



# EMPLOYMENT TRIBUNALS

**Claimant :** Paula Onyia  
**First Respondent:** Royal Town Planning Institute  
**Second Respondent:** Royal Institute of British Architects  
**Hearing:** Watford (by video) on 26 June 2023  
**Before:** Employment Judge Street

## Representation

<b>Claimant</b>	<b>in person</b>
<b>First Respondent</b>	<b>Mr Clark, solicitor</b>
<b>Second Respondent</b>	<b>no attendance</b>

# JUDGMENT

The complaints of discrimination on the grounds of age, sexual orientation, religion or belief, race, disability, marriage or civil partnership or sex, for notice pay, holiday pay, arrears of pay and other payments against the First Respondent, the Royal Town Planning Institute, have no reasonable prospect of success and are struck out.

The Claimant is Ordered to pay the sum of £200 towards the Respondent's costs, the claims made having no prospect of success.

**JUDGMENT** having been given orally and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013 at the hearing, the following Reasons are provided.

# REASONS

## 1. Background

- 1.1. The Claimant brought claims by a claim form (“ET1”) presented on 11 May 2022, against both Respondents.
- 1.2. The First Respondent filed a response. Service on the Second Respondent was ineffective. The Second Respondent did not respond.
- 1.3. On 5 August 2022, the First Respondent applied for all the claims against it to be struck out, or for a deposit order. That was on the grounds that the Claimant’s relationship with the First Respondent was limited to being a member and unpaid volunteer. The First Respondent said she was not an employee or a worker of the First Respondent for the purposes of the Employment Rights Act 1996 or in its employment for the purposes of the Equality Act 2010.
- 1.4. By an Order dated 3 January 2023, Employment Judge Laidler gave notice that in his view, the Tribunal had no jurisdiction to consider the claims and/or the claims had no reasonable prospect of success.
- 1.5. That was on the following grounds:
  - 1.5.1. The Claimant has ticked the boxes at section 8.1 claiming age, religion/ belief, race, disability, marriage/ civil partnership and sex but provided no particulars as to how she was treated less favourably on those grounds.
  - 1.5.2. The Claimant states that she was a volunteer for the Royal Town Planning Institute but claims notice pay, holiday pay, arrears of pay and other payments but sets out no details as to the basis on which she would be entitled to such as a volunteer.
  - 1.5.3. The Claimant has named the Royal Institute of British Architects but does not provide any information as to why that entity should be a party or what claims are brought against it.
- 1.6. Employment Judge Laidler ordered that all claims would stand dismissed on 24 January 2023 without further order, unless before that date the Claimant had explained in writing why the claims should not be dismissed.
- 1.7. The Claimant responded by e-mail on 6 January 2023.
- 1.8. The present hearing was listed to consider strike out, deposit orders and/ case management if the case was to proceed. Case Management Orders were made to address the steps required in preparation for this hearing. Those included,

“The Claimant and the Respondent must send each other copies of all the documents they have relevant only to the preliminary issues.

Documents includes recordings, emails, text messages, social media and other electronic information. You must send all relevant documents you have in your possession or control even if they do not support your case.”

## **2. Evidence**

- 2.1. The Claimant gave evidence on her own behalf under affirmation
- 2.2. The Respondent called no witnesses.
- 2.3. The Respondent presented a bundle of documents of 226 pages, to which the Claimant had contributed, together with a supplementary bundle of more recent correspondence. Numbers in brackets in these Reasons are references to the page numbers in the bundle, the digital page number following.
- 2.4. The Royal Town Planning Institute is referred to here as the “RTPI” and the Royal Institute of British Architects as the “RIBA”.

## **3. Issues**

- 3.1. The hearing was listed for the Employment Judge to consider the following preliminary issues:
  - 3.1.1. To consider whether any of the claims having no reasonable prospect of success should be struck out
  - 3.1.2. to consider whether any of the claims having little reasonable prospect of success the Claimant should be ordered to pay a deposit in relation to any such claims, and
  - 3.1.3. if any claims proceed, to clarify those, finalise a list of issues, make further directions up to and including listing the full merits hearing.

