EMPLOYMENT TRIBUNALS

Heard at: Croydon (by video) **On:** 17 to 20 June 2024

Claimant: Ms Samantha Bradley

Respondents: (1) Sir Elly Kadoorie & Sons Ltd

(2) Mr Andrew Brandler

(3) Mr John Leigh

(4) Sir Michael Kadoorie

(5) Mr Ronald McAulay

(6) The Honourable Rita McAulay

Before: Employment Judge E Fowell

Representation:

Claimant In Person

Respondent Mr T Croxford KC, instructed by Simmons & Simmons LLP

RESERVED JUDGMENT ON A PRELIMINARY ISSUE

1. The claim is struck out under Rule 37 Employment Tribunal Rules of Procedure on the basis that there is no reasonable prospect of the claimant succeeding on the question of territorial jurisdiction.

REASONS

Background

1. Ms Bradley is a solicitor, specialising in international tax and compliance law. Her increasingly successful career took her to Hong Kong in 2007 and for most of the intervening period she worked there for the first respondent, Sir Elly

Kadoorie & Sons Ltd. This company is the private office of the Kadoorie family and is responsible for managing its wealth. The assets in question amount to billions of pounds and are invested in companies and trusts around the world. Three of the respondents are members of the family: Sir Michael Kadoorie is the fourth respondent; his sister, The Honourable Rita McAulay, is the sixth respondent; and her husband, Mr Ronald McAulay, himself an individual of considerable wealth, is the fifth respondent.

2. Not only did Ms Bradley work there but she was a leading figure, a director and trustee of numerous companies in which the family wealth was invested. On her advice, large sums depended. She was correspondingly well-rewarded with a salary of approximately £1m a year, paid in Hong Kong dollars - the exchange rate being about 10 Hong Kong dollars to the pound over the period in question.

3. The other two respondents were (are) also leading figures at the company. Mr Andrew Brandler, the second respondent, was the Chairman of the board and Mr John Leigh, the third respondent was the Legal Director. Ms Bradley reported to him, and he too is a solicitor regulated by the SRA.

4. Summarising matters, in September and October 2020 the working relationship between Ms Bradley and Mr Leigh broke down. She felt that she was being pressured to act unlawfully and says that she made disclosures of information related to potential tax evasion. A separation agreement was reached in November that year in which she resigned as a director in return for a substantial payment. It was also agreed that she continue to provide her services to the company as a consultant, for a further three years, and at a level of reward not much less than her previous salary. Her position is that she reluctantly agreed to this arrangement, which she says was intended to prevent her making any disclosures, and would have preferred a clean break. Given those circumstances, the consultancy arrangement was not a success. It was ended by the company in June 2021.

5. Ms Bradley returned to the UK on 1 June 2022, submitting her claim form on 10 September 2022. It included claims of unfair dismissal, whistleblowing detriments, victimisation and discrimination on various grounds. Given that she had been living and working in Hong Kong for so long, an obvious issue arose as to whether the tribunal has jurisdiction to deal with such claims.

Procedural History

6. The first preliminary hearing was on 6 July 2023, before Employment Judge Evans. Even at that early stage it was obvious that this was a case of considerable size and complexity. The bundle for that short hearing was 710 pages and Mr Croxford KC was already retained by the respondents. The Judge directed that the issue of territorial jurisdiction be decided as a preliminary issue, and in order to reduce the scope of the evidence required, directed that it be dealt with on the basis of submissions only, i.e. that it be treated as an application

to strike out the claim under rule 37(1)(a) as one having no reasonable prospects of success.

7. That application was listed for hearing on 7 and 8 December 2023 before Employment Judge Ramsden. By then, Ms Bradley had secured the services of Mr James Laddie KC together with junior counsel, but they withdrew the day before the hearing and so it was adjourned.

8. It was re-listed for four days, in part because there were a number of other applications and issues to deal with, mainly in connection with redactions to the documents in the bundle. The respondents' case is that many of the matters relied on by Ms Bradley as protected disclosures fall within the scope of legal professional privilege. I took the view that none of that material could assist on the question of territorial jurisdiction and in the event it was not necessary to refer to any of it.

9. Ms Bradley represented herself throughout, and although employment law is not her field she had clearly immersed herself in the relevant caselaw and demonstrated an impressive command of this material.

10. I made no enquiry as to why Mr Laddie KC had withdrawn but Ms Bradley volunteered that he declined to accept her instructions to criticise the conduct of the respondents' solicitors. While I cannot verify that position, it would certainly explain matters and it is the case that Ms Bradley has made forthright criticisms of the firm. Fortunately, however, skeleton arguments had already been exchanged before the last hearing and I could see no reason why Ms Bradley should not be able to refer me to that document and the arguments it sets out. Hence, I have had the benefit of skeleton arguments from leading counsel on both sides together with a more extensive skeleton from Ms Bradley herself.

11. Of the four days allocated, only three days were required. The first day was set aside for reading, and after various preliminary issues on the second day Mr Croxford KC took about half a day for his submissions and Ms Bradley a little over a day. Her position, in a nutshell, is that although she was based in Hong Kong, her position as a solicitor, regulated by the Solicitors Regulation Authority (SRA), takes her outside the normal run of cases, both because this was central to her recruitment and because of her obligation to report to the SRA any wrongdoing by other solicitors, such as Mr Leigh, wherever it occurred. She also argues that during her consultancy, when her position was that of a worker, she was not tied to Hong Kong and, but for Covid and other difficulties, would have been able to return to the UK to carry it out.

The relevant evidence

12. Applications of this sort involve submissions based on the statements of case on each side. Where there is a dispute of fact, that dispute is treated as resolved in favour of the claimant. In other words, her case is taken at its highest. That is the well-established principle. If, adopting that approach, it can be said that

the claim has no reasonable prospect of success, then it may be appropriate to strike it out.

13. It has not been an easy task in this case to identify the relevant facts and to disentangle the facts from the arguments. To take an example, Ms Bradley argues that her contract of employment was governed by UK law. She does so on the basis that this has to be implied from her status as a UK solicitor – or strictly speaking, a solicitor of the courts of England and Wales. But the contract is silent on the point. Her argument is therefore just that, not a statement of fact. Similarly, she has argued that she has in fact been based in the UK throughout, since she kept a house here, but that too is an argument and cannot be treated as part of the accepted body of facts.

