EMPLOYMENT TRIBUNALS

Claimant:	And	**Respondents:**
Mrs K Bradley		1. BAE Systems PLC 2. BAE Systems Strategic Aerospace WLL

OPEN PRELIMINARY HEARING

On: 8-9 June and with legal submissions made on 5 July 2023

Before: Employment Judge Nicolle

By: CVP

Representation:

Claimant: Mr C Milsom, of Counsel
Respondents: Mr J Crozier, of Counsel

JUDGMENT

1. The Tribunal concludes that it does not have jurisdiction to hear the various claims pursued by the claimant on the basis that it finds her employment was not with the First Respondent and she was at all times of her employment an employee of the Second Respondent. Further, that she has not satisfied the burden of demonstrating that her employment had a sufficiently close connection with the UK for UK territorial statutory jurisdiction to apply.

The Hearing

2. The hearing took place via CVP, there were no issues of connectivity and the parties could see and hear what the Tribunal saw and heard.

3. The main bundle of documents comprised of 354 pages. However, there was an additional bundle of documents prepared by the Claimant comprising of 439 pages (the Disputed Documents).

4. The Claimant gave evidence and Andrew Forsyth, Senior Counsel employed by BAE Systems, QFC Branch in Qatar (Mr Forsyth) and Matthew Foster, Business Development and Strategy Director for FalconWorks, employed by BAE Systems PLC (Mr Foster) gave evidence on behalf of the Respondents.

5. Aidan Beech (Mr Beech) gave evidence pursuant to a witness order obtained by the Claimant. He had been employed as Operations Manager in Qatar by BAE Ops. He is now working in the UK for BAE Systems Submarines.

The issues to be determined

6. At a case management hearing before Employment Judge Bartlett on 17 March 2023 it was directed that an OPH should be heard to determine the following questions:

(a) Who is the correct Respondent?
(b) Does the Tribunal have territorial jurisdiction over the claims brought by the Claimant?

7. Whilst the fact, nature and dates of various alleged protected disclosures made by the Claimant were referred to during the hearing I was asked not to make any findings on the substantive issues pertaining to such purported disclosures. They are only referred to the extent to which they are potentially relevant in the context of the question of territorial jurisdiction.

Findings of Fact

The Claimant

8. The Claimant is a British national. She has worked overseas, initially in Australia and since 1 February 2014 in Qatar. Immediately prior to her recruitment by the Respondents she worked for Defense Conseil International, a French company, also in Qatar.

The Respondents

9. There was significant evidence given regarding the Respondents' corporate group structure. The Claimant's position is that notwithstanding what may appear from strict lines of corporate demarcation that the reality of her employment was that it was ultimately controlled by the First Respondent. The Respondents' position is that the Claimant was solely and exclusively employed by a Branch Office of BAE Ops called BAE Systems (Operations) Ltd – Qatar Branch (the Branch Office).

10. The First Respondent is a publicly listed company in the UK and the parent company of the wider BAE Systems Group (the Group). The Group is a multinational defence and security company, delivering a full range of products and services for air, land, and naval forces, along with advanced electronics, IT and customer support services.

11. BAE Systems has approximately 93,000 employees worldwide with approximately 40,000 in the UK.

12. The Second Respondent is a limited liability company registered under the law of the State of Qatar.

13. BAE Ops has a trade licence issued in Doha for the supply of Typhon Combat aircraft and training in relation to such aircraft.

14. BAE Systems Strategic Aerospace Services is registered with the Licence Department in Qatar. Its partners are Strategic Aerospace Services a Qatar based company, with 51% and BAE Systems Overseas Holdings Limited, a UK company, with 49%.

15. BAE Ops is registered with the Ministry of Commerce and Industry in Qatar. It holds a contract with the Qatar Armed Forces (QAF) for the supply of Typhon and Hawk Aircraft, support to those aircraft (including maintenance and repair), the provision of training to existing members of the QAF to familiarise themselves with the aircraft, and the provision of training to newly enlisted Qatari military personnel in technical and vocational skills, including foundational training in English language, maths, and IT (the QAF Contract).

16. BSL is a joint venture between BAE Systems (Overseas Holdings) Ltd and Strategic Aerospace Services WLL (a Qatari company wholly owned by Qatari shareholders). BAE Systems (Overseas Holdings) Ltd holds 49% of the shares in BSL.

17. The Branch Office sub-contracts the provision of "man" hours for various roles required to carry out the QAF Contract in Qatar to the Second Respondent, which is a Qatar registered company. The Respondents therefore contend that the Branch Office is a customer of the Second Respondent (also referred to as BSL).

<u>The Claimant's recruitment</u>

18. The Claimant says that she saw the role of Academic Manager advertised on the BAE Systems website. She subsequently liaised with Kamilla Kelemen, HR Advisor employed by BSL, (Ms Keleman) regarding the role.

19. The Claimant attended an interview via Teams on 3 March 2021. This was conducted by Alan Collier, Head of the QTI (Mr Collier), Jonathan Baron, HR Manager of the QTI (Mr Baron), Mr Beech and Derek Davidson, Vocational Training Manager at the QTI (Mr Davidson). The Respondents say that all of the above individuals were employed by BSL or the Branch Office.

20. In an email of 6 April 2021 Craig Buckley, HR Manager – Off-Shore at BSL (Mr Buckley) attached an offer of employment to the Claimant as Academic Manager within the QTI). His email included:

> "We also have the added benefit of being part of the wider BAE Systems family, working with our global functions to tap into other international opportunities for those who have wider aspirations".

21. The Claimant argues that this evidences her expectation that she would be employed within the wider BAE Group and that her employment would not be specific to the Branch Office/BSL.

The Claimant's contract of employment

22. In a letter dated 18 April 2021, signed by Ben Clegg, Chief Operating Officer, (Mr Clegg) and on the letterhead of BSL (but giving the business address of the Second Respondent), the Claimant was offered the position of Academic Manager with the Second Respondent. The offer letter referred to basic salary and various other benefits payable in Qatari Riyals.

23. Relevant provisions in the contract of employment between the Claimant and the Second Respondent which was signed by her on 9 May 2021 (the Contract of Employment) included:

a) Labour Law means Qatar Labour Law

b) That the Claimant and the Second Respondent would be required to enter into a contract in a standard form as required by the Ministry of Administrative Developments Social and Labour Affairs as required by Labour Law (the Ministry Contract).

c) That the Claimant's normal place of work would be the QFI.

d) That the Second Respondent and the Claimant are required to comply with any obligations under any relevant military regulations and with the laws, customs, and social traditions of Qatar.

e) Provisions regarding working hours are subject to the provisions of Qatari Labour Law.