## **4. Findings of Fact**

- 4.1. Ms Onyia is an architect. She describes having wide-ranging expertise by virtue of experience and qualifications in urban design, planning and architecture. She is a member of the Urban Design Network. Her history has been as an employee in employment but more recently she says she has become self-employed. She says she has no expertise in employment law.
- 4.2. The RTPI publishes material on its website describing opportunities for volunteers and the terms on which they work. It does not limit the hours that volunteers can do. It does not promise payment in respect of hours undertaken by volunteers, even if those hours become substantial.
- 4.3. For example, it explains

“There are a great variety of roles available at the RTPI, some of which need more of a time commitment than others. For example, in our bylaws, it states that 50% of our standing committees must be made up

of members of our General Assembly. So, if you apply to join the General Assembly you will might (*stet*) also take on another role on one of our committees. This is likely to mean at least 10 days of volunteering a year.

You could get involved in a nations executive committee or regional management board or activities committee. This is about four or five days of volunteering a year. These enable you to get involved in your nation or region and as a AC member you can focus on your areas of interest. It might be planning CPD events or being on an awards judging panel.” (104/109)

- 4.4. Ms Onyia started working with the RTPI in 2020. She saw an e-mail asking for people who would join a committee. She had previously applied for a role with the RTPI but had been refused. She then saw this opportunity and thought it would be a good idea for her to follow it up.
- 4.5. She agrees that at this stage her involvement was on a voluntary basis. She enjoyed it. As she says, “It made me feel I had something to do, rather than doing nothing at all.” She was not paid. She was free to refuse any invitation to work on something or to contribute.
- 4.6. She undertook some work reviewing government policies and received an e-mail thanking her for that work from the lead for the policy team. That made her feel appreciated. She had contributed something meaningful.
- 4.7. Other opportunities for voluntary work arose. She undertook more work, she contributed to a variety of things and committed time, including in the evening, and at weekends. She wrote articles. She contributed to work on continuing professional development.
- 4.8. Ms Onyia agreed that when opportunities arose, she might undertake the work or, if she was busy or had less to offer because it was outside her field of expertise, she might not. She very much enjoyed the work. She says there were interesting things going on and she found the people engaging. She started taking a more active interest, checking emails, considering whether she should respond and so became more actively involved.
- 4.9. All that work was on the basis that she was a volunteer.
- 4.10. The RTPI does not offer a volunteer agreement. There was no formality to her volunteer role.
- 4.11. On the 11th of November 2021, Ms Onyia wrote to Susan, a full-time employee of the RTPI and the regional coordinator for the South East region. saying that she was applying for a position with a local authority and asking whether it would be possible to have a reference from the RTPI with regards to the volunteer role she had been doing (168/173).
- 4.12. Eventually, she was asked to undertake the role as international lead in respect of work on which she had been a committee member. She established that the existing lead was leaving and that that was not for any reason that might put her off - such that he was under too much pressure or there were difficulties with the role.

- 4.13. If she undertook the role she wanted to make a meaningful impression. She arranged a proper handover with the previous lead and with Susan.
- 4.14. She agreed to do undertake the role.
- 4.15. The previous lead was Geoffrey Ing. He is shown in a picture from RTPI material about volunteering, captioned,

“RTPI SE committee members are all volunteers with expertise in many aspects of planning and represent both the private and public sectors” (128/133)

- 4.16. Ms Onyia then wrote to Simon who is the local chair:

“I met with Jeff and Susan yesterday and there was an official handover. As the chair, i am making you aware of what was discussed. As the new lead for the international task group can you clarify for me whether this is a paid role by the RTPI and if so, how much am I expected to receive?

Please note, I do have billable hours on any given day. This will allow me to know the level of involvement and amount of time I can spend on the task group.”

- 4.17. She went on to discuss other plans, speakers, an article, future meetings.
- 4.18. Ms Onyia says that she received a response to that e-mail from Simon that was a holding response. In other words it did not answer her question about paid employment or rate of pay but promised a fuller reply.
- 4.19. That e-mail has not been disclosed and the RTPI deny any knowledge of it. However it did not, on her evidence, present or promise an agreement of any kind. There was no offer of payment to her.
- 4.20. There was no discussion about the terms on which she would work with any representative, employed or not, of the RTPI
- 4.21. As she explains,

“Susan would ask me, could you do a certain thing, and to me, I thought, why not, but the issue at the back of my mind was how am I going to be paid for the work I am doing.”