14. The volume of material has also caused difficulties. Instead of two rival statements of case, each a concise statement of the facts relied on, I have a much longer list of documents. The original particulars of claim, submitted on 10 September 2022, ran to 70 pages, although this naturally covered all aspects of the case, not just territorial jurisdiction. A rather shorter response was submitted on behalf of all respondents on 18 October 2022, prepared by Mr Croxford KC. On 24 March 2023 Ms Bradley submitted a fresh claim arising out of the same events (2301371/2023), described as a supplementary claim or amendment, and referring to ongoing detriments. She also submitted a lengthy reply to the first grounds of resistance on 21 June 2023, followed by a separate and extensive application to amend the first claim on 17 August 2023. That application has not yet been formally considered, although as Employment Judge Ramsden explained at the last hearing that this material can nevertheless be taken into account, in keeping with the principle of taking the claimant's case at its highest.

15. Ms Bradley was also given permission to file a witness statement for this hearing. That was to obtain a more focussed statement of the facts relating to territorial jurisdiction, not to form the only evidential basis for the application. It focusses on her links with the UK without mentioning, for example, any details of her contract of employment in Hong Kong, or the fact that the first respondent is based there and she was paid in Hong Kong dollars. These important aspects, which are set out in the responses to the claim, also need to be taken into account provided that they are not disputed.

16. The final batch of documents comprised various skeleton arguments, which again contain some restatement of the facts together with legal arguments. Mr Croxford KC provided separate skeletons on the extent of the privileged or redacted material and on territorial jurisdiction, and despite Mr Laddie KC's original skeleton argument, Ms Bradley submitted a further 78 page skeleton covering both aspects, together with a short supplementary skeleton in response to points raised by the respondents.

The accepted facts for the purposes of this application.

17. Despite this proliferation of material, the underlying facts are not unduly complicated and I will set them out. Again, these are **not** findings of fact: they set out Ms Bradley's case together with those points relied on by the respondents and which are not disputed. I have included in this narrative all of the points raised in the skeleton from Mr Laddie KC.

18. Ms Bradley qualified as a solicitor in 1995. As such, she was and is subject to professional obligations, including the duty to act with integrity, to provide information to the SRA and to report serious breaches of SRA rules. In 2003 she joined Withers LLP. Two years later she was a junior partner there. The firm's clients included the Kadoorie family and so she became involved in giving them legal advice. In December 2007, she moved to Hong Kong, employed by Withers HK Professional Services Limited, and continued to provide that advice at the request of the first respondent. The final stage was for her to go in-house and be employed by them directly, which she did on 1 November 2009.

19. To do this, the first respondent had to register with the SRA so that she could give advice on the law of England and Wales to their clients, i.e. to the family. The SRA Code of Conduct for Individuals therefore applied to her, together with the SRA Principles. They paid for her practicing certificate, which was renewed every year and she was held out, both internally and externally, as an English-qualified solicitor.

20. The terms of that employment as a legal consultant were set out in a two page letter to her from Mr Leigh on 15 October 2009 [301]. It was set out on the company's notepaper, stating their Hong Kong address - the company is registered in Hong Kong. It provided that her salary and other payments were to be paid in Hong Kong dollars and she was responsible for paying tax on those amounts. They included a housing allowance for the rent of her property there. That is how the contract operated and the payments were made from a Hong Kong bank account.

21. Those terms were then extended and a further letter issued [305] on 23 March 2010. This provided for one business class return to London each year for her and her husband with an economy class return for her two children. By then she had registered as a solicitor with the Hong Kong Law Society so it covered her practising certificate fees in both England and Hong Kong, together with memberships of other professional organisations such as the Society of Trust and Estate practitioners in the UK. As a registered Hong Kong lawyer, working in-house, she was not able to give advice directly to anyone other than her employer and related organisations, but as a UK solicitor she was able to advise clients of the company, including family members. She also instructed external solicitors on specialist matters.

22. A further set of terms were issued to her on 10 March 2011 [313]. That letter provided for her to join the company's staff Provident Fund, which is a pension scheme based in Hong Kong. The company then made contributions into that scheme. A contribution was also allowed for an educational allowance up to the level of fees payable to the English schools foundation.

23. Various pay rises and bonuses followed and in 2013 she was made 'Director, Legal and Trust Management', although she continued to report to Mr Leigh. He, like Mr Brandler, was resident in Hong Kong. A fully expensed company car was also provided [332] including tunnel fares – a feature of Hong Kong life.

24. During those years her work took her to many parts of the world. The company, or at least the family, had extensive business interests including property developments in the UK and the three members of the family named as respondents are all British citizens (as indeed are Mr Leigh and Mr Brandler). Whenever Ms Bradley returned to the UK on holiday she would set aside time to meet one or more of her client group in London. The company does not have an office in London but she was able to make use of an office owned by an associated company, one of which Mr Leigh was a director. Her estimate of 40 to 50 such visits over the course of 11 years was accepted by Mr Croxford KC for these purposes, so these visits amounted to four or five per year. While in the UK, and at other times, her advice concerned assets in the UK and in relation to UK tax liabilities. Her invoices also show trips to other parts of the world including New York and Bermuda but the UK was her principal overseas destination. (In theory, Mrs Bradly was subject to tax in the UK for work done in the UK, but the amount of time spent here meant that she did not in fact have to pay any.)

25. In the course of her work on behalf of the family she became a director of several companies in which they had an interest. Some of these were based in Hong Kong and others were in the British Virgin Islands and Cayman Islands. One of the latter was The Oak Private Trust Company Limited (OPTCL) which managed assets for the benefit of Mrs McAulay and her family. She was also the compliance officer for the first respondent and for some further companies in Bermuda and the British Virgin Islands. Some of her work was specific to that of an English lawyer - advising on English law, certifying documents and providing certifications for anti-money laundering purposes in that capacity.