The Ministry Contract

24. The Claimant entered into the Ministry Contract dated 26 July 2021 with the Second Respondent.

The QFI (also referred to as the Institute)

25. The introduction section of a document pertaining to the Institute states that it needs to implement higher education programmes aligned to the framework for higher education qualifications in England, Wales, and Northern Ireland to deliver this vision in line with the Qatar 2030 vision.

The Official Secrets Act – 1911-1989

26. As a condition of her employment the Claimant was required to sign the Official Secrets Act. The Respondents say that this applies to employees and also external contractors.

The Department for International Trade and Strategic Suppliers

27. BAE Systems is a Strategic Supplier given its significance for UK trade. There are approximately 40 such Strategic Suppliers whose goods or services are deemed important enough by the Cabinet Office to warrant a more centralised, hands-on approach to managing procurement with them.

The Claimant's job description

28. Her job description dated February 2021 referred to her proactively engaging with the QAF to deliver student reports. It said that it was essential that the successful candidate had a thorough knowledge of the UK education system.

29. The Claimant was primarily based at the Institute at Al Udeid Airbase.

30. The Claimant says that the project she was working on was managed by James Glazebrook, Head of Typhon Aircraft – Qatar at BAE Systems in the UK (Mr Glazebrook).

Relevant Corporate documents

Code of Governance

31. The BSL Code of Governance (but also referencing the Second Respondent) dated 9 August 2021 (the Code of Governance) was created by Nicola Forsyth, Chief Legal and Compliance Officer of BSL, (Ms Forsyth) and Mr Foster. It says that concerned individuals should use the BAE Systems ethics helpline.

The BAE Systems Code of Conduct (the Code)

32. The Code states that it applies to all employees of BAE Systems. Further, joint ventures controlled by BAE Systems, are required to uphold standards that are substantially equivalent to the Code. Joint ventures not controlled by BAE Systems are encouraged to adopt standards that are substantially equivalent.

33. The Code provides that BAE Systems will not tolerate retaliation as result of employees, or other individuals, raising concerns.

Uniform standards

34. The Code mandates that employees are always expected to behave professionally and respectfully. This includes a dress code to include a shirt embroidered with the Institute logo.

35. The Claimant says that all staff at the institute were provided with BAE Systems Polo shirts which they were required to wear. She says that there was other branded material bearing the BAE Systems logo.

The BSL Employee Handbook (the Handbook)

36. The Handbook includes:

a) BSL Employees undertaking a role with a BSL customer are employed and paid by BSL and BSL will be responsible for HR related matters such as pay and incentive review, performance review and management and investigating this grievance and disciplinary matters.

b) Your line manager will be a BSL or customer person and training relating to your work, together with day-to-day instruction and supervision will be provided by the BSL customer.

c) The policies contained within the Code of Governance are further defined and expanded within the operating manuals for the company, including policies and procedures that are closely aligned with that of BAE Systems' corporate guidelines and best practice.

d) In the section entitled working for the BSL there is reference to working time dictated by the Labour Department and the Ministry of Civil Service Affairs and Housing (both based in Qatar). It goes on to say that rates of sick pay are determined by Qatar Labour Law. Further, that it is the responsibility of BSL to protect personal data in accordance with the Qatar Data Protection Law.

BAE Systems Website

37. This includes:

a) BAE Systems' presence in Qatar is expanding in order to deliver the Typhon and Hawk programmes for the Qatar Airforce (QAAF).

b) The Second Respondent will play a key role, and BSL will deliver the on-shore activities associated with the Qatar Programme through the provision of specialist labour, welfare, and ancillary support.

The Claimant's personal and family living arrangements

38. The Claimant has not paid income tax in the UK since 2010. Whilst she and her husband retain a property in South East London they have not lived there as their permanent home since she first started working overseas in 2010.

The property was rented out for the first three years whilst the Claimant was abroad but she says it has been retained as her "family home" since 2013.

39. The Claimant's husband also works in Qatar and they have rented accommodation in which they live with their child. The Claimant says that she and her family regularly return to the UK to include during her employment with the Respondents over Christmas/New Year 2021/2022 and at Easter 2022. The Claimant says that whilst these visits were booked as holiday working requirements necessitated her performing some work in relation to teacher recruitment.

Purported Protected Disclosures

40. The Claimant raised a series of concerns starting with a call via safe call on 23 March 2022 and through various additions and clarifications to the concerns that she raised up until 4 July 2022 (the Purported Protected Disclosures). An investigation and meeting was undertaken by John Cocksey, (Mr Cocksey) and David Tindall, Financial Director at BAE Systems in the UK (Mr Tindall) on 17 May 2022. This meeting was also attended by Terry Kushner, HR Case Coach Representative based in the UK (Mr Kushner) and Hayley Hutton of HR in the UK (Ms Hutton). The Claimant says that during the meeting Mr Lancashire said:

> "There are a lot of grey areas in certain aspects of day to day working life in the Middle East".

41. The Claimant says that the Purported Protected Disclosures were handled and investigated by senior people in BAE Systems in the UK.

42. The parties acknowledge that Qatar does not have legal protection for whistleblowers.

Investigation interview record dated 8 June 2022

43. As part of the investigation Lauren Thomason, HR Manager of BAE Systems based in the UK (Ms Thomason) was interviewed by Mr Tindall. She is recorded as saying:

> "I think there is a complexity around culture and environment related to where BSL Vs QBL in terms of employees and complexities that has brought to the environment. There is complexity around how BAE Systems wants that relationship with BSL and how they manage that relationship and manifests itself on the ground".

She went on to refer to:

> "You had a lack a clarity really and people did not understand the BSL dynamic, if they were working for BAE or BSL, or the understanding of the escalation route, BAE route or BSL route. That had contributed to some difficulties".

Further she said:

> "I often use the phrase; we have a schizophrenic relationship with BSL".
>
> "Sometimes we want to be very controlling of BSL other times we want to hold them to account as third party suppliers and I don't necessarily think we understand where the balance sits as the balance shifts. That brings complications into our relationship with them. We have a scenario where people are on BSL employment contracts which are not the same as QBL contracts. That causes confusion. There has been a narrative that we are one team. I have seen a slight shift in that, one towards there will be a difference between BAE and BSL, we are separate".

