead and Reynolds on Agency* 22nd Edition, 1-004:

"As to status, an agent's status will usually be that of employee or independent contractor (but sometimes a gratuitous actor), and agency is not a separate category. Equally, employees and contractors often have no authority to alter their appointer's legal relations, and if not exercising any authority are not properly described as an agent."

s.110 EqA

137. By s.110 EqA the agent who causes the principal to be vicariously liable is deemed to have aided the principal's vicarious act.

Strike out

138. Rule 37 of *Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* (“*ET Rules*”) deals with the circumstances in which a Tribunal can issue a strike out order:

37.—(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds—

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

(e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

Deposit orders

139. Rule 39 of the *ET Rules* deals with deposit orders:

“(1) Where at a preliminary hearing (under rule 53) the Tribunal considers that any specific allegation or argument in a claim or response has little reasonable prospect of success, it may make an order requiring a party (“the paying party”) to pay a deposit not exceeding £1,000 as a condition of continuing to advance that allegation or argument.

(2) The Tribunal shall make reasonable enquiries into the paying party's ability to pay the deposit and have regard to any such information when deciding the amount of the deposit.

(3) The Tribunal's reasons for making the deposit order shall be provided with the order and the paying party must be notified about the potential consequences of the order.

(4) If the paying party fails to pay the deposit by the date specified the specific allegation or argument to which the deposit order relates shall be struck out. Where a response is struck out, the consequences shall be as if no response had been presented, as set out in rule 21.”

140. Rule 39(1) therefore provides a power for targeted case management that is likely to discourage parties (i.e., the claimant in this case) from pursuing weak claims or weak elements in their case.

141. The threshold for making a deposit order is that the Tribunal (i.e., me) must be satisfied that there is ‘*little reasonable prospect*’ of the particular allegation or argument succeeding. This is different from the criterion for striking out a case under rule 37(1)(a) on the ground that the proceedings have ‘*no reasonable prospect of success*’.

142. In considering whether to make a deposit order, the Tribunal is entitled to have regard to the likelihood of a party being able to establish facts essential to their case and, in doing so, to reach a provisional view as to the credibility of the assertions being put forward. In *Van Rensburg v The Royal Borough of Kingston Upon Thames* [2007] UKEAT/0096/07, Elias P held: “...the test of little prospect of success...is plainly not as rigorous as the test that the claim has no reasonable prospect of success... It follows that a tribunal has a greater leeway when considering whether or not to order a deposit. Needless to say, it must have a proper basis for doubting the likelihood of the party being able to establish the facts essential to the claim or response.”

143. In *Hemdan v Ishmail* [2017] IRLR 228, Mrs Justice Simler, as she then was, described the purpose of a deposit order as being: “...to identify at an early-stage claims with little prospect of success and to discourage the pursuit of those claims by requiring a sum to be paid and by creating a risk of costs ultimately if the claim fails.” That was legitimate policy, because claims or defences with little prospect caused unnecessary costs to be incurred and time to be spent by the opposing party. They also occupied the limited time and resources of Tribunals that would otherwise be available to other litigants. However, the purpose was not to make it difficult to access justice or to effect a strike-out through the back door. Indeed, the requirement to consider a party’s means in determining the amount of a deposit order (at rule 39(2)) was inconsistent with that being the purpose. It was essential that when a deposit order was deemed appropriate it did not operate to restrict disproportionately the fair trial rights of the paying party or impair access to justice. Accordingly, an order to pay a deposit had to be one that was capable of being complied with. A party without the means or ability to pay should not be ordered to pay a sum that he was unlikely to be able to raise.

144. In *Adams v Kingdom Services Group Ltd* EAT 0235/18 the EAT held that a Tribunal must give reasons for setting the deposit at a particular amount. In the EAT's view, the requirement to give reasons for 'making' the deposit order under rule 39(3) includes a requirement to give reasons not only for making the order at all but also for the particular amount to be paid.

Parties' Submissions

145. Parties made detailed submissions which the Tribunal found to be informative. The Tribunal considered parties' representatives' written submissions (and replies) and referred to the authorities cited therein. References are made to essential aspects of the submissions and the authorities relied on by the parties' representatives with reference to the issues to be determined in this judgment, although the Tribunal considered the totality of the submissions from the parties.