26. It is necessary to say a little about the events forming the basis of Ms Bradley's claims. She says that from 2015 onwards she was marginalised and undermined by Mr Leigh. Then in 2018 a dispute also arose between her and a Mr Bowers, a partner in an external firm of solicitors she had instructed. Her view was that Mr Bowers had betrayed her confidences and passed information about her to Mr Leigh. That dispute ended in Mr Bowers leaving his firm and, in due course, to him suing Ms Bradley. In the course of that dispute she also accused Mr Leigh of lying to her, at a meeting they had in London, on 3 October

2018, about what had gone on. That allegation therefore concerns events in the UK. Another disputed exchange with Mr Leigh took place in New York.

27. Those events appear to form part of the background to further disputes which arose in August 2020, when she says that she took issue with various proposals on the basis that they would amount to tax evasion. These are the protected disclosures she relies on, which include disclosures made about Mr Leigh to the SRA and the Hong Kong Law Society. Her case is that Mr Leigh then tried to have her removed from her fiduciary position as a trustee of the family trusts and to have her dismissed. These allegations are all disputed.

28. From about October 2020 discussions were underway about the terms of her departure and although she preferred a clean break she agreed that she would continue on a self-employed basis for a further three years. Those arrangements were then formalised in two separate agreements, a separation agreement ending her employment and a consultancy agreement setting out the future relationship. The terms were negotiated over two or three weeks and some clauses were added to the separation agreement at Ms Bradley's insistence to preserve her right to bring claims against various third parties and to give her some protection against potential claims. Both documents gave her address in Hong Kong and her local ID number. They are stated to be governed by Hong Kong Law and to be subject to the non-exclusive jurisdiction of Hong Kong courts and tribunals.

29. The separation agreement [373] is dated 24 November 2020 and brought her employment to an end on 31 December that year. It provided for a severance payment to her of about 25 million Hong Kong dollars and for her to resign from her various posts and directorships. There was one caveat. Clause 5.3 provided that she would resign as a director of OPTCL only once she received the 'informed written consent' of various family members. In short, she wanted the family members to be personally aware of her concerns.

30. The consultancy agreement [387] was to last for three years. It required her to do 1000 hours of work a year for the first respondent on a self-employed basis. The location, and the way in which she provided the services, were for her to decide. She could do so through her own company or through another law firm, provided that any such company entered into similar undertakings as to confidentiality and the like. It contained various references to Hong Kong law such as the need to enrol in a mandatory Provident Fund scheme and to maintain the appropriate business registration. Those provisions only appear to apply if the services were being provided in Hong Kong, and it is not suggested by the respondents that she was obliged to remain there.

31. Her intention at the time was in fact to go back to the UK. Her son had come to Hong Kong before the pandemic struck and he was hoping to go back to university in the UK. She meant to go with him. The wording of the announcement of her departure did not say in terms that she was going back to

the UK, but it did say, at her request, that she intended "to continue her legal career in private practice which will mean she can spend more time in England with her mother, sister and two children."

32. However, Covid restrictions intervened. Over the Christmas period at the end of 2020 all air flights between the UK and Hong Kong were cancelled. Enhanced quarantine restrictions were then introduced for UK travellers and these continued until May 2021. There were also restrictions on the movement of pets.

33. So, Ms Bradley decided to stay in Hong Kong and set up her own firm, which she called the Bauhinia Family Office. (Mr Croxford KC explained in his skeleton that the bauhinia is an orchid which adorns the Hong Kong flag.) In fact it is not clear if she then operated under this name, or under another company name which she set up at the time, S J Bradley & Co., but she did take a lease on premises in Hong Kong to work from and the firm in question had to register with the SRA to allow it to employ her as a UK solicitor. That meant that she could give advice to clients in England and in relation to English assets.

34. Ms Bradley emphasised during the hearing how small an office she had and that it was in a much less salubrious part of Hong Kong, but these were her choices. She also complained that she was not given any substantial legal work to do and that she spent much of her time filing and organising the papers she had accumulated after so many years advising the Kadoorie family. Those points support her argument that the consultancy agreement was simply to prevent her making any further disclosures and was not a genuine consultancy, but they do not help on the question of territorial jurisdiction.

35. While these new arrangements were being put in place she was still attempting to obtain the informed consent she wanted from members of the family. That issue was never resolved and on 23 March 2021 her directorship of OPCTL was simply terminated. On 15 June 2021 Mr Brandler terminated the consultancy agreement.

36. By then, Mr Bowers had issued a writ against her in Hong Kong because of events in 2018. Ms Bradley is of the view that he received the assistance or co-operation of Simmons & Simmons, who were then acting for the first respondent, in bringing those proceedings. However, Mr Bowers withdrew the writ in October 2021.

37. By then Ms Bradley had started a personal relationship and was working for another law firm there so she decided to stay. Consequently she was still in Hong Kong in May 2022 when the first respondent also issued a writ against her. This alleged that her many emails amounted to harassment.

38. She says that a number of sinister events occurred to her at about this time, including her home being broken into, her garden flooded and her dog going missing, events that persuaded her that she was no longer safe in Hong Kong. She returned to the UK on 1 June 2022. Consequently she was not in Hong

Kong while the second set of legal proceedings was underway, but in October 2021 they were dismissed as an abuse of process. On her return to the UK, she then commenced these proceedings, in part because there is no such protection for whistleblowers in Hong Kong.

Legal principles

39. Turning to the applicable legal principles, Ms Bradley has brought claims under both the Employment Rights Act 1996 and the Equality Act 2010 but the test for determining jurisdiction is the same in each case, and the starting point is the decision of the House of Lords in **Lawson v Serco Ltd** [2006] ICR 250, a case in which Mr Laddie KC appeared. Lord Hoffman's judgment opened with a general statement of principle:

> "6. The general principle of construction is of course, that legislation is prima facie territorial. The United Kingdom rarely purports to legislate for the whole world. Some international crimes, like torture, are an exception. But usually such an exorbitant exercise of legislative power would be both ineffectual and contrary to the comity of Nations."

40. This concept of the comity of nations involves the understanding that sovereign states treat each other with respect and do not attempt to interfere in the exercise of their jurisdiction within their own territory. Construing a statute involves attempting to assess the intention of parliament, and it follows that in the absence of an express statement that an Act is intended to have worldwide effect, such as in the case of some international crimes or, more recently, bribery, it is unlikely that such a wide scope was intended.