“I was being asked if I would do this, or join for a meeting, or different things for the SE Region, and I enjoyed all of it. But my time was pulled in different directions, no one was unkind or horrible. But I kept saying how will I be paid?”

- 4.22. It is not clear who she was saying that to other than Simon in the e-mail referred to, but what she says is,

“All I kept on hearing was that I was a volunteer and eventually I was referred to someone who deals with the volunteers.”

- 4.23. Nothing led to negotiation over the payment to her for the work she was doing, no offer was made to her and no agreement or contract entered into.
- 4.24. She did not discuss the terms on which she was working with Susan.
- 4.25. She is not clear about whether she was entitled to refuse the work:

“I don’t know that I was entitled to, but I never did, because I enjoyed the work. If she said we need a meeting, or she would say we needed to send an article or review some particular work, I would just do it. I enjoyed it. I felt I was adding a meaningful impact and I would even offer to do certain things, I said, I enjoyed what I was doing.”

- 4.26. She felt valued.
- 4.27. She was and is unhappy about the terms of her membership status. She did not feel that the categories of student or licentiate to be appropriate. To be a licentiate did not recognise her level of expertise and broad range of experience and qualification. She was not willing to undergo the procedures required to apply for chartered membership because it meant disclosing areas of work or working activities which were confidential. The level of her membership she says has a bearing on the level of remuneration she should be able to command in respect of the work for the RTPI.
- 4.28. She agrees she has never been paid for the work she does for the RTPI. She agrees that she does not have any written contract with the RTPI. She agrees that there has been no discussion with any individual at the RTPI in which terms and conditions were fixed for any work that she did based on an agreed rate of pay to her for her services in respect of work provided to her by the RTPI.
- 4.29. She had no contract, oral or written.

## 5. Law

### *Volunteers*

- 5.1. Under the ERA 1996 section 230(1), an “employee” is defined as an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment”
- 5.2. A “contract of employment” is defined as the contract of service or apprenticeship, whether express or implied and, if express, whether oral or in writing.
- 5.3. “Worker” means “an individual who has entered into or works under...
  - (a) a contract of employment, or
  - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or

perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.”

- 5.4. To be a worker or an employee therefore requires a contract.
- 5.5. The workplace protections of the Equality Act 2010 protect a category of individuals that is wider.
- 5.6. By the Equality Act 2010, section 83(2)(a) “employment” means “employment under a contract of employment, a contract of apprenticeship, or any other contract personally to do work”.
- 5.7. The essential difference is between those who are employed or in employment (under those definitions) and those who are genuinely self-employed, carrying on business for themselves for clients or customers.
- 5.8. The position of a volunteer who had no contract was considered by the UK Supreme Court in *UKSC X v Mid Sussex CAB [2013] IRLR 146* in relation to Equality Act claims. The Claimant there volunteered for the Citizen’s Advice Bureau.
- 5.9. The Equality Act 2010 is the source of the obligations on employers in respect of discrimination in all categories
- 5.10. What is said in the introduction to the judgment is this,

“Any responsible organisation aims to combat discrimination on the grounds of disability - or indeed any other characteristic protected by the Equality Act 2010 - and will do so for the benefit of persons serving or wishing to serve as volunteers in the organisation no less than anyone else. But the present appeal is not about this moral imperative. It is about whether, under European and domestic law, discrimination against volunteers, or some categories of volunteer, on the grounds of disability is currently unlawful and if so how the relevant volunteers are to be defined.”

