



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4103622/2022**

**Held in Glasgow on 20 December 2022**

5

**Employment Judge D Hoey**

**Ms S Classick**

**Claimant  
In Person**

10 **The Richmond Fellowship Limited  
(operating under The Richmond Fellowship  
Scotland)**

**First Respondent  
Not present and  
Not represented**

15 **Scottish Social Services Council**

**Second Respondent  
Represented by:  
Mr Thomas -  
Solicitor**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

Judgment having been sent to the parties on 20 December 2022 and written reasons  
20 having been requested (by the first respondent) in accordance with Rule 62(3) of the  
Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

### **REASONS**

#### **Background**

1. The claimant had been engaged as support practitioner by the first  
25 respondent for a number of months. She raised a claim for unlawful  
discrimination and unlawful detriment.

2. In order to fulfil her contractual duties she required to maintain registration  
with the second respondent. The claimant had previously been removed from  
the register and was seeking to be reinstated. She believed she had been  
30 unlawfully removed from the register.

3. The second respondent is the public body responsible for the registration of care workers in Scotland. The claimant had never been an employee (or worker) of the second respondent. She had been engaged by the first respondent ostensibly as an employee.
- 5 4. The claimant's connection with the second respondent was with regard to its status as the public body delivering services and regulating care workers in Scotland.

### **Hearing fixed to determine jurisdiction of the claims against the second respondent**

- 10 5. The claims had been raised against both respondents. This hearing had been fixed to determine whether there was any power in law to consider the claim as against the second respondent (and separately if required whether the claim was time barred as against the second respondent). The first respondent was not in attendance as the arguments did not affect the position  
15 of the first respondent, which claims were proceeding.

### **Overriding objective**

6. At the start of the hearing, I explained to the parties the importance of the overriding objective to ensure that all decisions that are taken are just and fair taking account of the importance of the issues and proportionality and that  
20 the parties work together to ensure the overriding objective is achieved.

### **Time bar issues did not require to be considered**

7. It was agreed that the initial focus of the hearing would be whether or not the Tribunal had the power to consider the claims the claimant had raised as against the second respondent. If necessary, time bar would be considered.  
25 It transpired that as a matter of law the Tribunal had no power (jurisdiction) to consider the claims against the second respondent and so it was not necessary to consider time bar.

### **Argument in support of contention there was no jurisdiction to proceed against second respondent**

8. The second respondent had prepared a detailed written argument in support of its position that there was no jurisdiction to consider the claims as a matter of law. This was something the claimant had considered. She was not legally qualified and had not undertaken any detailed research but was of the view that the Tribunal should determine the matter from the information presented. The claimant did not disagree with any of the propositions that had been set out but asked that a judicial determination be made. She was not in a position to refute what had been set out and had not provided any other grounds to support the argument the Tribunal had jurisdiction to consider the claims as against the second respondent.
9. The second respondent's agent presented 3 arguments in support of the contention that the Tribunal did not have jurisdiction to consider the claims raised against the second respondent. The claimant did not argue that the submissions were incorrect nor present any counter argument to support the position that the claims she advanced could competently be brought against the second respondent. The claims as against the first respondent were unaffected by any of the arguments relied upon.
10. The Tribunal considered each of the arguments in turn ensuring both parties were able to set out their position. Each of the arguments were legally sound and the Tribunal upheld them.

**Claims against the second respondent as service provider required to be raised in the Sheriff Court**

11. The first argument was that if the claimant's claim was about the service the second respondent provided, in terms of sections 120 and 114 of the Equality Act 2010 such a claim required to be presented to the Sheriff Court, not the Employment Tribunal. The Employment Tribunal had no jurisdiction to consider such a claim. The claimant accepted that such a position was correct. It was correct. If the claimant wished to claim that the service the second respondent had provided was discriminatory, such a claim required to be raised in the Sheriff Court, not the Employment Tribunal.

**Claims as against second respondent as qualifications body could not proceed as there was an explicit right of appeal**

12. The second argument was that if the claim was about the second respondent's actions as a qualifications body in terms of section 120(7) of the Equality Act 2010, the Tribunal did not have jurisdiction if there was the right of appeal against the decision of the second respondent complained about. In this case section 51(1)(a) of Regulation of Care (Scotland) Act 2001 explicitly provided the claimant with an appeal against the decision complained about. This was again a matter the claimant did not dispute. On that basis the Employment Tribunal had no power to consider the claim as against the second respondent, there being an appeal against the decision relied upon.

**Detriment claims could not proceed against second respondent as the claimant was not an employee or worker of second respondent**

13. Thirdly, if the argument was that the claimant had made protected and qualifying disclosures, the claim as against the second respondent would be governed by the Employment Rights Act 1996. The claimant accepted that her claim in that regard was against the first respondent and not the second respondent. The claimant accepted she was not (and had not been) an employee or worker of the second respondent and her claim in that regard was against the first respondent.

**No other basis to allow the Tribunal to consider claims against second respondent**

14. The claimant did not argue that there was any other legal basis upon which her claim could competently proceed against the second respondent.

**Summary**

15. Each of the second respondent's submissions therefore had merit. The Employment Tribunal has no inherent jurisdiction and can only consider claims which statute has empowered the Tribunal to consider. The

Employment Tribunal had no power under statute to consider the claims the claimant had raised against the second respondent.

5 16. The claims in relation to her employment were properly directed against the first respondent and would proceed. The claims as against the second respondent could not proceed in the Employment Tribunal and would be dismissed. The claimant understood the position and accepted the legal position. If so advised, she would consider raising the claims that had been raised against the second respondent within the Sheriff Court.

10 17. The claimant may wish to seek legal advice in that regard, whether from a solicitor, citizens advice bureau or law clinic.

15 **Employment Judge: D Hoey**  
**Date of Judgment: 4 January 2023**  
**Entered in register: 6 January 2023**  
**and copied to parties**

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