41. Lord Hoffman went on to consider the sorts of situations in which parliament may have intended that result. The first examples concerned peripatetic employees such as airline pilots, who work in various places, and where the key question is whether they can be said to be "based" in Great Britain. Another concerned those posted overseas by a British company, such as a foreign correspondent on a newspaper, where it is necessary to show a sufficient connection with the UK - a connection strong enough to displace the usual expectation that any claim against their employer has to be pursued in the jurisdiction in which they are working. Finally, there are exceptional cases, such as those working in a British enclave overseas such as a military base. These examples were not intended to be exclusive but all of them, it should be noted, concern an employer based in the UK.

42. Both of the skeleton arguments from leading counsel referred me to the case of **The British Council v Jeffery** [2019] ICR 929 for an updated general statement of the legal position from Underhill LJ:

> "(2) The House of Lords held in *Lawson v Serco Ltd* that it was in those circumstances [i.e. for overseas workers] necessary to infer what principles Parliament must have intended should be applied to ascertain the applicability of

the 1996 Act in cases where an employee works overseas.

(3) In the generality of cases Parliament can be taken to have intended that an expatriate 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 1996 or 2010 Acts. 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 Act to apply if they are based in Great Britain.)

(4) 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. I will refer to the question whether that is so in any given case as "the sufficient connection question".

(5) In *Lawson* Lord Hoffmann, with whose opinion the other members of the Appellate Committee agreed, 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 (a) 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 (b) where he or she works in a "British enclave" abroad. But the decisions of the Supreme Court in *Duncombe* and *Ravat* made it clear that the correct approach was not to treat those as fixed categories of exception, 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.

(6) In the case of a worker who is "truly expatriate", in the sense that he or she both lives and works abroad (as opposed, for example, to a "commuting expatriate", which is what *Ravat* was concerned with), the factors connecting the employment with Great Britain and British employment law will have to be specially 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/EU-funded international schools considered in Duncombe.

(7) The same principles have been held by this Court to apply to the territorial reach of the 2010 Act: see *R (Hottak) v Secretary of State for Foreign and Commonwealth Affairs* [2016] EWCA Civ 438, [2016] ICR 975."

43. As can be seen from this summary, the question of whether a sufficient connection with the UK has been established has been considered in a number of cases, and in very different types of situation. Some grouping of cases can be attempted to illustrate the correct approach.

44. To begin with, there are a group which have dealt with the position of those working for the UK government abroad. **Duncombe v Secretary of State** [2011] ICR 1312 was another decision of the Supreme Court. There, Mr Duncombe, who was British, was appointed by the Secretary of State as a teacher at a

school in Germany, one of a group of schools in Europe for children of parents working in European institutions. The contract was governed by English law. Lady Hale held, at para. 16, that the test to be applied was whether:

> "… the employment has such an overwhelmingly closer connection with Britain and with British employment law than with any other system of law that it is right to conclude that parliament must have intended that the employees should enjoy protection from unfair dismissal".

45. That case also considered an appeal in the case of **Ministry of Defence v Wallis** [2011] ICR 617, which involved teachers working outside the UK at NATO HQs. Again, they were employed directly by the UK government, under contracts governed by English law, and in that case were only eligible to work as the spouses of UK military personnel, so again this test was met.

46. Other cases, even involving those working abroad for the UK government, have been less clear cut. **Bryant v Foreign & Commonwealth Office** [2003] 3 WLUK 230, concerned a British citizen employed by the British Embassy in Rome. She had been recruited locally and employed under a contract governed by Italian law. On those facts it was held that Italy was the appropriate forum. Lady Hale in **Duncombe** agreed, even though Ms Bryant was unlikely to have had any other recourse locally – the Embassy could have claimed diplomatic immunity. She also observed that the fact that Ms Bryant was a British citizen was merely fortuitous and so did not distinguish her from Italian recruits.

47. **R (Hottak) v SS FCA** [2016] ICR 975 concerned Aghan interpreters serving with the British Army in Afghanistan. They too were held to be outside the territorial jurisdiction of the UK even though they worked for the British military, in uniform, and were based at Camp Bastion. They were not British citizens but were recruited locally, on local terms. That was the decisive consideration. In fact, the Divisional Court felt that on those facts the claimants fell "far short" of showing a closer connection with the UK than with Afghanistan.

48. More recently in **Hamam v British Embassy in Cairo** [2020] IRLR 570, the Employment Appeal Tribunal upheld a decision that a Vice Consul of the British Embassy was not within the territorial scope of the ERA 1996. She was Egyptian, recruited and based there, with a contract governed by local law, paid in the local currency and paying tax there. She was also made redundant there. The fact that she had made protected disclosures to London and had received some training there did not affect the position, nor the fact (again) that any remedy against the Embassy in Egypt was likely to be defeated by diplomatic immunity.

49. Another decision reached since the summary of the law in **Jeffery** is **FCO v Bamieh** [2020] ICR 465. There, the claimant, who was British, was working for an EU body in Kosovo. She was in fact seconded by the Foreign and Commonwealth Office to this unit. It was an international group with a British presence. She had an obligation of loyalty to the UK, and an obligation to make

protected disclosures, with specific reference to the PIDA Act 1998. The FCO did not dispute territorial jurisdiction on those facts, which were similar to those in **Duncombe** and **Wallis**, involving as it did an international enclave, but the claims against her British co-workers were dismissed. It was held that there could be no jurisdiction over co-workers from other states – that could not have been what parliament intended - and it would be anomalous to hold some liable and not others.

50. In that case too, Simler J (President) held that "there is no obvious justification for justification for introducing a more generous test of extraterritoriality in cases involving whistleblowing".