- 5.11. The importance of that judgement is not limited to the protected status of disability but applies to any protected status. It is not limited to volunteers for the Citizens Advice Bureau but to volunteers generally.
- 5.12. The Supreme Court reviewed European law which is the source of much of UK discrimination law. The judges referred to the Framework Directive<sup>1</sup>
- 5.13. In reviewing European Court of Justice judgments considering the meaning of the words “worker” and “employment”, the classic definition of being a “worker”, or being in a “employment relationship” found is,

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1.1.<sup>1</sup> The Directive containing basic obligations for employers and workers (Directive 89/ 391 EEC)

“For a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration”

5.14. The Supreme Court held that :

- the Framework Directive definitely does not cover voluntary work
- therefore it is not necessary to interpret UK domestic legislation in such a way as to cover volunteers, if the UK legislation does not on a straightforward reading cover them
- if there is no contract the person is not covered

5.15. In respect of the jurisdiction of the Employment Tribunal, the relevant provisions of the Employment Rights Act 1996 and of the Equality Act 2010 do not apply to volunteers.

5.16. I am referred to *South East Sheffield Citizens Advice Bureau v Grayson UKEAT/0283/03/DA*. That was also a Citizens Advice Bureau (“CAB”) case concerning volunteer work.

5.17. In that case, there was a volunteer agreement covering the work of volunteers. It was had to be determined whether that volunteer agreement meant that the volunteer worker was in fact an employee under a contract of service or under a contract personally to do work. If that was to be the case, it must be on the basis that there was an arrangement under which, in exchange for valuable consideration, the volunteer is contractually obliged to render services to or else to work personally for another, here the CAB. (Valuable consideration put very simply means that each party to the agreement promises to provide something to the other – usually in this context, pay in exchange for work.) Considerations included whether there was an intention to create a legal relationship, rather than simply reasonable expectations. “Expectations” are not the language of contractual obligation. Guidance about or an expectation as to the level of work in terms of hours is not the same as a binding obligation. But, the agreement there did not include that the volunteer was paid. There was no obligation to provide work for the volunteer and there was no obligation on the volunteer to do it. If the volunteer simply ended the arrangement, the Bureau would not have a case for claiming a breach of contract. The volunteers were held not to be in employment.

### Costs

5.18. By rule 76(1),

“A Tribunal may make a costs order .....and shall consider whether to do so, where it considers that-

- (b) Any claim or response had no reasonable prospect of success”



5.19. That imposes a duty on the tribunal to consider a costs order in such a case.

5.20. In , per Mummery LJ, this guidance is given,

*“The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and ,in doing so, to identify the conduct, what was unreasonable about it and what effects it had.”*

5.21. At this preliminary stage it would be right to take the Claimant’s case at its highest since the full evidence has not been heard.

5.22. In *Cartiers Superfoods Ltd [1978] IRLR 315*, this is said,

*“... We think it is right to look and see what the party in question knew or ought to have known if he had gone about the matter sensibly.”*

## 6. Submissions

6.1. Mr Clark and Ms Onyia both made submissions which I have considered carefully and with equal care in making my findings of fact and in determining the issues.

## 7. Reasons

7.1. This was a one day preliminary hearing held remotely by video and in public.

7.2. I am not clear that the bundle presented was wholly agreed. The Claimant did not present any additional documentation during the hearing and none was mentioned that might affect the issues or outcome. I am satisfied that she had a reasonable opportunity to present her case.

7.3. Coming to the issues, the invitation to become the international lead in February 2022 crystallised for Ms Onyia the issue about remuneration. She was by then committing substantial hours to the work she was doing for the RTPI.

7.4. In her response to the Order of Employment Judge Laidler, Ms Onyia said of her work,

*“Since taking on the role of international lead, work has been carried for and in behalf of the RTPI. This work includes reviewing documents and policy documentation, providing a large number of written correspondence, contributing and attending meetings, making policy recommendations, writing articles for the RTPI and preparing for a joint summer event with the RTPI and RIBA that should have been held in the summer of 2022, a project I must add that is very dear to my heart. This international event is to form part of continuous professional*

development for these two organisations with some input from a number of different organisations and universities.

A number of documents have been prepared in preparation for this CPD event and are under review by the RTPI to list but a few of the main items, duties and responsibilities that I have been involved with the RTPI this past financial year in my current role as international lead for the RTPI.”