Termination of the Claimant's employment in a letter dated 14 June 2022 from BSL

44. The Claimant's employment was terminated with immediate effect. This letter was signed by Suzanne Hay, Head of Commercial and Procurement at BSL (Ms Hay) for and on behalf of the Second Respondent.

The Law

General position on extraterritorial jurisdiction

45. It is for the Claimant to show that the Tribunal has territorial jurisdiction, not for the Respondent to show that it does not.

Position under the Employment Rights Act 1996 (the ERA)

46. Following the repeal of s.196 in October 1999, the ERA contains no generally applicable geographical limitation.

Lawson v Serco

47. Following Lawson v Serco [2006] IRLR 289 an analysis of the factual matrix is required. Lord Hoffman gave guidance as to what sort of employee would be "within the legislative grasp" of the ERA by reference to three examples:

- the standard case (working in Great Britain);
- peripatetic employees; and
- ex-patriate employees.

48. Lord Hoffmann identified two particular kinds of case (apart from that of the peripatetic worker) where the employee worked abroad but where there might be a sufficient connection with Great Britain to overcome the territorial pull of the place of work, namely:

- where he or she has been posted abroad by a British employer for the purposes of a business conducted in Great Britain (sometimes called "the posted worker exception"); and
- where he or she works in a "British enclave" abroad.

49. The basic rule is that the ERA only applies to employment in Great Britain. However, in exceptional circumstances it may cover working abroad. As summarised by the Court of Appeal in Bates van Winkelhof v Clyde and Co LLP and anor 2013 ICR 883, CA:

> "Where an employee works partly in Great Britain and partly abroad, the question is whether the connection with Great Britain and British employment law is sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the employment tribunal to deal with the claim".

50. Where an employee works and lives wholly abroad, it will be more appropriate to ask whether his or her employment relationship has much stronger connections both with Great Britain and with British employment law than with any other system of law — Duncombe v Secretary of State for Children, Schools and Families (No.2) 2011 ICR 1312, SC.

51. In Ravat v Halliburton Manufacturing and Services Ltd 2012 ICR 389, SC the Supreme Court said that the resolution of territorial jurisdiction will depend on a careful analysis of the facts of each case, rather than deciding whether a given employee fits within categories created by previous case law. If an individual lives and/or works partly in Great Britain they need only to show that there is a sufficient connection to employment in the UK to establish jurisdiction.

52. In Ravat, Lord Hope stated that "the case of those who are truly ex-patriate because they not only work but also live outside Great Britain requires a specially strong connection with Great Britain and British employment law.'

53. Underhill LJ's judgement in Jeffery v British Council [2019] ICR 929 included:

a) As originally enacted, section 196 of the ERA contained provisions governing the application of the Act to employment outside Great Britain. That section was repealed by the Employment Relations Act 1999. Since then, the ERA has contained no express provision about the territorial reach of the rights and obligations which it enacts.

b) The House of Lords held in Lawson v Serco that it was in those circumstances necessary to infer what principles Parliament must have intended should be applied to ascertain the applicability of the ERA in cases where an employee works overseas. This

c) In the generality of cases Parliament can be taken to have intended that an ex-patriate worker—that is, someone who lives and works in a particular foreign country, even if they are British and working for a

British employer—will be subject to the employment law of the country where he or she works rather than the law of Great Britain, so that they will not enjoy the protection of the ERA. This is referred to in the subsequent case law as "the territorial pull of the place of work. This does not apply to peripatetic workers, to whom it can be inferred that Parliament intended the ERA to apply if they are based in Great Britain.

d) However, there will be exceptional cases where there are factors connecting the employment to Great Britain, and British employment law, which pull sufficiently strongly in the opposite direction to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation.

54. The decisions of the Supreme Court in Duncombe and Ravat make it clear that the correct approach was not to treat the Lawson categories as fixed, or as the only categories, but simply as examples. In each case what is required is to compare and evaluate the strength of the competing connections with the place of work on the one hand and with Great Britain on the other.

55. Where the worker is "truly ex-patriate", in the sense that he or she both lives and works abroad (as opposed, for example, to a "commuting ex-patriate", which is what Ravat was concerned with), the factors connecting the employment with Great Britain and British employment law will have to be especially strong to overcome the territorial pull of the place of work. There have, however, been such cases, including the case of British employees of government/European Union-funded international schools considered in Duncombe.

Choice of Law

56. In Jeffrey, the employers argued that an express choice of English law as the law of the contract was immaterial. Underhill LJ disagreed, and held that the Court of Appeal was bound by the Judgment of the Supreme Court in Duncombe No 2: [2011] ICR 1312, in which the Court "expressly took account of the existence of an English choice of law clause in considering the sufficient connection issue".

57. In Duncombe No. 2, Lady Hale noted that:

"The claimants were employed under contracts governed by English law; the terms and conditions were either entirely those of English law or a combination of those of English law and the international institutions for which they worked. Although this factor is not mentioned in Lawson it must be relevant to the expectation of each party as to the protection which the employees would enjoy. The law of unfair dismissal does not form part of the contractual terms and conditions of employment, but it was devised by Parliament in order to fill a well-known gap in the protection offered by the common law to those whose contracts of employment were ended."

58. Underhill LJ in Jeffrey also noted that Lord Hope had made similar observations in Ravat, in which the Supreme Court was faced with the situation of a "commuting ex-patriate". Lord Hope held:

> "Lady Smith said in the EAT that the employment tribunal was wrong to take account of the proper law of the parties' contract and the reassurance given to the claimant by the employer about the availability to him of UK employment law, as neither of them were relevant. The better view, I think, is that, while neither of these things can be regarded as determinative, they are nevertheless relevant. Of cause, it was not open to the parties to contract into the jurisdiction of the employment tribunal. The question whether the tribunal has jurisdiction will always depend on whether it can be held that Parliament can reasonably be taken to have intended that an employee in the claimant's position should have the right to take his claim to an employment tribunal. But, as this is a question of fact and degree, factors such as any assurance that the employer may have given to the employee and the way the employment relationship is then handled in practice must play a part in the assessment".