51. That decision was upheld by the Court of Appeal in **Jeffery**, and the facts of **Jeffrey** are also relevant. The British Council is a charity, established by Royal Charter, as the United Kingdom's international organisation for cultural relations. It exerts soft power or influence abroad. Mr Jeffrey was a UK citizen, recruited in the UK, and who worked for the British Council a teacher in many countries. Although he was away from the UK for many years, he kept properties in the UK which he let out, had parents here whom he visited, and hoped to retire here in due course. His contract was governed by English law and his salary was payable in sterling, although there was a 'notional' deduction of tax and national insurance to ensure parity with those working in the UK. Any by virtue of his service he had a Civil Service pension and was bound by the Official Secrets Act. Those factors were held to suffice to overcome the territorial pull of Bangladesh, where he was based at the time. The Court of Appeal felt that it was fanciful to suppose that he would enforce his rights under an English contract in Bangladesh and so his connections with the jurisdiction of the UK was much stronger.

52. That case also involved a joint appeal in another case, **Green v SIG Trading Ltd** [2019] ICR 929. Mr Green's arrangements were more complicated: he was a British national, working for a British company, but doing so in Saudi Arabia. In fact he lived in Lebanon, and was fairly settled there. He had a Lebanese wife, and had lived in the Middle East for 15 years, so he divided his time between Lebanon and Saudi Arabia, working in blocks of a few days at a time. His employment arrangements, like IT and payroll, were all managed from the UK, and he was paid in sterling. Although he was not able to join the company's pension scheme, his contract was governed by English law, and included policies on such things as ethics and anti-bribery. Following his dismissal, by directors based in Sheffield, he attended an appeal meeting there.

53. In addressing these facts, Lord Underhill, at para. 94, quoted the words of Lord Hoffman in **Lawson:**

> "37. First, I think that it would be very unlikely that someone working abroad would be within the scope of section 94(1) unless he was working for an employer based in Great Britain. But that would not be enough. Many companies based in Great Britain also carry on business in other countries and employment in those

> businesses will not attract British law merely on account of British ownership. 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."

54. He noted that the tribunal had found that this was a new business venture in Saudi Arabia, with a degree of separation from the UK operations. That was significant. He rejected, at para. 110, the submission that the outcome should depend on who "in reality" the employee was working for or who had the benefit of their work:

> "Simple phrases of that kind conceal a variety of complexities and nuances when they fall to be applied to a particular situation and give no useful guidance in answering the sufficient connection question, which is the actual test propounded by the authorities."

55. Underhill L.J. did not consider that this degree of separation was necessarily decisive, but it was a factor and on that basis there was no reason to overturn the conclusion that there was no territorial jurisdiction. This may therefore be regarded as a case close to the line – one which was 'rooted and forged' in the UK, with a contract governed by English law, but where the ties to the UK had become eroded, principally by the changing nature of the work and location.

56. One of Mr Green's grounds of appeal was under Article 10 of the ECHR, the right to freedom of expression. It was argued that because he suffered detriments as a result of making a protected disclosure, these rights were breached and so any detriment suffered in the UK automatically brought him within the territorial jurisdiction. That was also firmly rejected [118]. Underhill LJ described it as, "to say the least, extravagant. I have no hesitation in rejecting it." He held that the ECHR could not confer territorial jurisdiction in whistleblowing cases, over and above that in ordinary employment cases. Further, at para. 124:

> "The essential first step is to establish that the Charter applies to employments where the employee works wholly outside not only the UK but the EU. For essentially the reasons already given in relation to the Convention, I do not believe that it does."

57. Turning to the cases on which Ms Bradley places more reliance, the first is an unreported case of the Employment Appeal Tribunal, **Ravisy v Simmons & Simmons** UKEAT/0085/18/00 – the same firm which appears for the respondents in this case. Ms Ravisy was a partner in the firm. She was a French national, working and living in Paris. To the outside world the Paris office was indistinguishable to any other French law firm even though it was an office of a British firm. It was largely independent of the London head office. Understandably, she paid French taxes, and her contract provided that disputes be referred to the Paris Bar. There were occasional visits to London for work every few months but she was not allowed to do fee-earning work there.

58. The Employment Judge (now Auerbach J) proposed a distinction between three types of case:

    a) those where, at the relevant time or during the relevant period, the claimant worked in the UK;

    b) those where he or she worked outside Great Britain; and

    c) those where he or she lived and worked for at least part of the time in Great Britain.

59. He took the view that in cases of type (a) there would be territorial jurisdiction, while in cases of type (b) the presumption would be against jurisdiction unless there is something which puts the case in an exceptional category, such as that the employment has much stronger connections both with Great Britain and British employment law than with any other system of law. As for cases of type (c), the case did not have to be 'truly exceptional' for territorial jurisdiction to be established and the comparative exercise called for in a type (b) case is not required.

60. The Employment Appeal Tribunal (Kerr J) considered this analysis a helpful guide, with one caveat: that it would be more correct to define category (c) as applying to those who ***lived and/or worked*** for at least part of the time in the UK. That was in accordance with Lord Hope's judgment in **Ravat v Haliburton Manufacturing Services Ltd** 2012 ICR 389, SC. In the circumstances of that case, the territorial pull of France was held to be considerably greater than that of the UK, since Mme Ravisy lived and worked in France.

61. Ms Bradley also referred me to the case of **Smania v Standard Chartered Bank** [2015] UKEAT 018114KN. Mr Smania was an Italian, living and working in Singapore for the bank, which had a head office in London. His contract was governed by the law of Singapore and he was dismissed there. The only link with the UK in fact was the location of the head office. On those facts, unsurprisingly, his case was rejected, but he argued at the appeal stage (Langstaff J) that a looser test should be applied in whistleblowing cases because article 10 ECHR and article 11 of the EU Charter of Fundamental Rights were engaged. That argument was rejected, and the position was put beyond doubt by Underhill LJ in **Jeffrey**, as already noted, together with the decision of Simler J in **Bamieh** on the same point. I therefore regard it as settled that there is no wider jurisdiction in cases in which human rights issues are raised.

62. Other cases were raised to illustrate particular points and can be taken more briefly. In **Partners Group (UK) Ltd and another v Mulumba** [2021] ICR 1501 Employment Appeal Tribunal (Eady J, President) accepted that the degree of connection can change over time. In that case, although Ms Mulumba was a national of the Democratic Republic of Congo, posted to the UK for a US company and under a contract governed by US law. Although she would not

normally have had a sufficient connection with the UK, by the time of her claim she had lived and worked in the UK for six of the preceding eight years.