- 7.5. She goes on to say that she has worked tirelessly within that role and could only achieve what she did because of the exceptional team she worked with, working evenings and occasionally over the weekends to deliver on time within any prescribed deadlines. But, she adds, the circumstances around pay has marred and tarnished the experience.
- 7.6. What she says in effect is that her level of commitment in terms of time and effort by now well exceeded what is usually expected from volunteers and well beyond anything contemplated by the documents about volunteering that the RTPI has on its website.
- 7.7. Ms Onyia points for example to the way volunteering is presented by the RTPI as establishing what is expected of volunteers, citing the passage above,

“You could get involved in a nations executive committee or regional management board or activities committee. This is about four or five days of volunteering a year. These enable you to get involved in your nation or region and as a AC member you can focus on your areas of interest. It might be planning CPD events or being on an awards judging panel.”

- 7.8. She had well exceeded any such level of work as might be consistent with 4, 5 or even 10 days per year. She points out that no guidance is given as to the number of hours that might be expected for work on documents or articles.
- 7.9. She did ask Simon whether the role of international lead would be a paid role. She says that she had a holding reply, that is, a reply that she would have a full reply in due course. The RTPI do not have that e-mail and it was not produced by Ms Onyia during the process of disclosure. However she does not rely on it as establishing that she would be paid or at what rate. It led her to expect a substantive reply, that is all.
- 7.10. I have not heard evidence from the RTPI and Ms Onyia does not know herself the terms on which Mr Ing undertook the role she was being offered as international lead. I am told he was not paid, and that is at least consistent with the captioning of the photograph, the way the RTPI presents its use of volunteers and with the way that Ms Onyia herself had acted on a voluntary basis. I think it likely he was not paid, I do not rely on that.
- 7.11. Ms Onyia’s query shows that there had been no offer of payment in respect of her work. There was no substantive reply. The absence of a reply points to there being no agreement entered into between her and the RTPI to

engage her services as a consultant or otherwise. But she agrees in any case that there was no contract or agreement or discussion about remuneration.

- 7.12. There was no point at which she said to the RTPI that she would only do the work on a paid basis. She did not set out her hourly rate. There was no negotiation over a contract of any kind.
- 7.13. What she says is that there must come a time when the work done is inconsistent with simply being a volunteer and at that point, whatever point that is, she should have been paid as a consultant.

“Does a volunteer work indefinitely? If they do a day’s work, do they work indefinitely for the RTPI, for any work that is required, continuous, without being expected to be paid?”

“Where does the volunteering stop and when, even if not a full-time volunteer, when do I get paid for the work I have done and I continue to do?” (oral evidence)

- 7.14. Her point is simply that given the work that they expected of her, she should have been paid.
- 7.15. If there is no agreement for payment, then there is no entitlement to payment.
- 7.16. Ms Onyia expected the RTP I to tell her when she had reached the end of what is expected of a volunteer:

“When does volunteering stop and employment start?”

- 7.17. Her approach is misconceived. The RTPI does not hold itself out as undertaking to pay for work done by volunteers at any stage. The RTPI does not in its published material make any commitment to pay volunteers when their work becomes significant in terms of hours or importance.
- 7.18. The RTPI did not enter into any agreement with Ms Onyia to pay her for her work. She had no contractual entitlement to be paid.
- 7.19. Nothing converts voluntary work into paid work by operation of law.
- 7.20. She could not answer the question as to whether she was obliged to undertake the work she was given or invited to do. But there is no evidence of her entering into any binding commitment either before or after she was invited to become international lead. Her evidence confirms that prior to that she was free to refuse work if it did not fit with her other commitments, inclination or expertise. The RTPI did not require any new level of obligation on her in undertaking that role. Her work remained voluntary.
- 7.21. Ms Onyia does not say that she was an employee. What she says on that is,

“I never said I was. I provided services as a consultant for the RTPI. I have worked for them as a consultant. They have used consultants

before. So they should be telling me how they work with consultants.”  
(oral evidence)

- 7.22. The Employment Rights Act and the Equality Act confer jurisdiction on the Employment Tribunal in respect of claims brought by employees and those in employment under the wider Equality Act definition. Pure volunteers are not covered by that. Nor are those in business on their own behalf, that is, the genuinely self-employed.
- 7.23. The law, under either Act, requires a minimum of obligation on the person doing the work. There must be a contract personally to do work.
- 7.24. Ms Onya did not perform services for and under the direction of another person in return for remuneration.
- 7.25. There was no contract or legally binding agreement. There was no contract and no requirement on her to do work or for it to be done personally. No obligations were imposed on either side.
- 7.26. There was no intention to create legal relations.
- 7.27. Ms Onya was a volunteer and only a volunteer. She cannot bring herself within the definition of employee or worker under the Employment Rights Act or as someone in employment under the Equality Act 2010.
- 7.28. The Employment Tribunal does not have jurisdiction to determine claims, even of discrimination, brought by pure volunteers.
- 7.29. The claims against the RTPi have no prospects of success because Ms Onya has no right to bring them.
- 7.30. Even if Ms Onya established that she worked for the RIBA as a consultant, there would still be a question as to whether that entitled her to bring these claims. If she was genuinely self-employed, she might still fall outside the protections of the legislation.
- 7.31. I observe that the claims under the Equality Act 2010 also have no reasonable prospects of success as presented because Ms Onya has provided no particulars, that is, no factual statement as to the basis on which she says she has been discriminated against. She had the opportunity to do so in response to Employment Judge Laidler's Order. In her response she identified that she was relying on her colour. She is Black. She again asserted that she had experienced discrimination, direct, indirect, harassment and victimisation but gives no details. The Respondent therefore does not know what case it has to answer. What that means is that the Respondent's managers and representatives do not know what conduct she is complaining about, when it happened, who to ask about it so that they can decide how to respond. That is supposed to be given in the claim form, and Ms Onya was given a further opportunity to explain by Employment Judge Laidler.
- 7.32. That is the only explanation given in relation to the Equality Act claims. There are therefore immediate grounds to dismiss all but the race claim and a question arises as to whether that should proceed, given that still no particulars have been given. She has not said what conduct towards her she is complaining about.
- 7.33. That is not the basis on which this judgment is given.

7.34. The claims against the RTPI in respect of notice pay, holiday pay, arrears of pay and other payments all require the rights of an employee or worker. For the reasons set out above, Mrs Onyia does not have those rights. That is because she was a volunteer, working without a contract.

7.35. The Equality Act claims require that she be in employment as defined. She was not.

## 8. **Determination**

8.1. The claims against the RTPI are struck out.

## 9. **Costs**

9.1. An application for costs was made. The Respondent's costs were put at £13,000 but the application was limited to the costs of the hearing, put at £1300. The Respondent had warned the Claimant that the claims she made were outside the jurisdiction of the Tribunal.

9.2. That there might be a question about whether the Tribunal had jurisdiction and whether the claims had any reasonable prospect of success had been flagged up to the Claimant by the Respondent on 5 August 2022. The finding made was on exactly the basis then put forward.

9.3. The Claimant was alerted to the issue in respect of the Employment Rights Act claims in the Order of Employment Judge Laidler of 3 January 2023.

9.4. The basis on which she persisted in her claim, that at some point she was entitled to be paid because of the level of work she did, is not a sensible one. The difference between volunteering to do something and agreeing to do something for payment is a matter of general knowledge, common sense and experience.

9.5. Ms Onyia is very well equipped to take advice and to carry out her own research. At least from the date of the warning on 5 August 2022, she should have explored why it was being said that the claims were outside the jurisdiction of the Tribunal. ACAS had told her that they could not assist: that might have prompted enquiry.

9.6. It is fair to say that she disagreed that her conduct in bringing these claims was unreasonable. She saw it as her only option. That is not the case: the essence of being a volunteer is that you do not have to do the work. If she thought she should be paid, she should have established that the RTPI agreed to pay her, and if they would not, her remedy was not to do it.

9.7. It is hard to understand how she could bring money claims with no agreed basis for money to be owing to her.

9.8. I asked about her means. She said she had no income, had not had since 2016, had received no benefits, lived on modest capital and family support. That is not a clear answer.

9.9. Taking all that into account, I ordered her to pay £200 towards the Respondent's costs, noting in particular the money claims which she could not

quantify and for which she put forward no basis on which the liability could arise.

**Employment Judge Street**

Date 28 June 2023

REASONS SENT TO THE PARTIES ON  
13 July 2023  
FOR THE TRIBUNAL OFFICE  
GDJ