Identity of the Claimant's employer

59. In the judgment of Mann LJ in Clifford v Union of Democratic Mineworkers [1991] IRLR 518:

> "A question as to whether A is employed by B or by C is apparently a question of law for it is a question as to between whom there is the legal relationship of employer and employee. The resolution of that question is dependent upon the construction of the relevant documents and the finding and evaluation of the relevant facts. Where the only relevant material is documentary in nature then the question is not only apparently, but it is also actually, a question of law. Where, however, the relevant material is an amalgam of documents and facts then the apparent question of law is often said to be a mixed question of law and fact. The present case is one where the relevant material is an amalgam of documents and facts and it can thus be described as a case of mixed law and fact. This description does not, however, in my judgment mask the reality that the answer to the question is determined by the determination and evaluation of the relevant material".

60. In the judgment of Morrison P in Secretary of State for Education and Employment v Bearman & Others [1998] IRLR 431:

> "The correct approach would have been to start with the written contractual arrangements and to have inquired whether they truly reflected the intention of the parties"

61. In Dynasystems v Moseley (unreported, EAT, 25 January 2018), Langstaff J held that it was permissible for a tribunal to look at the dealings between the parties and who carried out what functions during the employment to decide who the real employer was. It was permissible for the Tribunal to use the judgment of

the Supreme Court in Autoclenz Ltd v Belcher [2011] UKSC 41 to determine who the real parties to the contract were which includes:

> "After all, if the parties to an agreement have indeed agreed X but they behave as if they have agreed Y, that would be surprising. If, however, they have agreed Y it is entirely to be expected. To behave as if they have agreed Y is therefore some evidence that they have indeed done".

Additional law and cases referred to by the parties

Claimant

62. Mr Milsom referred to Okpabi and others v Royal Dutch Shell plc and another [2021] 1WLR 1294 in support of his argument that where a parent company exercises control or regulatory supervision of its subsidiaries, it owes in principle a common law duty of care for the actions of those subsidiaries.

63. Mr Milsom also referred to well established authorities requiring tribunals to look beyond the ostensible contractual relationship and give effect to the business reality of the relationship. For example, the judgment of Mummery LJ in Dacas v Brook Street Bureau (UK) Ltd [2004] ICR 1437, CA, that in order to imply a contract to give business reality to what was happening the question was whether it was necessary to imply such a contract.

64. He also referred to the judgment of Lord Clarke in Autoclenz Ltd v Belcher [2011] IRLR 820 to include at paragraph 35 the requirement to consider the relative bargaining position of the parties and where appropriate adopt a purposive approach.

65. Mr Milsom argues that pursuant to s203(1) of the ERA any contractual clause which would have the effect of precluding workplace rights falls to be regarded as void for contracting out following the Supreme Court's decision in Uber v Aslam [2021] ICR 657, SC.

66. The Claimant relies upon Article 10 of the European Commission of Human Rights (ECHR) both as a free standing right and raised alongside Article 14. Article 14 ECHR provides as follows:

> The enjoyment of the rights and freedoms set forth in the European Convention on Human Rights and the Human Rights Act shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

Respondents

67. Mr Crozier referred to the judgment of Elias LJ in Diggins v Condor Marine Crewing Services Limited [2010] ICR 213, CA where at paragraph 29 he identified the focus of the test is "not where the employer is based, but where the employee is based".

68. Mr Crozier drew my attention to various authorities to include Bryant v Foreign and Commonwealth Office [2003] UK EAT 174, Green v SIG Trading and Rajabov v Foreign and Commonwealth Office [2022] EAT 112 in support of his contention that the engagement abroad of British citizens as ex-patriate employees by overseas entities linked to the UK was not sufficient to give rise to statutory employment jurisdiction within the UK.

69. Mr Crozier referred specifically to paragraphs 36 and 37 of the judgment of Lord Hoffman in Lawson v Serco to include:

> "The circumstances would have to be unusual for an employee who works and is based abroad to come within the scope of British labour legislation. …. In my view one should go further and try, without drafting a definition, to identify the characteristic which such exceptional will ordinarily have".

70. Further, at paragraph 37 of Lord Hoffman's judgment:

> "First, I think that it would be very unlikely that someone working abroad would be within the scope of s94(1) unless he was working for an employer based in Great Britain…. the fact that the employee also happens to be British or even that he was recruited in Britain, so that the relationship was "rooted and forged" in this country, should not in itself be sufficient to take the case out of the general rule that the place of employment is decisive. Something more is necessary".

71. Mr Crozier referred to paragraph 98 of the judgment of Elias LJ in Bates van Winkelhof and in particular:

> "The comparative exercise will be appropriate where the applicant is employed wholly abroad. There is then a strong connection with that other jurisdiction and Parliament can be assumed to have intended that in the usual case that jurisdiction, rather than Great Britain, should provide the appropriate system of law. In those circumstances it is necessary to identify factors which are sufficiently powerful to displace the territorial pull of the place of work, and some comparison and evaluation of the connections between the two systems will typically be required to demonstrate why the displacing factors set up a sufficiently strong counter-force".

72. Mr Crozier referred to the judgment of Underhill LJ in Jeffrey v British Council to include:

> "In the generality of cases Parliament can be taken to have intended that an ex-patriate worker – that is, someone who lives and works in a particular foreign country, even if they are British and working for a British employer – will be subject to the employment law of the country where he or she works rather than the law of Great Britain.
>
> There will be exceptional cases where there are factors connecting the employment of Great Britain, and British employment law, which pulls

> sufficiently strongly in the opposite direction to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation."

73. Mr Crozier referred to the judgment of Sir Colin Rimer in R (Hottak) v the Foreign Secretary [2016] ICR to rebut any contention that Parliament would have intended to engraft on to the applicable jurisdiction test an unidentified qualification to the effect that a more generous standard is to be applied when the relevant enquiry is the availability of the discrimination provisions.

74. He also referred to the judgment of LJ Gross in Bamieh v Foreign and Commonwealth Office [2019] EWCA Civ 803 and specifically at paragraph 51:

> "The Brussels Regulation is concerned with which court should hear a claim; it has nothing to say on the content of the substantive law applicable to a claim or the extraterritorial application of the ERA".

75. He also referred to paragraph 80 to include:

> "Hottak cannot be read as authority equating the territorial sphere of application of Part 5 of the EQA with the ERA whistleblowing protection provisions".

Dual employment

76. In the recent decision of the EAT in United Taxis Limited v Comolly [2023] EAT 93 it was held that it was not possible for Mr Comolly to be employed or engaged by two different employers in respect of the same work. The EAT noted that the key cases of Dacas and Cable and Wireless v Muscat [2006] EWCA CIV 220 had found the concept of dual employment to be "problematic" and concluded that it could not "see how [the problems] could be overcome".