63. I was also referred to two cases on the significance of the claimant's location at the time the employment ended. In **Hunt v United Airlines Inc** UKEAT/0575/07/DA (Burke J) 12 Feb 2008 [C/166], Ms Hunt was employed by a US airline and based in Paris. The Paris operation closed and she would have been transferred to London, indeed was regarded as being based in London, but went off sick and never physically moved there. Her ill health process was handled in the USA and ended in her dismissal. The fact that she had not actually been in the UK then was considered decisive.

64. In **YKK Europe Limited v Henegan** UKEAT/0271/09/ZT, also unreported (Cox J) 23 Oct 2009. The company's head office was in London but Mr Henegan had been posted to the Middle East several years earlier. After that he moved to Germany to set up an office there and his salary and rent were paid through the German payroll system. He was managed from London and when it was decided not to continue with the operation in Germany he was placed on garden leave. But he stayed in Germany, which is where he was when the contract was terminated, and on that basis the tribunals in the UK did not have jurisdiction. However, it was held that a broad, factual enquiry was needed, including asking where the employee would have been if they had not been absent from work. Ms Bradleys case is that such a broad enquiry would recognise that she would have returned to the UK to carry out her consultancy work but for the travel restrictions and other difficulties she faced.

Analysis and Conclusions

65. It is clear from these authorities that in each case the facts have to be carefully analysed to see whether the claimant has a sufficient connection with the UK. it is also the case, per **Duncombe**, that what needs to be established is an overwhelmingly closer connection to the UK than, in this case, Hong Kong.

Major factors

66. Some factors emerge as clearly more significant than others and Ms Bradley produced a helpful table identifying common features of the leading cases. The heading she selected were:

    a) the location of the employer;

    b) the nationality of the employee;

    c) the governing law of the contract;

    d) the place of work; and

    e) whether they were working in a British enclave.

67. The table also shows how comparatively rarely territorial jurisdiction is established. **Lawson** itself concerned a member of the armed forces working at

an RAF base on Ascension Island, another working with British forces in Germany, and an airline pilot based at Heathrow but working for a Hong Kong based airline. All were British citizens, working under a contract governed by the law of England and Wales and all were successful. Those successes were followed by **Wallis** and **Duncombe**, which also involved British citizens working for the government at an international base under a contract governed by English law. The facts in **Bamieh**, involving the EU enclave in Kosovo, were so similar that the FCO did not dispute that they were subject to UK jurisdiction, but the co-workers were not. The facts of **Jeffrey** were not so clear cut, but he was working for a quintessentially British organisation, the British Council, under similar terms, and, crucially, with little connection to Bangladesh.

68. These cases indicate the extent of the connection required, especially when contrasted with those cases in which the claimant was unsuccessful despite being employed by the UK government. The claimants in **Bryant**, **Hamam** and **Hottak** were all unsuccessful, because they were all employed on local terms, in Italy, Egypt and Afghanistan respectively – even, in the case of Ms Bryant, as a British citizen. The fact that two of them were working in British embassies abroad and still did not have the requisite connection with the UK shows the gulf between the facts of Ms Bradley's case and those were territorial jurisdiction has been accepted.

69. There is in fact no decided case where jurisdiction has been established for someone working abroad under the law of that country. That appears to me to be an overriding consideration. It is in keeping with the very clear words of Lord Hoffman quoted at paragraph 56 above. It is difficult to see how parliament could have intended that British citizens working overseas would be entitled to bring proceedings in the UK and, by extension, to require their employer or co-workers, to submit to proceedings in the UK in those circumstances. The fact that the individuals in question are also British makes no real difference to that analysis. It is clear from **Bamieh** for example, that foreign co-workers could not be sued in the UK and that parliament did not intend that British nationals working alongside them would be in a different position. That, it seems to me, is sufficient to dispose of the claims against the individual named respondents, although I note that in the case of the family members their connection is even more tenuous than that of Mr Brandler and Mr Leigh. They were not fellow employees or co-workers and so if there had been any acts of harassment or discrimination by them, it does not follow that the first respondent would have been vicariously liable.

70. At points in her submissions Ms Bradley, speaking figuratively, suggested that this was essentially a British enclave in Hong Kong. Certainly it would have been easy for her to fit in there. All the business was conducted in English and all the named respondents are British citizens. That however only takes matters so far. The fact is that the company chose to establish itself in Hong Kong. It is an organisation which conducts business worldwide and could have established

itself in any of a number of jurisdictions. The choice of location is not a mere circumstance, it is a point of fundamental importance. It governs the legal and tax regimes to which the company is subject. Again, there is no basis in any of the cases cited out above for distinguishing between an overseas company employing local staff and one in which many or even all of the employees are British citizens.

71. Another major and related consideration is the governing law of the contract. Again, given that the various contracts were entered into between parties in Hong Kong, involving payments in Hong Kong dollars and a Hong Kong pension, the natural conclusion is that the governing law of the contract is that in Hong Kong. Once again, all of the 'successful' cases involve contracts governed by English law. It is a requirement, even where the claimant is working in a British embassy. The governing law reflects the intentions of the parties. A contract might be formed in a country which has no statutory protection against unfair dismissal. If that contract is governed by the law of that country it is difficult to understand how parliament could have intended that the employee could sue for unfair dismissal in the UK, thereby advancing a right that neither party envisaged and which the employer would have taken no steps to avoid.

72. In this case, there is no protection against whistleblowing in Hong Kong, but as shown by **Bryant**, where the FCO could claim diplomatic immunity, that does not affect the question of jurisdiction. That is the first question, and the extent of the rights involved, whether under the ECHR or otherwise, do not affect its scope.

73. Ms Bradley's citizenship is no sort of trump card either, just as it was not for the claimant in **Bryant.** There it was regarded as merely fortuitous. In Ms Bradley's case, I accept, she was recruited because of role as a solicitor, but admission to the Roll is not confined to British citizens. Her nationality is a relevant consideration, but one which is substantially outweighed by the nationality of her employer.