146. Parties' representatives cited a number of cases including but not limited to the following cases, all of which the Tribunal considered:

1. *British Judo Association v Petty* [1981] ICR 660 EAT
2. *National Federation of Self-Employed and Small Businesses Ltd v Philpott* [1997] ICR 518
3. *Kelly v Northern Ireland Housing Executive* [1998] ICR 828 HL
4. *Anyanwu v South Bank Students' Union* [2001] IRLR 305 HL
5. *Cox v General Medical Council* 70 BMLR 31 (22 Mar 2002) EAT
6. *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).
7. *Patterson v Legal Services Commission* [2004] ICR 312 CA
8. *Jeffrey-Shaw v Shropshire County Premier Football League* EAT 0320/04
9. *Medical Protection Society and ors v Sadek* [2004] ICR 1263 CA
10. *Higham v Horton* [2005] ICR 292
11. *Kelly v Football Association* EAT 0015/05
12. *Ezsias v North Glamorgan NHS Trust* [2007] ICR 1126 CA
13. *Van Rensburg v RB of Kingston-upon-Thames* UKEAT/0095/07 (16 Oct 2007), [2007] All ER (D) 187 (Nov)

14. *Watt (formerly Carter) and others v Ahsan* [2008] 1 AC 696 HL
15. *A v B* [2010] EWCA Civ 1378
16. *Lockey v East North East Homes Leeds* UKEAT/0511/10 (14 Jun 2011)
17. *Sharma v New College Nottingham* UKEAT/0287/11 (1 Dec 2011)
18. *Kulkarni v NHS Education Scotland* UKEATS/0031/12 (16 Oct 2012)
19. *Hawkins v Atex Group Ltd* [2012] ICR 1315 EAT
20. *QDOS Consulting Ltd v Swanson* UKEAT/0495/11 (12 Apr 2012)
21. *Tayside Public Transport Co Ltd v Reilly* [2012] IRLR 755 CSIH
22. *Patel v Lloyds Pharmacy Ltd* UKEAT/0418/12
23. *X v Mid Sussex Citizens Advice Bureau* [2013] ICR 249
24. *Jessemey v Rowstock Ltd* [2014] IRLR 368 CA
25. *Romanowska v Aspirations Care Ltd* UKEAT/0015/14 (25 Jun 2014)
26. *Kemeh v Ministry of Defence* [2014] ICR 625 CA
27. *Chandhok v Turkey* [2015] IRLR 195 EAT
28. *The General Municipal and Boilermakers Union v Henderson* [2015] IRLR. 451 (EAT) at [99]; [2016] EWCA Civ 1049
29. *Sajid v Bond Adams LLP Solicitors* UKEAT/0196/15 (3 Jun 2016)
30. *Zeb v Xerox (UK) Ltd* UKEAT/0091/15 (24 Feb 2016)
31. *Hemdan v Ishmail* [2017] IRLR 228 at [10]
32. *Mechkarov v Citibank NA* [2016] ICR 1121 EAT
33. *Wasteney v East London NHS Foundation Trust* [2016] ICR 643 EAT at §51
34. *Pemberton v Inwood* [2017] ICR 929 EAT
35. *Unite the Union v Nailard* [2019] ICR 28 CA
36. *Page v NHS Trust Development Authority* [2021] ICR 941 CA

Discussion and decision

147. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

28.1 Whether the tribunal has jurisdiction to hear the complaints brought against UKCP in both claims on the basis that it is a qualifications body for the purposes of sections 53 and 54 of the EqA

148. In paragraph 45 of its Response to the First Claim, the second respondent admits that it was a qualifications body within the meaning of sections 53 and 54 of the EqA. However, it denies that inclusion of a person in the directory of trainee

psychotherapists constitutes the conferment of a relevant qualification for the purposes of section 53, Equality Act 2010 because all decisions as to who can become a trainee psychotherapist are taken by institutions.

149. Whilst the claimant accepts that Full Clinical Membership with UKCP is an automatic consequence of completing and obtaining his qualification with the first respondent (see claimant's witness statement paragraphs 11 and 27(b)), he does not accept that trainee membership of UKCP is automatic upon his embarking on his course with the first respondent.

150. The claimant's representative submits on holding a qualification for the purposes of s 53(2) and (5) "*recognition, registration, approval or certification of a person which demonstrates to the public that an individual meets UKCP's standards*" was a relevant qualification.

151. On the evidence before me, I was not satisfied that inclusion on the second respondent's list of trainees facilitated engagement in the profession of psychotherapist in the sense that it "*better enables*" a person to do so or makes it "*easier or less difficult*" to do so. I considered that inclusion on the second respondent's list of trainee members was not required in order for the claimant to practice the trade or profession of psychotherapy.

152. Moreover, I was satisfied that inclusion in UKCP's list of trainees is a consequence of trainee membership, which in turn is a result of being enrolled on a course with an organisational member (namely the first respondent). Whilst the claimant referred to the application process (which included payment of a fee and input from the first respondent), this did not change the fact that his trainee membership of the second respondent arose from his enrolment on a programme with an organisational

member (the first respondent). The trainee membership list is separate from the register of Full Clinical Members.