The parties' submissions

The Claimant

77. Mr Milsom argues that:

a) many of the Claimant's disclosures were made to non-BSL employees;
b) many were made to UK employees;
c) the ultimate decision-makers as to the Claimant's detriments (including dismissal) were not BSL employees; and
d) many of the detriments took effect in the UK and were made by employees of the First Respondent or associated companies

78. The Claimant maintains that the First Respondent was her true employer having regard to the control it ultimately exercised over her. In this respect Mr Milson relies on the following:

a) the necessity test for implying a contract;

b) that the First Respondent as parent company was ultimately responsible for the whistleblowing detriments; and
c) that a de facto controlling parent company should be regarded as the true employer as informed by Articles 10 and/or 14 ECHR.

79. In respect of territorial scope Mr Milsom argues that a sufficiently close connection is all that is required. He says that the Tribunal must consider the Claimant's pleaded case at its highest.

80. Mr Milsom says that the directing operational mind of BSL was BAE rather than the Qatari umbrella. Further, that the BAE umbrella is designed so as to service the true client, QAF.

81. He says that the treatment of the Claimant was at the hands of BAE employees from a plethora of entities – Branch Office, BSL, BAE(OH) Ltd, BAE Ops etc.

82. Mr Milsom says that Article 10 should inform the approach to identifying the true employer where the read in isolation or by reference to a valid Article 14 status. The Claimant suggests that employment by a subsidiary constitutes a valid status just as much as occupational classification or military rank may do so.

Respondents

83. Mr Crozier says that the position as to the Claimant's employment status, employer and base is self-evident from the relevant documentation. In particular the Claimant's offer letter identifies the offer of employment with BSL and is signed by Mr Clegg, BSL's Chief Operating Officer. It refers to her employment being subject to the laws of Qatar.

84. He says that for the reasons identified in James and the following authorities, it cannot be necessary to imply a contract between the Claimant and a third party where he says the entirely of the Claimant's working relationship with BSL and QTI is properly explicable by her employment relationship with BSL. He says that the Claimant had no dealings with BAE Plc.

85. He says that what matters is the links between the Claimant's employment and the UK/UK employment law, not the connections linking the employment of others. Further, the "damage" was done in Qatar, where the Claimant was and remains. He says that the substance of the cause of action arose in Qatar.

86. He relies on Green v SIG as authority that even if the detriments were done in the UK and by employees based in the UK it would not have the effect of swaying the connection of an otherwise ex-patriate employee to the UK.

87. Mr Crozier says that nothing in Uber changes the approach to the territorial reach of the ERA. He says that in the absence of such territorial application,

there is no warrant to construe the ERA in such a way as to give the Claimant a cause of action against BAE Plc.

88. Mr Crozier says that the veil separating subsidiary from parent could not be disregarded because the two businesses operated as a "single economic entity" (at p538) in Bank of Tokyo v Karoon [1987] AC 45. Further, it was appropriate to pierce the corporate veil only where special circumstances existed indicating that it is a mere facade concealing the true facts for a deliberate dishonest purpose (p539-40), as referred to in Prest v Petrodel Resources Ltd [2013] 2AC 415, SC. He says that the fact that a group structure exists and all the companies within that group operate as a singularly economic unit (for which he says there is no evidence in this case anyway) does not permit the courts to ignore separate legal personalities. This

89. Mr Crozier says that Article 10 does not extend territorially to Qatar and in any event does not bite on the Claimant's relationship with BAE Plc. For Article 10 to be engaged, the Claimant must fall within the territorial ambit of the Convention. He says that she does not.

Conclusions and discussion

General position on extraterritorial jurisdiction

90. It is for the Claimant to show that the Tribunal has territorial jurisdiction, not for the Respondent to show that it does not.

Position under the Employment Rights Act 1996

91. Following the repeal of s.196 in October 1999, the ERA contains no generally applicable geographical limitation.

Lawson v Serco

92. Following Lawson v Serco [2006] IRLR 289 an analysis of the factual matrix is required. Lord Hoffman gave guidance as to what sort of employee would be "within the legislative grasp" of the ERA by reference to three examples:

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- where he or she has been posted abroad by a British employer for the purposes of a business conducted in Great Britain (sometimes called "the posted worker exception"); and
- where he or she works in a "British enclave" abroad.

94. The basic rule is that the ERA only applies to employment in Great Britain. However, in exceptional circumstances it may cover working abroad. As summarised by the Court of Appeal in Bates van Winkelhof v Clyde and Co LLP and anor 2013 ICR 883, CA:

> "Where an employee works partly in Great Britain and partly abroad, the question is whether the connection with Great Britain and British employment law is sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the employment tribunal to deal with the claim".

95. Where an employee works and lives wholly abroad, it will be more appropriate to ask whether his or her employment relationship has much stronger connections both with Great Britain and with British employment law than with any other system of law — Duncombe v Secretary of State for Children, Schools and Families (No.2) 2011 ICR 1312, SC.

96. In Ravat v Halliburton Manufacturing and Services Ltd 2012 ICR 389, SC the Supreme Court said that the resolution of territorial jurisdiction will depend on a careful analysis of the facts of each case, rather than deciding whether a given employee fits within categories created by previous case law. If an individual lives and/or works partly in Great Britain they need only to show that there is a sufficient connection to employment in the UK to establish jurisdiction.

97. In Ravat, Lord Hope stated that "the case of those who are truly ex-patriate because they not only work but also live outside Great Britain requires a specially strong connection with Great Britain and British employment law.'

98. Underhill LJ's judgement in Jeffery v British Council [2019] ICR 929 included:

e) As originally enacted, section 196 of the ERA contained provisions governing the application of the Act to employment outside Great Britain. That section was repealed by the Employment Relations Act 1999. Since then, the ERA has contained no express provision about the territorial reach of the rights and obligations which it enacts.

f) The House of Lords held in Lawson v Serco that it was in those circumstances necessary to infer what principles Parliament must have intended should be applied to ascertain the applicability of the ERA in cases where an employee works overseas.

g) In the generality of cases Parliament can be taken to have intended that an ex-patriate worker—that is, someone who lives and works in a particular foreign country, even if they are British and working for a

British employer—will be subject to the employment law of the country where he or she works rather than the law of Great Britain, so that they will not enjoy the protection of the ERA. This is referred to in the subsequent case law as "the territorial pull of the place of work. This does not apply to peripatetic workers, to whom it can be inferred that Parliament intended the ERA to apply if they are based in Great Britain.

h) However, there will be exceptional cases where there are factors connecting the employment to Great Britain, and British employment law, which pull sufficiently strongly in the opposite direction to overcome the territorial pull of the place of work and justify the conclusion that Parliament must have intended the employment to be governed by British employment legislation.