74. I attach some significance to the fact that Ms Bradley's connection with the respondents began in the UK. Although she was in fact recruited in Hong Kong, that was the culmination of a process, and she first went to Hong Kong in furtherance of that existing connection. So, at the risk of overstatement, the contract might be said to have been 'rooted and forged' in the UK. (That was a phrase used by Lord Hoffman in the passage already quoted at paragraph 56 above.) As that passage emphasizes, and at the risk of labouring the point, the contract being rooted and forged in the UK is simply one of a number of necessary criteria, the starting point being that the work must be for a UK company.

75. There are three aspects however on which Ms Bradley laid particular emphasis:

    a) the fact that she spent some of her time in the UK and did work here;

b) her obligations as a solicitor; and

c) the fact that the consultancy agreement allowed her to be located elsewhere.

Work in the UK

76. Taking these in turn, the starting point has to be that Ms Bradley was present in Hong Kong and carrying out the majority of her work there throughout the contract. The fact that she maintained a house in the UK, had family here and made regular visits, even work visits, cannot affect that fundamental state of affairs. Her position is therefore broadly comparable to that of Mme **Ravisi**, who lived in Paris, spent most of her time working there but sometimes did some work in the London head office. As that case concluded, visiting the UK for occasional work was not sufficient, just as it was not sufficient for Ms **Hamam** in Cairo, who did occasional training in the UK. The position might call for some further consideration if there were extended periods of living and working in the UK, but at all times Ms Bradley's main home and base was in Hong Kong and the work done in the UK did not suffice to incur any UK tax liability. For the avoidance of doubt, both Mme Ravisi and Ms Hamam were ultimately working for a British employer, meaning that their connection with the UK was much greater.

77. Overall therefore Ms Bradley's time spent in the UK is not a particularly significant factor and by no means sufficient to establish the necessary connection with the UK. The fact that whilst here she was advising on English assets or in connection with English law, makes no real difference: work carried out in the UK generally has a UK focus, or there would be no purpose in making the journey, and legal work by itself confers no advantage in this respect. It was, in any event, work that was being done for the benefit of her employer in Hong Kong.

Being a solicitor

78. The second particular aspect of the case is Ms Bradley's role as a solicitor. I appreciate and accept that under the relevant code of conduct Ms Bradley has an obligation to report to the SRA any professional misconduct by other solicitors with whom she has dealings, and that that obligation can also extend to her employer since they have to be registered to employ her in her capacity as solicitor. That is certainly one factor connecting her work with the UK.

79. The SRA can then subject any solicitor who is the subject of such a reference to disciplinary action. Equally, they can revoke the firm's registration to employ solicitors. But that of course is a very separate regime. There is no reason to conclude, for example, that because Mr Leigh might be subject to disciplinary action by the SRA over a particular allegation, Ms Bradley is entitled to sue him over that issue in an employment tribunal. The SRA exists as a regulatory body for its own members, so it makes no difference from their point of view where

those members are based. It is not something which impinges on the sovereignty of the country in which they are based. Indeed it would be odd if UK solicitors could remain subject to SRA regulation but be exempt from any sanction because they were practicing abroad. Hence, very different considerations govern the geographical scope of the two types of disclosure. They also serve very different purposes. SRA regulation is designed to ensure professional standards and respect for the work of solicitors qualified in England and Wales. It confers no advantage on the person raising a concern. Tribunals, on the other hand, are statutory bodies, established to ensure that justice is done between those parties.

80. The relevance of her professional standing was repeatedly advanced by Ms Bradley but logic of her position remains obscure. She submitted, for example, that under the terms of the relevant Overseas Conduct Rules she had additional obligations to report matters to her employer. The implication is that this placed her at a disadvantage, she was more likely to find herself regarded as a whistleblower, and she would be unfairly prejudiced if there were no remedy for her in the UK. That is an example of the type of argument raised in **Jeffrey** that as a whistleblower, Convention rights were engaged, and so the scope of the tribunal's jurisdiction should be expanded to afford him a remedy. That argument was of course firmly rejected, and as a matter of principle the question of territorial jurisdiction has to be established first. It does not depend on the rights asserted and it cannot be expanded to afford a remedy.

81. So, the SRA reporting obligation does provide an additional strand of connection with the UK, but does not imply English law or jurisdiction into the contract, and the significance of this connection is still very much overshadowed by the fact that the work in question was for an overseas body. It is also diluted by the fact Ms Bradley was also regulated by the Hong Kong Law Society, to whom she also had reporting obligations. Overall, therefore, it appears to me that Ms Bradley's position as a solicitor regulated by the SRA cannot materially affect the question of jurisdiction.

Consultancy Agreement

82. The final main aspect is the effect of her consultancy agreement and the fact that it did not require her to be in Hong Kong. Looking at matters in the round however, this was a consultancy agreement negotiated between parties based in Hong Kong, concerning her future work for that Hong Kong company. The services were therefore to be provided for a Hong Kong concern. The contract itself reflected that with its express choice of law clause, albeit under the non-exclusive jurisdiction of Hong Kong. It contains various references to Hong Kong ordinances including regulatory requirements and the need to establish a suitable Provident Fund, which at least shows that the parties envisaged that the services would continue to be supplied locally. The fact that Ms Bradley wanted to return to the UK and was permitted to do so by the contract does not itself

establish a particular strong connection with the UK. Whether the UK has jurisdiction in such a case depends on the fundamentals of the working arrangements not on the personal choices of the parties from time to time, at least not unless those arrangements are solidified by a lengthy course of dealing between the parties, such as occurred in the case of **Mulumba** who spent six years actually in the UK, or the claimant in **Green** (considered in **Jeffery**) who over time lost his connection with the UK by moving to various locations in the Middle East. Whilst I accept that Ms Bradley's physical location at the end of the contract is not determinative, per **YKK**, the fact is that her intention to move to the UK did not persist, and she spent the entire duration of the consultancy agreement in Hong Kong, working from her own firm/office. Nor did she return when Covid restrictions were lifted. Is she had returned to the UK, the fact is that she would have continued to work under a contract governed by Hong Kong law, paid in Hong Kong dollars for a firm based in Hong Kong.

83. In all those circumstances, Ms Bradleys connections with the UK, under the terms of those contracts, whether as an employee or as a consultant, were modest, and a distant second to her connection with Hong Kong. That view is reinforced by the fact that Ms Bradley has in fact been involved in two legal claims in Hong Kong during the course of her consultancy agreement.

Strike Out Considerations

84. Despite those clear conclusions, I have to remind myself that this is an application for an order striking out the claim, and that the question is not one to be resolved at this stage on the balance of probability. I have to decide whether the claim can be said to have no reasonable prospect of success. This was the aspect on which most weight was given in the skeleton from Mr Laddie KC.

85. Applications for strike out take many forms. Often they relate to the overall merits of a claim rather than to any discrete preliminary issue like time limits or employment status, and tribunals have been repeatedly enjoined to tread carefully before making a decision to strike out a claim on its overall merits. In most cases, it is only when all of the evidence has been presented that the tribunal can make an assessment as to whether a decision was influenced by a discriminatory motive or by a whistleblowing allegation. And even if a case appears weak on the papers, and it appears that it has no reasonable prospect of success, the decision to strike it out is still discretionary: **HM Prison Service v Dolby** [2003] IRLR 694, EAT.

86. Summarising the main cases in this area, in **Anyanwu and anor v South Bank Student Union and anor** 2001 ICR 391, HL, the House of Lords highlighted the importance of not striking out discrimination claims except in the most obvious cases, because of the public importance of such cases being heard. In **Ezsias v North Glamorgan NHS Trust 2007** ICR 1126, CA, the Court of Appeal held that the same approach should generally be taken in whistleblowing cases, which are similar in that they involve an investigation into why an employer took

a particular step. Then in **Balls v Downham Market High School and College** 2011 IRLR 217, EAT, Lady Smith expanded on this guidance, stating that the tribunal must first consider whether, on a careful consideration of all the available material, it can properly conclude that the claim has no reasonable prospect of success. That includes, for example, material on the employment tribunal file. There may be correspondence or other documentation which contains material that is relevant to the issue or which assists in determining whether it is fair to strike out the claim.

87. An example of the potential for pitfalls is shown by the case of **White v HC-One Oval Ltd** [2022] IRLR 576 (Eady J, President). Ms White was a part-time receptionist who had volunteered for redundancy. The tribunal considered in those circumstances that the company would be able to show that the dismissal was reasonable, and struck out the claim, but it was held that this failed to engage with her case that the company had manufactured the redundancy situation by bringing in another employee as a full-time receptionist role to replace her and a colleague. So, taking the claimant's case at its highest, including her assertion that the redundancy situation was a sham, it could not be said that the claim had no reasonable prospect of success.

88. In **Cox v Adecco** [2021] ICR 1307, the Employment Appeal Tribunal reviewed the authorities in this area and distilled the principles governing the approach to strike-out applications. Mr Cox, was an agency worker and made allegations that his daily rate of pay had been improperly disclosed to his colleagues and others. He complained about this breach of his personal data in a letter, and that letter was therefore the basis of his whistleblowing claim. Did it contain a protected disclosure? The Employment Judge took the view that it was self-serving and not made in the public interest, so it did not qualify, and on that basis the entire case was struck out.

89. The Employment Appeal Tribunal (Tayler J) held that the tribunal first had to properly identify the issues, which meant identifying with care the protected disclosures relied on. It might not be confined to that single letter. The decision about the letter was open to question as it focussed on the motive for the disclosure and the question of whether it was in the public interest was a broad one. Moreover, Mr Cox was representing himself at the preliminary hearing where this was decided, and given the potential consequences this was not something which he should have been required to explain on the spot. In that case, he had also produced a detailed witness statement which might have supported an allegation of race discrimination. An application to amend might have led to a viable claim.

90. The following principles were distilled:

    (1) No one gains by truly hopeless cases being pursued to a hearing.

    (2) Strike out is not prohibited in discrimination or whistleblowing cases; but especial care must be taken in such cases as it is very rarely appropriate.

(3) If the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate.

(4) The claimant's case must ordinarily be taken at its highest.

(5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is.

(6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim.

(7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing.

(8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer.

(9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

91. **Cox** was a case on which Mr Laddie KC laid particular emphasis in his skeleton, and it is an important reminder of the need for a tribunal to be alert, to consider what might change, or what else might emerge in the course of a hearing, whether through disclosure or amendment, or simply on the basis that matters may be seen in a different light once all the evidence has been heard.

92. But there are some obvious differences between that case and the position of Ms Bradley. In considering the issue of territorial jurisdiction there is no need to consider any issues of causation or the motives for her dismissal. Nor does it depend on the circumstances surrounding the ending of her contract of employment or as a consultant, or how the working relationship broke down. There is no need to assign any blame on either side. It depends only on the application of well-established legal principles to the circumstances of her employment or other work, taking her case at its highest. And the possibility of any new argument coming forward has been all but extinguished by taking into consideration the points raised in her application to amend.

93. That application [129] states, at para 3:

The amendments have been limited to changes necessary to address the issue of territorial jurisdiction that are to be addressed at the forth coming strike out hearing.

94. The points raised have already been considered, but include the extent to which Ms Bradley carried out work in the UK, the fact that one of the alleged incidents took place in the UK, her reporting obligations to the SRA, the fact that her whistleblowing allegations matched some disclosures made to the SRA, the fact that she intended to return to the UK following her dismissal and the difficulties in doing so caused by Covid.

95. This is also the third preliminary hearing. It has been listed for many months and Ms Bradley has had a very full opportunity to prepare for it. The application was in fact to have been heard on the last occasion, when she was represented by leading counsel. So, taking all those matters into account, it is very difficult to see how the overall position could change between now and a final hearing. The essential facts relating to her work in Hong Kong are well known and very fully set out. But they fall well short of establishing jurisdiction. Once again, there is no decided case in which someone employed to work abroad for a foreign company on local terms has been held to come within the jurisdiction of this tribunal. That is no accident. It is not the result of a lack of suitable examples. Rather, it follows from the clear principles underpinning the exercise of jurisdiction, that parliament would not have intended that foreign employers and individuals associated with that employer, based overseas, should be required to answer to a claim in the UK.

96. For all the above reasons therefore, this is one of the relatively small number of cases in which the principle should be applied that no one gains by truly hopeless cases being pursued to a hearing, and hence a case where a strike out order is appropriate.

Employment Judge Fowell

Date 15 July 2024