153. The claimant was not subject to UKCP's Complaints and Conduct process as a trainee member and any such matters were addressed by the first respondent's internal regulations.

154. The evidence before me did not demonstrate that the claimant was better enabled to carry out the profession of psychotherapist by recognition as a trainee by UKCP. He remained a trainee and he was not fully qualified or a Full Clinical Member. The claimant's evidence does not show that as a trainee (and the resultant recognition by UKCP as a trainee member) he could better practice his profession. I considered that in relation to the claimant's voluntary work (the only work performed by the claimant of which there was some evidence before me), the evidence did not show that inclusion in the list of trainees had any effect on his ability to practice as a trainee psychotherapist (or as a professional psychotherapist if he had completed the relevant qualification). On the evidence before me, there was no connection in terms of the claimant's trainee membership of UKCP and employment or occupation.

155. I accept that the recruitment materials for Harley Therapy (see page 647 of the Hearing Bundle) do not suggest that they accept trainee members of UKCP, and their uniform requirement that therapists were *registered* (see page 647 of the Hearing Bundle) tends to suggest that there was a requirement for the claimant to obtain Full Clinical Membership of UKCP or a similar organisation.

156. There was evidence that the claimant provided services free of charge as a volunteer including for charitable organisations such as MIND. I was referred to the authority of *X v Mid Sussex Citizens Advice Bureau* [2013] ICR 249 by the second

respondent's representative in which the Supreme Court held that the claimant was not protected by the relevant provisions of the Disability Discrimination Act 1995 and Directive 2000/78/EC as the Directive did not cover voluntary activity. The second respondent contends that this also applies to claims under the EqA. However, even if this were not correct, I am not satisfied on the evidence that inclusion in the second respondent's list of trainees better enabled the claimant to undertake voluntary work or that this had any effect on his ability to practice as a professional psychotherapist (if the claimant had completed his course with the first respondent and obtained Full Clinical Membership of UKCP).

157. The second respondent also refers to the contextual setting for the second respondent's list of trainee members as being a formal list of trainees. However, it is contended that this must connote the claimant being specifically declared by UKCP as having attained a particular set standard: *Kulkarni v NHS Education Scotland*, at paragraph 24 and if UKCP does not have the power to set such a standard *and make such a declaration* then UKCP cannot be a qualifications body within the meaning of sections 53 and 54 of the EqA.

158. The claimant's representative submits that even if inclusion in the second respondent's directory were an automatic consequence of enrolment on an accredited course, due to the close control exercised by the second respondent over its accredited training providers it is quite difficult to draw a line between the two. Having carefully reviewed the relationship between the first and second respondent, including any standards set by the second respondent, and the role and responsibilities of the first respondent, I was not satisfied that it was artificial to draw a line between the first and second

respondent nor was I satisfied that inclusion on the directory was “*in effect*” conferred by UKCP.

159. It is apparent from the evidence including the documents to which I was referred that UKCP set only a floor, and not a ceiling in relation to ethics and conduct, and it was for the first respondent to decide whether a student or trainee should remain a member of the first respondent. There was no evidence to indicate that UKCP made any declaration of the attainment of a particular set standard in any of these respects.

160. Based on the evidence in the claimant’s witness statement the second respondent was said to have specified minimum requirements that any course must meet in order to be awarded the accreditation. The claimant refers to HIPC’s standards also. The claimant’s representative’s characterisation in terms of the contents of the course being “*largely dictated by UKCP*” was not borne out in the witness evidence or in the documents before me.

161. The claimant has not been able to show that at the time of the acts about which he complains he held a relevant qualification as defined in section 54(3) of the EqA, or indeed, that a relevant qualification was conferred to him by the second respondent.

162. Accordingly, having considered the witness evidence and the documents to which I was referred, I conclude that the Tribunal does not have jurisdiction to hear any claim made by the claimant against the second respondent pursuant to section 53 of the EqA (section 54 being the interpretation provisions).

28.2 Whether the tribunal has jurisdiction to hear the complaints brought against UKCP in both claims on the basis that it is a trade organisation for the purposes of section 57 of the EqA