99. The decisions of the Supreme Court in Duncombe and Ravat make it clear that the correct approach was not to treat the Lawson categories as fixed, or as the only categories, but simply as examples. In each case what is required is to compare and evaluate the strength of the competing connections with the place of work on the one hand and with Great Britain on the other.

100. Where the worker is "truly ex-patriate", in the sense that he or she both lives and works abroad (as opposed, for example, to a "commuting ex-patriate", which is what Ravat was concerned with), the factors connecting the employment with Great Britain and British employment law will have to be especially strong to overcome the territorial pull of the place of work. There have, however, been such cases, including the case of British employees of government/European Union-funded international schools considered in Duncombe.

Choice of Law

101. In Jeffrey, the employers argued that an express choice of English law as the law of the contract was immaterial. Underhill LJ disagreed, and held that the Court of Appeal was bound by the Judgment of the Supreme Court in Duncombe No 2: [2011] ICR 1312, in which the Court "expressly took account of the existence of an English choice of law clause in considering the sufficient connection issue".

102. In Duncombe No. 2, Lady Hale noted that:

> "The claimants were employed under contracts governed by English law; the terms and conditions were either entirely those of English law or a combination of those of English law and the international institutions for which they worked. Although this factor is not mentioned in Lawson it must be relevant to the expectation of each party as to the protection which the employees would enjoy. The law of unfair dismissal does not form part of the contractual terms and conditions of employment, but it was devised by Parliament in order to fill a well-known gap in the protection offered by the common law to those whose contracts of employment were ended."

103. Underhill LJ in Jeffrey also noted that Lord Hope had made similar observations in Ravat, in which the Supreme Court was faced with the situation of a "commuting ex-patriate". Lord Hope held:

> "Lady Smith said in the EAT that the employment tribunal was wrong to take account of the proper law of the parties' contract and the reassurance given to the claimant by the employer about the availability to him of UK employment law, as neither of them were relevant. The better view, I think, is that, while neither of these things can be regarded as determinative, they are nevertheless relevant. Of cause, it was not open to the parties to contract into the jurisdiction of the employment tribunal. The question whether the tribunal has jurisdiction will always depend on whether it can be held that Parliament can reasonably be taken to have intended that an employee in the claimant's position should have the right to take his claim to an employment tribunal. But, as this is a question of fact and degree, factors such as any assurance that the employer may have given to the employee and the way the employment relationship is then handled in practice must play a part in the assessment".

Identity of the Claimant's employer

104. In the judgment of Mann LJ in Clifford v Union of Democratic Mineworkers [1991] IRLR 518:

> "A question as to whether A is employed by B or by C is apparently a question of law for it is a question as to between whom there is the legal relationship of employer and employee. The resolution of that question is dependent upon the construction of the relevant documents and the finding and evaluation of the relevant facts. Where the only relevant material is documentary in nature then the question is not only apparently, but it is also actually, a question of law. Where, however, the relevant material is an amalgam of documents and facts then the apparent question of law is often said to be a mixed question of law and fact. The present case is one where the relevant material is an amalgam of documents and facts and it can thus be described as a case of mixed law and fact. This description does not, however, in my judgment mask the reality that the answer to the question is determined by the determination and evaluation of the relevant material".

105. In the judgment of Morrison P in Secretary of State for Education and Employment v Bearman & Others [1998] IRLR 431:

> "The correct approach would have been to start with the written contractual arrangements and to have inquired whether they truly reflected the intention of the parties"

106. In Dynasystems v Moseley (unreported, EAT, 25 January 2018), Langstaff J held that it was permissible for a tribunal to look at the dealings between the parties and who carried out what functions during the employment to decide who the real employer was. It was permissible for the Tribunal to use the judgment of

the Supreme Court in Autoclenz Ltd v Belcher [2011] UKSC 41 to determine who the real parties to the contract were which includes:

> "After all, if the parties to an agreement have indeed agreed X but they behave as if they have agreed Y, that would be surprising. If, however, they have agreed Y it is entirely to be expected. To behave as if they have agreed Y is therefore some evidence that they have indeed done".

Conclusions and discussion

107. I have decided that it is most appropriate and logical to address the question of the territorial scope of the whistleblowing provisions of the ERA prior to determining the question of the correct Respondent to the proceedings.

Territorial scope

108. In view of the above I will approach the question of territorial scope on the generic basis of the Claimant's employment rather than it being confined to the specific question as to whom her contractual employer was and the subsidiary question as to whether the ostensible contractual position should in any way be obviated to reflect arguments concerning legal necessity or that the purported contractual relationship did not reflect the factual reality of that relationship. For the purposes of addressing this question I refer to the Respondents generically rather than on the basis of an individual employer which will be addressed separately later in this judgment.

Connection with Great Britian

Approach take to determine the issue

109. I have been referred to a substantial number of case law authorities, and there are many more decisions to which I could have been referred. I have approached my decision by determining whether the Claimant's employment with the Respondents has a connection with Great Britian that is sufficiently strong to enable it to be said that Parliament would have regarded it as appropriate for the Tribunal to deal with the claim. This involves undertaking a careful analysis of the facts of the case.

110. Having carefully considered the balance of factors in favour of, and militating against, the existence of territorial jurisdiction, I find that the Claimant did not have a sufficient level of connection in her employment with Great Britain. I set out below my analysis and findings in respect of those factors I consider militate against a sufficient level of connection with Great Britain.

The Claimant's recruitment

111. I find that the Claimant's recruitment was consistent with her being employed by the Branch Office / BSL rather than with the First Respondent as she contends. I reach this finding notwithstanding the fact that she applied to an advert on the BAE Systems website. I consider that it will inevitably be the case

that in a multinational group company, such as BAE, that there will be a degree of commonality of policies, procedures, websites and advertising of positions, but this does not necessarily imply that such commonality means that all employees, regardless of geographical location and the recruitment process, worldwide are able to successfully contend that their employment relationship is with the parent company. I find that the process pursuant to which the Claimant was interviewed, to include the individuals responsible for that process, is consistent with a reasonable expectation that her employment would be with the Branch Office / BSL and not the First Respondent.