163. The definition of a “*trade organisation*” is set out in section 57(7) of the EqA.
164. The second respondent denied that it is a trade organisation, on the ground that it did not exist for the purposes of carrying on a particular trade or profession, but to regulate those who do, and it would be inconsistent for the second respondent to operate as both as qualifications body and trade organisation.
165. The claimant’s representative highlights that as far as trainees are concerned UKCP is not a regulator and that this was agreed by Ms Thakore when she gave oral evidence. It is further submitted that UKCP is a membership organisation which provides professional support and benefits in order to enable and assist members in terms of carrying out the profession of psychotherapy. Moreover, the claimant’s representative submits that even if UKCP were a regulator for trainees, it is not comparable to the GMC (who are established by statute).
166. Several bodies offer membership (including but not limited to UKCP and BACP) to students, trainees, and qualified psychotherapists. Membership of a body is voluntary.
167. The claimant says that the second respondent offers trainees a number of membership benefits which include inclusion on the list of trainees, a free magazine and discount schemes. I was also shown evidence of several other potential benefits of being a trainee member. I accept that these benefits may assist trainees in terms of providing information and benefits that may be relevant to their trainee membership.
168. Although the claimant could not attend as a voting member, all UKCP members were entitled to attend Members’ Forum meetings. The claimant was invited to raise the matters that he

contacted the second respondent about via the Members' Forum (see emails referred to above dated 8 and 9 April 2021).

169. The claimant was also entitled to apply for a bursary as a trainee member of UKCP.

170. I do not accept the second respondent's analogy in paragraph 25 of its closing submissions. The claimant was carrying on the profession of a psychotherapist albeit as a trainee member. It was not disputed that an individual did not require to be fully qualified in order to carry on the particular trade of psychotherapy. The position of the claimant who unsuccessfully applied to defer his pupillage on grounds of ill health in *Higham v Horton [2005] ICR 292* is not analogous.

171. I note the second respondent's representative submits that the UKCP's power "*to represent the Charity's members*" at Article 3(1)(c) [see page 271 of the Hearing Bundle] cannot and could not be used for purposes other than the furtherance of UKCP's charitable Objects, but it is acknowledged that this may include the promotion of psychotherapy. Moreover, having taken the Charity objects into account, and considering the evidence as a whole, I am satisfied that the second respondent existed for the purpose set out in section 57(7)(c). This was not inconsistent with serving the public benefit.

172. Having considered all the evidence that was before me, I am satisfied that the second respondent was a trade organisation as defined by section 57(7)(c) of the EqA and that UKCP were an organisation whose members carried on a particular trade or profession for the purposes of which the organisation exists. The claimant was a trainee member of the second respondent for the purposes of section 57(7)(c) of the EqA at the material time (until the termination of his membership) having completed the

application process, paid his membership fee, and received confirmation that his application had been approved.

28.3 Whether the tribunal has jurisdiction to hear the complaint brought against Ms Gawler-Wright in the Second Claim having regard to the jurisdictional questions set out at paragraph 4 of the draft agreed list of issues prepared for the Second Claim

173. As observed earlier, the third respondent's representative focussed on "*the jurisdictional agency point – rather than the wider strike out application.*" Therefore, no substantive submissions were made in terms of "*the wider strike out application*" in the time available as this was not considered to be proportionate by the third respondent's representative. The Tribunal were required to only deal with "*the jurisdictional agency point*" which relates to the Second Claim.

174. I was therefore not required to determine any other issues relating to the third respondent's response including whether the third respondent had knowledge of the First Claim, or the protected characteristic relied on by the claimant, or whether the claim should be struck out on the ground that it was vexatious or had no reasonable prospects of success.

s 108 EqA – discrimination in respect of relationships that have ended

175. Paragraph four of the third respondent's application dated 22 February 2022 states that the third respondent "*...at the time relevant to Claim 2, held no position with that qualification body and was, at most, an independent contractor providing services to that body.*" That application also states that the relationship between the claimant and UKCP was at an end at the time of the conduct complained of.

176. It is difficult to decipher the basis of the latter point made. Section 108 of the EqA prohibits discrimination in respect of relationships that have ended. The Court of Appeal has

confirmed that s.108 EqA extends to victimisation (see *Jessemey v Rowstock Ltd*). The third respondent's submissions on this issue were not developed further.

Third respondent's liability pursuant to s 109 EqA

177. I considered the third respondent's liability pursuant to section 109 of the EqA. Paragraph 39 of the claimant's submissions state, "*the Claimant asserts that Pamela Gawler-Wright was acting as agent to UKCP when she delivered training on the Memorandum of Understanding on Conversion Therapy in the UK43 ("MoU2") to delegates from its membership organisations on 20 September 2021.*" It is not contended that the third respondent's liability arises under section 109(1) on the basis that the third respondent was acting in the course of employment. Therefore, the claimant contends that liability arises under section 109(2) of the EqA (any defence under section 109(4) is not available if that provision applies).

178. A principal is liable under s.109 EqA (and by extension the agent is liable under s.110 EqA) where the agent discriminates in the course of carrying out the functions he is authorised to do.

179. The third respondent's representative enquires "*Is every external speaker to be taken to be an agent of an organisation for whom they provide a training course?*" As indicated above, it is envisaged in *Bowstead and Reynolds on Agency* that an agency relationship may arise in respect of an independent contractor. This will clearly be dependent on the factual circumstances relating to the relationship between parties.

180. In *Ministry of Defence v Kemeh*, Lord Justice Elias says at paragraph 40 “...it cannot be appropriate to describe as an agent someone who is employed by a contractor simply on the grounds that he or she performs work for the benefit of a third party employer. She is no more acting on behalf of the employer than his own employees are, and they would not typically be treated as agents. (That is not, of course, to say that employees can never be agents; they might well be, depending upon the obligations cast upon them, such as where a senior manager is authorised to contract with third parties. He will be an employee but will also act as an agent when exercising the authority to deal with third parties.)” Lord Justice Lewison says at paragraph 64 “By contrast, as a general rule a person is not responsible at common law for torts committed by his independent contractor or his independent contractor's employees. There may be cases, involving what are called non-delegable duties, where there is an apparent exception to the rule. I say “apparent” because in reality the person who has engaged the independent contractor is answerable for his own breach of duty, rather than for someone else's: *Woodland v Essex County Council* [2013] UKSC 66”.

181. The claimant's representative contends that the only safe conclusion to draw from the evidence described in the claimant's submissions is that Ms Gawler-Wright delivered the training to third parties with UKCP's authority, on its behalf and for its benefit. She further submits that the third respondent was expressly requested to do so, and even if she was not the background facts were such as to lead both parties to understand that that was the position.

182. The third respondent denies that she was an agent of UKCP. The second respondent states “UKCP agrees with, and adopts, WCS-R3 on R3's status relative to JE and UKCP.”

183. The claimant states in paragraph 53 of his witness statement that he claims the third respondent victimised him and she was

acting as an agent of the second respondent. Although the claimant provides some further information in his statement, his knowledge of the relationship between the second and the third respondent and the arrangements relating to the training course in question that took place in September 2021 is limited (given he was not an attendee or likely to be a party to any key documents). Ms Thakore's statement did not contain any information relating to this matter and the third respondent did not provide a statement.

184. I was provided with copy correspondences and some documentation showing the third respondent's interactions with the second respondent. This included emails during which the third respondent was invited to provide a quotation in relation to training sessions. A quotation was sent on 26 June 2020 (see Hearing Bundle page 451), and the third respondent suggested the dates that she was available to undertake training on 16 June 2020 (see page 449 of the Hearing Bundle), and that she retained copyright over her material (see page 450 of Hearing Bundle). In the same email dated 16 June 2020 the third respondent opted not to provide UKCP an exclusivity clause and made clear that she trained for many organisations and groups (although she said UKCP's training program would be very unique). The third respondent sent invoices to the second respondent in respect of the services she provided. The third respondent was sent an email on 12 August 2021 in relation to training she delivered up to that date and further training she could deliver in future.

185. The emails I was referred to in the Hearing Bundle are consistent with the third respondent being an independent contractor, a contractor engaged to provide specific training at agreed dates and times. The third respondent was responsible for preparing the content of the training, including determining its

duration. On the evidence the second respondent had no or little control in relation to the training sessions that were organised, which were set up for the benefit of third parties (including organisational members, supervisors, and practitioners). The documents evidencing the third respondent's status as an independent contractor were credible and consistent.

186. I must consider whether in terms of the conduct complained of, the third respondent, was acting as an individual independent contractor or as an independent contractor who acted as UKCP's agent.

187. The comments referred to in the claimant's claim (please see above) were said to have been made at a remote online training session on 20 September 2021, in the third respondent's capacity as a trainer (which she carried out as independent contractor).

188. The claimant's witness statement states that the third respondent was in an agency relationship with the second respondent because of the roles held by the third respondent within UKCP in the past and present, and in terms of her role in relation to the organisation of the event (see the details provided at paragraphs 53-59 of the claimant's witness statement).

189. In terms of my finding, I am not satisfied that simply being an independent contractor nor any of the third respondent's past (or present) roles with the second respondent, or indeed, a member of UKCP staff being present at the relevant training session (who it is said did not make any comment that UKCP were not responsible for the training), nor any of the other details provided in the claimant's witness statements meant that the third respondent was acting as an agent on behalf of the second respondent, with the second respondent's authority.

190. The claimant refers to a number of online messages. These lend nothing to any argument that in sending these messages or any references to the third respondent in those messages were as an agent of the second respondent. The second respondent had no or insufficient control of the communications in question. The content of those messages did not show that the third respondent acted as an agent of the second respondent.

191. The burden of proof is on the claimant, on the balance of probabilities, and subject to the EqA provision on burden of proof.

192. I am satisfied, on the evidence I have heard and read, that there was no actual or ostensible authority for the matters alleged had been said by the third respondent by the claimant in the Second Claim.

193. I did not consider the information that was before me was sufficient to satisfy me that Ms Gawler-Wright was acting as an agent of the second respondent at the material time. The evidence demonstrated that Ms Gawler-Wright was an independent contractor and the second respondent had no or insufficient control in terms of the training session (and in respect of the content thereof) that the third respondent delivered.

194. I conclude that the claimant's victimisation claim against the third respondent in the Second Claim based on the third respondent acting as an agent for a principal (namely the second respondent), with the authority of the second respondent (under sections 109 and 110 of the EqA respectively) has no reasonable prospect of succeeding.

195. For the reasons set out above, the Second Claim insofar as this was brought against the third respondent is struck out

pursuant to Rule 37(1)(a) of the ET Rules on the ground that it has no real prospect of success.

196. If I were wrong to strike out the Second Claim against the third respondent (contrary to my conclusion above), based on the evidence that I have heard and read and for the reasons explained above, I would have ordered the claimant to pay a deposit order on the basis that the Second Claim relating to the third respondent has little reasonable prospect of success, and I would have invited further submissions from parties as to the amount of the order (and the claimant's means).

197. Having regard to the issues before the Tribunal, I was not required to consider whether the Second Claim insofar as this related to the second respondent should be struck out. However, it is my provisional view that in light of my decision that the claim against the third respondent is struck out (as set out above), there is no reasonable prospect of the claimant establishing that the second respondent is liable in respect of any detriments listed at paragraphs 18.1 and 18.2 of the Second Claim. I therefore propose to strike out the Second Claim insofar as it relates to the second respondent pursuant to Rule 37(1)(a) of the ET Rules on the ground that it has no reasonable prospect of success. **By not later than 7 days after the date of issue of this judgment**, the claimant's representative shall write to the Tribunal to make representations in respect thereof in writing or shall request that this matter be considered further at an Open Preliminary Hearing. If a hearing is required, the claimant's representative shall provide an agreed time estimate and confirm whether this matter can be considered on the existing date that has been listed for case management purposes (and if not shall provide alternative agreed dates to avoid for a period within 3 months of the date of this judgment).

28.4 UKCP's application dated 7th December 2021 to strike out the First Claim against it (as second respondent) and/or for a deposit order

i) Liability for "instructing, causing or inducing" under s 111 EqA 2010

198. The claimant alleges that UKCP instructed, caused and/or induced the first respondent to terminate its contract with him and that accordingly UKCP is liable for that discriminatory act by virtue of s.111 of the EqA.

199. Taking the claimant's case at its highest, as the Tribunal must do, it is the claimant's case that UKCP communicated its concerns to the first respondent about the claimant's expressed views on conversion therapy the day after the first respondent had decided that those expressed views did not even warrant investigation. The claimant contends that the two organisations then communicated further about the matter, and within a week the claimant's contract with the first respondent was summarily terminated which the claimant says took place because of his expressed views on conversion therapy. The claimant's representative suggests that the involvement of UKCP in the series of events – and the fact that its views were influential – are admitted by the Metanoia Institute.

200. The second respondent submits that the pleaded facts, taken at their reasonable highest, only go so far as to suggest that UKCP held concerns in relation to the claimant's public activity and that it communicated those concerns to the first respondent on 29 April 2021. However, the email to the first respondent dated 29 April 2021 reflecting UKCP's "*concern*" cannot, the second respondent says, sensibly be regarded as containing any express or implied instruction to terminate the claimant's contract.

201. The second respondent contends that the claimant's position that UKCP instructed, caused, or induced the termination of his contract on the basis that 'something was said' by UKCP to the first respondent in the period between 29 April 2021 and 5 May 2021 is entirely speculative. It is submitted that even the first respondent's admission that Professor Owen-Jones was communicating with someone who had "*the ear*" of UKCP fails to assert that the first respondent and second respondent were in direct communication, let alone that the first respondent had been "*expressly instructed*" by UKCP to expel the claimant.

202. In view of the above, I conclude that on the evidence before me it is not possible to say that the Claimant has no or little reasonable prospect of showing that UKCP instructed, caused, or induced the Metanoia Institute to terminate his contract. This matter cannot be fairly or properly disposed of without the Tribunal hearing all the evidence, including witness evidence relating to the context and meaning of the relevant communications.

ii) Liability as alleged principal under s 109 EqA 2010

203. The claimant's pleading states that "*The Second Respondent [UKCP] is liable for the termination as a principal of the First Respondent [the Metanoia Institute] within s.109(2) EqA*". This suggests that the Metanoia Institute is the agent and UKCP is the principal.

204. The claimant's representative refers to the claimant's submissions on the law on agency and further submits that the claimant's case is simply that UKCP enlisted the Metanoia Institute to expel the claimant in order to achieve his de facto expulsion from their own membership. In so doing it authorised the Metanoia Institute to act on its behalf to alter its legal relations with the claimant, a third party and that that point is "eminently arguable". The second respondent's representative points out that although paragraphs 38 – 46 of the claimant's submissions

addresses UKCP's strike out/deposit order applications, the basis for a claim of agency and s109 EqA are not addressed.

205. The second respondent submits that in the present case, the act alleged to have been done by the first respondent as an agent of UKCP is "*the termination of the Claimant's contract*". However, as the contractual relationship was between the claimant and the first respondent, UKCP had no authority in respect of this to confer on the first respondent and further submits that full authority already vested with the first respondent. In the absence of any original authority to affect the alleged treatment, the second respondent says it follows that it was impossible for UKCP to have conferred it on the first respondent.

206. I am not satisfied that UKCP is liable for the termination of the claimant's trainee agreement with the first respondent as a principal of the first respondent within section 109(2) EqA. The first respondent had full authority to terminate any trainee agreement with the claimant. The second respondent as I indicated above could terminate the claimant's trainee membership with UKCP. Furthermore, there was no or no adequate evidence before me to show to show that the second respondent was an agent who had done something for a principal (namely the first respondent) with the authority of the first respondent in terms of section 109(2) of the EqA.

207. I therefore strike out the claimant's claim to the extent that this is based on UKCP being liable for the termination of the claimant's contract with the first respondent as a principal of the first respondent under Rule 37(1)(a) of the ET Rules on the basis that it has no reasonable prospect of success. If I were wrong to strike out that aspect of the claimant's claim, for the reasons set out above I would have concluded that that aspect of the

claimant's claim has little reasonable prospect of success, and I would have ordered the claimant to pay a deposit order for an amount to be determined as a condition of advancing the same.

208. The second respondent submits that it was not stated in the claimant's Claim Form that UKCP acted as the agent of the first respondent. As I have indicated above, I find that there is no reasonable prospect of this contention succeeding at a final hearing in any event. The first respondent admits that it terminated its contract with the claimant directly (and there is no or no sufficient evidence before me that this was through any alleged agency of UKCP).

iii) Direct belief discrimination

209. The second respondent invites me to strike out the claimant's claim for direct belief discrimination on the basis that it has no reasonable prospect of success.

210. The Second respondent avers that taking the claimant's case at its reasonable highest, there are no reasonable prospects of the claimant showing that a hypothetical trainee member in the same material position, that held a different belief, would have been treated differently. It is submitted that when a trainee member is expelled from his accredited education institute, s/he would be removed from UKCP's directory of trainee members and that they would not be entitled to be placed on UKCP's register without completing the relevant training programme.

211. Having considered the submissions from the claimant's representative and the second respondent's representative, I do not consider it appropriate to strike out the claimant's direct discrimination because of philosophical belief claim. I am unable to conclude at this stage of the proceedings, as the second respondent invites me to do so, that the claimant's claims against

the second respondent have no or little reasonable prospects of success in the absence of hearing further evidence (including but not limited to the issues surrounding the circumstances of the termination of the claimant's trainee membership with the second respondent, and any evidence that may speak to the comparison between the claimant's circumstances and that of a hypothetical trainee member). This is a fact sensitive exercise that the Tribunal at a final hearing will be best placed to carry out.

212. Having reviewed the draft list of issues, it is clear to me that there will need to be witness evidence heard from all relevant witnesses, appropriate findings of fact made, including any appropriate inferences being drawn. It is entirely appropriate that these matters be determined at a final hearing. I am unable to find that this aspect of the claimant's claim has no or little reasonable prospect of success at this stage of the proceedings without all the relevant evidence being before me.

213. The second respondent further submits that the claimant's claim of direct belief discrimination sits uncomfortably as a concept because the pleaded facts relied on as "*less favourable treatment*" are neutral rules of membership/registration that applied equally to every trainee member of UKCP, and that the factual paradigm therefore evokes indirect discrimination (which he points out was not pleaded). As this matter did not feature in the pleadings or draft list of issues, I did not consider this issue further.

214. I concluded that the Tribunal at the final hearing will be best placed to consider the second respondent's submissions after hearing all the evidence at the final hearing, and after having made relevant findings of fact having heard from all witnesses.

iv) Stand-alone allegations

215. I have set out my decision in relation to the claimant's claim pursuant to sections 53 (and 54) of the EqA earlier in this judgment.