112. In particular it is relevant that the Claimant did not return to the UK for an in person interview with a view to an ex-patriate position overseas. Her interview on 3 March 2021 took place via Teams and as such this is neutral as to the question of jurisdiction.

The Claimant's place of residence

113. During the entirety of her employment with the Respondents the Claimant lived in Qatar. Further, she had been living outside the UK since 2010 and in Qatar since 2013.

114. I do not accept the Claimant's argument that her principal place of residence during her employment with the Respondents remained in the UK. Whilst the Claimant and her husband retained ownership of a home in South East London, which they would use during occasional return visits, this cannot from any realistic perspective be regarded as the Claimant's principal residence. I reach this decision for the following reasons:

(a) The Claimant spent the overwhelming proportion of her time in Qatar during her employment with the Respondents.
(b) The Claimant's husband also worked in Qatar.
(c) The Claimant's child attended school in Qatar.
(d) The Claimant did not relocate to Qatar to take up a position with the Respondents, but rather was already based there, and her Qatari experience was a significant advantage to the Respondents in her recruitment.

Pay, benefits and tax

115. The Claimant acknowledges that throughout her employment with the Respondents she was paid solely in Qatari Riyals and that her tax liability was exclusively in Qatar. Throughout her employment with the Respondents, and for a substantial period prior to it, the Claimant was regarded as non-resident in the UK and therefore paid no UK tax.

The Claimant's contract of employment and other relevant corporate documents

116. I consider that the Claimant's contract of employment and other corporate documents are consistent with her being employed by the Branch Office /BSL. I reach this finding for the following reasons:

The Claimant's contract of employment

117. The Claimant's offer of employment is from BSL and was signed by Mr Clegg, BSL's Chief Operating Officer.

118. The contract of employment identifies BSL as the Claimant's employer and provides that her employment was subject to the law of Qatar and the exclusive jurisdiction of the Qatari Courts.

119. The Claimant also entered into a Qatari Ministry of Labour contract.

Corporate policies

120. The Claimant was sent the BSL Code of Governance on 25 October 2021. Whilst the Claimant denies seeing this document I find, on the balance of probabilities, that it was sent to her given the contemporaneous email trail. The Claimant was also sent BSL's Employee Handbook on 10 February 2022. The Handbook makes clear that the employment protection regime applicable to BSL employees is derived from Qatari law.

121. Whilst I acknowledge that the Claimant was also provided with the BAE Systems Code of Conduct, which she says supports her argument that she was in effect employed by the First Respondent, I do not consider that this in itself is sufficient to establish territorial jurisdiction within the UK.

Reporting lines

122. I find that the Claimant reported to the head of the QTI. Whilst I accept that some elements of the Claimant's, and indeed other non UK employees' terms and arrangements of employment, would to a degree have input from the First Respondent, this is not in itself sufficient to establish territorial jurisdiction. I consider it inevitable that in a multinational group company there will be some employment and more general corporate policy which emanates from the parent company and disseminates to the multiple jurisdictions in which the group operates. However, this is not in itself sufficient to establish the existence of territorial jurisdiction in the UK.

123. For example, whilst the BSL Code Of Governance is derived from the BAE Systems Operational Handbook this in my view merely reflects corporate consistency, and in all probability a common initial legal draftsman for such policies/documents, rather than evidence that there was an intention for UK territorial jurisdiction to apply to BAE employees worldwide.

124. I also consider it inevitable that in a multinational group company that there will be incidences where reporting lines cross company lines. Over potentially long periods of employment managers will inevitably migrate from one group company to another and there may be occasions where reporting lines become blurred.

125. I do not accept the Claimant's argument that all of the corporate documentation with which she was provided spoke of a single and unified BAE Systems. Yes there was an element of corporate commonality but looking at the factual reality of the Claimant's position I find that the documentation was predominantly consistent with her employment being exclusively with the Brach Office / BSL in Qatar and not with the First Respondent as she contends.

The Claimant's job description

126. I find the Claimant's job description dated February 2021 to be consistent with her being employed in Qatar and engaging with the QAF to deliver student reports.

The Claimant performed some work in the UK

127. Whilst it is acknowledging that the Claimant performed some duties on behalf of the Respondents during her return visits to the UK I do not consider that this is remotely sufficient to establish a sufficient level of connection with the UK for territorial jurisdiction to exist. First, the primary purpose of these visits to the UK was holiday. Whilst the Claimant would on some occasions undertake work functions for the Respondents whilst on holiday, whether in the UK or otherwise, this is not suffice to establish a sufficient level of connection. In any event the work undertaken represented a relatively minor part of the time the Claimant was in the UK and there is no evidence that it specifically involved work functions pertaining to the Respondents' UK operations as opposed to the Claimant undertaking work in respect of her role in Qatar whilst on holiday in the UK.

The fact that the UK Government deemed the First Respondent to be a "preferred supplier"

128. I do not consider this to be a relevant factor. It would, in any event, be equally applicable to any employee of the Respondents worldwide working on UK related contracts regardless of such employee's country of origin, place of residence, contractual employment relationship and primary base of employment.

That the Purported Protected Disclosures were primarily investigated by employees based in the UK and the Claimant was subsequently subject to detriments pertaining to such disclosures

129. I do not consider that this is sufficient to establish UK territorial jurisdiction. I consider that it is inevitable that in a multinational group structure, where an employee raises serious issues of concern, potentially amounting to whistleblowing, that there is a significant likelihood that there will be a degree of referral to the corporate head office, in this case in the UK. It would be surprising if this was not the case particularly where the underlying commercial contract pursuant to which the individual was engaged involved input from the British Government. I do not, however, consider that this is sufficient to establish UK territorial jurisdiction as it is only one component of the overall employment relationship and not in itself sufficient to disapply the express contractual

provisions regarding the Claimant's employment which I have found are consistent with her being employed by the Branch Office / BSL in Qatar.

130. In any event I consider that the personnel who were tasked with the investigation following the Claimant's safe call complaint predominantly worked for BAE Ops. Further, the decision to dismiss the Claimant was communicated to her by Ms Hay of BSL.