216. In relation to the harassment claim pleaded at paragraph 101 of the claimant's claim, I am unable to find that that claim has no or little reasonable prospect of success. The second respondent accepts that the perception of the claimant is a relevant factor for the Tribunal to consider. This is a fact sensitive matter, and it will need to be considered along with all the other evidence at a final hearing.

v) Standalone allegations as direct discrimination, harassment, or victimisation

217. The parts of the Grounds of Resistance relied upon contain numerous denials of core factual allegations made by the claimant, including those relating to the motivations of UKCP in terms of various acts. I conclude that these matters cannot be determined on a strike out or deposit order application without hearing evidence from the parties' witnesses.

218. The second respondent contends that the pleaded facts, taken at their reasonable highest, are that the claimant was a participant in the first respondent's IP Diploma programme which was accredited by UKCP and that in circumstances when the claimant was in the "*process of completing a training course with a UKCP organisational member*", the claimant was accepted to be a trainee member at UKCP on 21 September 2020. Thereafter the first respondent terminated his contract on 5 May 2021. Consequently, he was no longer in the process of completing the accredited training course and ceased to have an active trainee membership with the first respondent. Therefore (the first respondent says), the claimant was removed from the directory of trainee psychotherapists. The second respondent contends in its submissions that this was "*in no way because of belief.*" It would

be entirely inappropriate for the Tribunal to reach such a conclusion without considering all the relevant evidence at a final hearing.

219. The second respondent also says that taken individually and as a whole, the alleged mistreatment consists of alleged failure to respond substantively to the claimant's emails, the letter from Mr McConnon dated 26 February 2021, UKCP's forwarding of the claimant's correspondence to the first respondent and, the alleged failure to adequately respond to the claimant's data subject access request.

220. The second respondent further submits that the remaining allegations have no or little reasonable prospects of success. Paragraphs 74-78 of its written submissions contains further details by way of an explanation of the second respondent's position.

221. I do not consider that I am well-placed to strike out or make a deposit order in respect of the claimant's claim that the treatment particularised at paragraph 101 amounted, individually, or collectively, to harassment, or a "*detriment*" and that it was because of or related to belief or because the claimant had done a protected act. This will involve carrying out a fact sensitive exercise and assessment of the totality of the evidence. I am unable to carry out this assessment without the benefit of hearing further evidence in relation to these issues. The Tribunal at the final hearing will be in a better position to investigate and determine these matters, with all the relevant evidence at its disposal.

Second respondent's strike out and deposit order applications

222. Save as I have indicated above in respect of the claimant's claims against the second respondent pursuant to sections 53 (and 54) and pursuant to sections 109 and 110 of the EqA, I do

not consider it appropriate to order that the claimant's claims be struck out pursuant to Rule 37(1)(a) of the ET Rules.

223. Alternatively, UKCP submits that the Tribunal ought to make a deposit order on the basis that the claimant's allegation under s 111 EqA has little reasonable prospects of success for the same reasons as set out in their submissions. I do not consider it appropriate to make a deposit order as I am not satisfied at this stage of the proceedings that the claimant's claims against the second respondent have little reasonable prospect of success because of the reasons I have explained above.

Conclusion

224. The Tribunal does not have jurisdiction to hear the claimant's claims made against the second respondent insofar as they are brought pursuant to sections 53 and 54 of the EqA. However, I conclude that the second respondent is a trade organisation pursuant to section 57(7)(c) of the EqA, so the claimant may continue to advance any claim pursuant to s57 of the EqA. The Second Claim insofar as this is brought against the third respondent is struck out pursuant to Rule 37(1)(a) of the ET Rules. Although the Second Claim continues in respect of the second respondent, I have directed the claimant to write to the Tribunal to indicate his position in respect of the Second Claim (insofar as it relates to the second respondent in light of this judgment) within seven days of the date of issue of this judgment. The First Claim to the extent it is contended that the second respondent is liable for the termination of the claimant's contract with the first respondent as a principal of the first respondent under sections 109 and 110 of the EqA stand struck out. Except as otherwise set out in this judgment, the remainder of the second respondent's application for a strike out order or deposit order dated 7 December 2021 is dismissed.

225. The rest of the claimant's claims shall proceed to a final hearing and a Closed Preliminary Hearing for case management is listed **for three hours by Cloud Video Platform before an Employment Judge sitting alone at 10am on 20 October 2022**. Prior to that hearing parties are directed to liaise and try to agree a revised draft list of issues and send this to the Tribunal in Word format **by not later than 4pm on 13 October 2022** together with their Preliminary Hearing Agendas (including any suggested directions) in completed form. The claimant's representative shall prepare and send a Preliminary Hearing Bundle in agreed form by email to the Tribunal and all other parties **by not later than 4pm on 13 October 2022**.

Employment Judge Beyzade

Dated: 30 September 2022

Sent to the parties on:

03/10/2022

For the Tribunal Office