Overall conclusion on territorial jurisdiction

131. For the reasons set out above I have found that the Claimant has not succeeded in establishing territorial jurisdiction in the UK and with UK employment law. Whilst the Claimant has pointed to some factors indicating a degree of connection with Great Britain, for example, that she is a British citizen, returns to the UK for holidays and some elements of the corporate policies and decision making relating to her employment had a UK dimension, I do not consider that the she has produced sufficient evidence to set aside the territorial pull of the place of work which I have found to be Qatar. The Claimant was self-evidently not a "commuting ex-patriate" or a "posted worker". She was exclusively based in and resident in Qatar. Her employment was subject to Qatari law and the jurisdiction of the Qatari Courts. She received her salary in Qatari Riyal into a Qatari bank account.

132. Whilst the Claimant was, to some extent, subject to the application of corporate policies of a UK business this is not in itself sufficient and falls far short of the position in Ravat where express representations were made to him that UK employment legislation would apply.

133. I find that the substance of the Claimant's cause of action arose, or primarily arose, in Qatar. The fact that there may have been some overarching corporate element pursuant to which matters pertaining to the Claimant were determined by employees of the First Respondent based in the UK did not have the effect of swaying the connection of an otherwise ex-patriate employee to the UK.

Who was the Claimant's employing entity and therefore the correct Respondent?

134. I find that the Claimant was not employed by the First Respondent and therefore regardless of the determination in respect of territorial jurisdiction the Tribunal does not have jurisdiction to hear a complaint against the First Respondent. I reach this decision for the following reasons.

135. From a further review of the documentation, the skeleton arguments, and my notes of the hearing, there is a degree of overlap between the contractual position that the Claimant was employed by the 2nd Respondent and what may be seen as a de facto position that she was an employee of BSL / the Branch Office. For example, whilst the Claimant's Contract of Employment is with the Second Respondent, Mr Crozier in his skeleton argument, for example in paragraph 86, states that it cannot sensibly be disputed that she was employed by BSL. However, as BSL is a joint-venture between BAE Systems (Overseas Holdings) Ltd and the 2nd Respondent, with the 2nd Respondent having a majority

51% shareholding in BSL, I do not consider that this represents a material distinction. My finding that the Claimant was employed by the 2nd Respondent applies notwithstanding any argument that her employer was BSL / the Branch Office and, in any event, the crucial determination is that the Claimant was not employed by the First Respondent.

136. The Claimant argues that she satisfies the litmus test on the basis of the extent to which the First Respondent took over or shared with the subsidiary (BSL / the Branch Office) the management of the relevant activity (the Claimant's employment). Whilst I have acknowledged that the First Respondent undoubtedly had a degree of input and influence over relevant corporate policies, to include matters pertaining to the Claimant's Purported Protected Disclosures, I do not consider that this is sufficient to give rise to an employment relationship between the Claimant and the First Respondent.

137. I do not consider that the Claimant's employment constituted a situation where in accordance with authorities such as Autoclenz it is necessary for a tribunal to look beyond the express contractual relationship on the basis that it does not properly reflect the factual reality of that relationship. Further, I do not consider that this was a case where giving cognizance to the relative bargaining position of the parties it is necessary or appropriate to adopt a purposive approach. The Claimant was an experienced and senior professional who entered into a contractual relationship pursuant to which her employment was with the Branch Office /BSL in Qatar and as such is not equivalent to the claimants' in cases such as Autoclenz and Uber where there was a significant differential in the relative bargaining position of the parties.

138. For the reasons set out above I do not consider that the Claimant's employment constitutes a situation where there had been a contracting out of applicable employment rights contrary to s203 (1) of the ERA.

139. This is not a case where in accordance with authorities such as James it is necessary to imply a contract between the Claimant and a third party, i.e. the First Respondent. I consider that the express terms of the Contract of Employment reflect the agreement between the parties and do not falsify the factual reality of the employment relationship. Therefore, the Claimant was at all times an employee of the Second Respondent, or alternatively BSL / the Branch Office, and in respect of which the Tribunal does not have territorial jurisdiction for the reasons set out above.

140. Further, I do not consider that this is a case where it would be appropriate to pierce the corporate veil as special circumstances do not exist indicating that it is a mere facade concealing the true facts for a deliberate dishonest purpose as referred to in Prest.

141. The fact that a group structure exists, or that the companies within that group operate as a single economic entity, does not permit a tribunal to ignore separate legal personality. In any event the Respondents do not accept that the group constitutes a single economic entity, and whilst I am not in a position to

reach a determination on this issue I do not consider it necessary for me to do so.

Convention rights

142. I do not accept the Claimant's argument that pursuant to Article 10 her employment by a subsidiary of the First Respondent constitutes a "valid status" thereby potentially circumventing the above identified position regarding UK statutory territorial employment jurisdiction and the correct identify of her employing entity. As such I do not consider that it would be appropriate to adopt a purposive approach to s204 and/or s230(3)(b) of the ERA so as to enable claims to be pursued against the First Respondent.

143. Further, I do not consider that pursuant to the Brussels Regulations, the Tribunal is the appropriate forum for a claim against the First Respondent. I reach this conclusion for the following reasons:

144. Article 10 does not extend territorially to Qatar and as such the Claimant's claims do not fall within the interpretive obligations under s3 of the Human Rights Act 1996. Further, for Article 10 to be engaged, the Claimant must fall within the territorial ambit of the Convention. For the reasons set out above I have found this not to be the case. I refer specifically to the judgment of Underhill LJ in Jeffrey where at paragraph 119 he stated:

> "I can see no reason why the Convention should be understood as requiring the UK to exercise a more extensive jurisdiction than is established by reference to the Lawson/Ravat principles … indeed I can see very good reason why it should not … it would lead to extraordinary incoherence and confusion if the jurisdiction rules differed as between causes of action that do or do not engage a Convention right".

Final conclusions

145. For the reasons as set out above I have therefore concluded that the Tribunal does not have jurisdiction to hear the Claimant's claims whether against the First Respondent and she was at all times of her employment an employee of the Second Respondent or alternatively BSL / the Branch Office. Given my findings on territorial jurisdiction, or the lack thereof, the determination of the correct Respondent is to a certain extent rendered otiose but nevertheless has been included for completeness.

146. Given my findings the entirety of the Claimant's claims against the Respondents fail and are dismissed.

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Employment Judge Nicolle

31 August 2023

Sent to the parties on:
31/08/2023
For the Tribunal: