



# EMPLOYMENT TRIBUNALS

**Claimant:**

Dr R Luthi-Carter v

**Respondent:**

- (1) University of Leicester
- (2) Ms N Bradley
- (3) Mr G Dixon
- (4) De Montford Higher Education Corporation
- (5) Mr S Barrow
- (6) Ms R Watson
- (7) Professor S Oldroyd
- (8) Ms P Robson
- (9) Professor C Normington

**Heard at:** Leicester

**On:** 4 July 2023

**Before:** Employment Judge Fredericks-Bowyer

**Appearances**

For the claimant: In Person  
For the respondents 1-3: Mr C Mordue (Solicitor)  
For the respondents 4-9: Ms K Hurst (Solicitor)

## JUDGMENT AT PUBLIC PRELIMINARY HEARING

1. The claimant's claim against the 1<sup>st</sup> and 3<sup>rd</sup> respondents in respect of less favourable treatment because of her disability is dismissed upon withdrawal.
2. The 3<sup>rd</sup> respondent is dismissed from these proceedings because no issues remain between him and the claimant which are the subject of these proceedings.
3. The claimant's claim against the 1<sup>st</sup> respondent under Regulation 9 The Employment Relations Act 1999 (Blacklists) Regulations 2010 is struck out on the basis it has no reasonable prospects of success.

4. The claimant's claim against the 4<sup>th</sup> respondent under Regulation 5 The Employment Relations Act 1999 (Blacklists) Regulations 2010 is made subject to a deposit order under the terms communicated in a separate order on the grounds that I consider it has little reasonable prospects of success.
5. The 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents remain as parties to the claim by operation of Regulation 15 The Employment Relations Act 1999 (Blacklists) Regulations 2010 for the purposes of any remedy stage resulting from the continuing claim against the 4<sup>th</sup> respondent being well-founded, subject to deposits being paid by the claimant under the same order referenced earlier because I consider that underlying claim against the 4<sup>th</sup> respondent has little reasonable prospects of success.

## REASONS

### Introduction

1. These written reasons are produced following decisions given orally at the hearing. The hearing was listed following a telephone case management preliminary hearing conducted by Employment Judge Millns on 19 April 2019. The 1<sup>st</sup> respondent's application to strike out the claims against it was made in the amended grounds of resistance filed after that hearing. The 4<sup>th</sup> respondent's application to strike out the claims against it was also made in amended grounds of resistance following the hearing.
2. The claimant represented herself in the hearing today. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents were represented by Mr Mordue, a solicitor from Eversheds Sutherland (International) LLP. The 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents were represented by Ms Hurst, a solicitor from Veale Wasbrough Vizards LLP. As is usual, I did not hear sworn evidence today, but the claimant and each representative made submissions with reference to an agreed bundle of documents which ran to 163 pages.
3. The claimant did not bring a copy of the bundle to the hearing in hard or electronic form. I do not consider this error to have been deliberate – it is apparent that the claimant misunderstood what Mr Mordue meant when he said he was bringing a bundle to the hearing today for me.
4. During the hearing, the claimant was provided with a bundle of the documents by one of the individuals in the public gallery and Mr Mordue provided additional documents when it became apparent that that bundle was not a complete version. In this way, the claimant was able to have access to all of the documents during the hearing.
5. In this judgment, reference to page numbers are to the page numbers in the bundle. Reference to "Rule" or "Rules" is a reference to the Employment Tribunal Rules of Procedure 2013. Reference to "Regulation" or "Regulations" is a reference to Employment Relations Act 1999 (Blacklists) Regulations 2010.

### Status of the findings below

6. I emphasise that I have made the conclusions and determinations below only upon a summary assessment of the currently available evidence, albeit taking the factual points in the claimant's claims at the highest as she described them in the hearing. Consequently, no finding below binds the future Tribunal in respect of any factual dispute in the case. I am conscious that further evidence, tested in the hearing, may emerge which could lead to the Tribunal forming a different view about the claimant's claims.

## The claims

### *Background*

7. The claimant was employed by the 1<sup>st</sup> respondent from 3 January 2012 to 31 August 2022, when her employment was terminated by the 1<sup>st</sup> respondent under the justification that her role was redundant. That decision is the subject of a separate unfair dismissal claim which I know nothing about other than what emerged in passing in this hearing.
8. The claimant worked as a professor in the health and life sciences department alongside two academic colleagues at the 1<sup>st</sup> respondent. They worked on an externally funded project, with parts of the project sub-contracted to the 4<sup>th</sup> respondent. Three other academics worked on the project who were employed by the 4<sup>th</sup> respondent.
9. Upon being given notice that the 1<sup>st</sup> respondent would no longer be able to host the project, the claimant entered discussions with the 4<sup>th</sup> respondent about transferring the project, ultimately including herself and perhaps her colleagues, from the 1<sup>st</sup> respondent to the 4<sup>th</sup> respondent. Discussions appear to have been well advanced at department and school level, with a managed services agreement being negotiated and a discussion held about space. It is understood that the claimant was to be offered, and was offered (there is a dispute about whether this was a genuine offer or a mistaken one), an unpaid role as an honorary professor.
10. The claimant then says that, following an e-mail dated 10 August 2022 which she says is a 'prohibited list', the proposals and arrangements changed such that the project was not to be transferred, with her, to the 4<sup>th</sup> respondent. She was then left without funding for the project, or the material required for the project, or a job at either institution.
11. The claimant had brought a direct disability claim against the 1<sup>st</sup> and 3<sup>rd</sup> respondents, but withdrew that claim. That was the only claim brought against the 3<sup>rd</sup> respondent, and so he is dismissed as a respondent from these proceedings.

### *Alleged prohibited list*

12. The prohibition on the sort of list the claimant alleges exists is found at Regulation 3. The parties agree that none of the exceptions in Regulation 4 are relevant, and so the claimant's claims will all fail unless the Tribunal concludes that the e-mail at page 108 (in un-redacted form) is a prohibited list.

13. The relevant part of Regulation 3 says:-

*“3 - General Prohibition*

*(1) Subject to Regulation 4, no person shall compile, use, sell or supply a prohibited list.*

*(2) A “prohibited list” is a list which –*

*(a) Contains the details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and*

*(b) Is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.”*

14. The Employment Tribunal has no jurisdiction to hear complaints relating to a breach of Regulation 3, alone. Such a claim would be a breach of a statutory duty. The Employment Tribunal does have jurisdiction to deal with the claimant’s complaints, though, which are that there has been a contravention of Regulation 5 and Regulation 9.

15. The alleged list was only available in redacted form at the hearing before Judge Millns. An un-redacted version was shown to me at page 108. The e-mail was sent by the 5<sup>th</sup> respondent, HR Business Partner at the 4<sup>th</sup> respondent, to addresses called “Talent Acquisition”, “Debs Ratcliffe” and “HR Enquiries”. All of these are within the 4<sup>th</sup> respondent. The e-mail, in full, reads:-

*“Hi*

*This is a strange request but could you check whether you are currently recruiting (or likely to recruit) any of the following into DMU:*

*Professor Ruth Luthi-Carter  
Mohamed Hasif  
Christian Reich*

*If not, could you let me know.*

*If you are, could you contact me as there is an issue that we will need to discuss.*

*Thanks*

*Steve.”*

16. The claimant says that this is a prohibited list, and is a list of names supplied to the 5<sup>th</sup> respondent by the 1<sup>st</sup> respondent. She is an active UCU member and told me that one of the other individuals is also a union member. She does not know about the final individual, and it could be helpful for her to find out. She says there is no credible

explanation for the existence of the list other than it being a list of people not to recruit due to their union activities.

17. The 1<sup>st</sup> and 4<sup>th</sup> respondents say that the transfer of the externally funded project from the 1<sup>st</sup> respondent to the 4<sup>th</sup> respondent, together with the individuals working on the project, may have activated TUPE provisions. In order to work out whether or not this was the case, they say, it was important to firstly understand whether the claimant and either of the others in the e-mail were in fact going to begin employment with the 4<sup>th</sup> respondent. This is why the 1<sup>st</sup> respondent contacted the 4<sup>th</sup> respondent, which led to the 5<sup>th</sup> respondent's e-mail on page 108. The "*issue that we will need to discuss*" is said to be about whether or not the employment of those individuals, together with taking on the project, was a qualifying transfer which would place additional obligations on the 1<sup>st</sup> and 4<sup>th</sup> respondents to deal with the 'transfer'.
18. There was documentary evidence shown to me which supports the 1<sup>st</sup> and 4<sup>th</sup> respondents' position about the purpose of the e-mail on page 108.

*Claim against 1<sup>st</sup> respondent*

19. The claimant alleges that the names supplied on page 108 were supplied by the 1<sup>st</sup> respondent in contravention of Regulation 3. The 1<sup>st</sup> respondent admits that it made contact about those individuals, but not for reasons which are related to the prohibition in Regulation 3. As outlined above, the claimant has no recourse in the Employment Tribunal for contravention of Regulation 3 alone.
20. The claimant claims that the 1<sup>st</sup> respondent has breached Regulation 9. That says, relevantly:-

*"9 – Detriment*

*(1) A Person (P) has a right of complaint to an employment tribunal against P's employer (D) if D, by any act or deliberate failure to act, subjects P to a detriment for a reason which relates to a prohibited list and either –*

*a. D contravenes Regulation 3,*

*...*

*(2) If there are facts from which the tribunal could conclude, in the absence of any other explanation, that D contravened Regulation 3 or relied on information supplied in contravention of that regulation, the Tribunal must find that such a contravention or reliance on information occurred unless D shows that it did not."*

21. The claimant says that the 1<sup>st</sup> respondent supplied the names which were on the written list and does not say that the 1<sup>st</sup> respondent relied upon list. To be successful in her claim, then, she needs to establish that the 1<sup>st</sup> respondent contravened Regulation 3 (noting the shifting burden of proof), and the 1<sup>st</sup> respondent subjected her to a detriment for a reason which related to the list.

22. The claimant alleges the following detriments, as recorded by Judge Millns in her summary following the earlier case management hearing (page 11):-
- 22.1. The claimant losing the opportunity to be employed by R4;
  - 22.2. The claimant losing her honorary role with R4;
  - 22.3. The refusal of R1 to provide the claimant with a large volume of her research data into Huntingdon's disease;
  - 22.4. The loss of professional support in the form of 3<sup>rd</sup> party funding for C's research.
23. The claimant has not queried or applied to amend that list of detriments and confirmed in this hearing that these were the detriments she says she was subjected to by the 1st respondent. For completeness, I revisited the claimant's claim documents and could not identify any other detriments alleged to have been done by the respondent which are related to the alleged prohibited list.
24. It is a matter of fact that the 1<sup>st</sup> respondent did not carry out the treatment complained of in the first, second and fourth detriments listed above. The claimant accepts this. The claimant also accepts that her employment ended on 31 August 2022 and that her access to the research data was not curtailed until 2 September 2022. The subsequent negotiation and, the claimant contends, refusal to provide research data occurred after dismissal, when the 1st respondent was not the claimant's employer and therefore after the claimant had the standing to complain to the Employment Tribunal under Regulation 9.

*Claim against 4<sup>th</sup> respondent*

25. The claimant alleges that the 4<sup>th</sup> respondent reneged on its intention to employ her once the e-mail at page 108 was sent. This, she contends, is in contravention of Regulation 5, and gives rise to an ability to bring a claim against the 4<sup>th</sup> respondent.
26. Regulation 5 reads, relevantly:-

*"5 – Refusal of employment*

*(1) A Person (P) has a right of complaint against another (R) if R refuses to employ P for a reason which relates to a prohibited list, and either –*

*a. R contravenes Regulation 3 in relation to that list, or*

*b. R –*

*i. Relies on information supplied by a person who contravenes that regulation in relation to that list, and*

*ii. Knows or ought to have known that the information relied on is supplied in contravention with that regulation.*

(2) *R shall be taken to refuse to employ P if P seeks employment of any description with R and R –*

- a. *Refuses or deliberately omits to entertain and process P’s application or enquiry,*
- b. *...*
- c. *Refuses or deliberately omits to offer P employment of that description,*
- d. *...*
- e. *Makes P an offer of such employment but withdraws it or causes P not to accept it.*

(3) *If there are facts from which the tribunal could conclude, in the absence of any other explanation, that R contravened Regulation 3 or relied on information supplied in contravention of that regulation, the Tribunal must find that such a contravention or reliance on information occurred unless R shows that it did not.”*

27. The claimant alleges that she was in conversation about moving the whole project from the 1<sup>st</sup> respondent to the 4<sup>th</sup> respondent. This would involve taking an honorary professor position, and then she contends that she would have become an employee in order to work on the project. There is some support for this contention in the bundle, although it is not apparent that discussions about future employment were at anything other than a very early stage. In particular, an e-mail from Ms Trent at the 4<sup>th</sup> respondent to Ms Curtis at the 4<sup>th</sup> respondent, dated 15 August 2022, reads (page 44):

*“Hi I have heard from Ruth. The next step in the plan is to join DMU as an employee on a part-time basis, funded by the grant. She has other commitments that prevent my engaging full-time ATM, but that might happen in the future, especially as she has outputs in progress that could substantially contribute to the next REF.*

*I believe this should be ok to sign as we have already have a material transfer agreement underway (with a signed Legal Services form) with legal for Ruth. These are both relating to a project that she is currently PI on at Leicester but is due to move the project with her to DMU when she comes here.”*

28. It is not clear that those the claimant were speaking to at the 4<sup>th</sup> respondent had consulted with the central University function about employing the claimant at a time, I am told, there was a broad recruitment freeze in place. There is no evidence that a formal offer was made or that there was any authority given to recruit the claimant from those who would be authorised to give it. It is clear, though, that the claimant wished to join the 4<sup>th</sup> respondent as an employee and that Ms Trent, a data and compliance officer, was receptive to that wish.

29. The alleged prohibited list was sent to the 4<sup>th</sup> respondent five days prior to the e-mail from Ms Trent. The 4<sup>th</sup> respondent contends that it was not a prohibited list

because it was about TUPE only. Support for that view is found at page 46, in an e-mail from the 5<sup>th</sup> respondent to the 6<sup>th</sup> respondent on 10 August 2022 (the same day as the alleged prohibited list):-

*“Ruth Luthi-Carter is not an employee of DMU and she is not about to be recruited etc so there are no TUPE implications... The other two individuals are not on our radar at all”.*

30. The claimant appears to have been appointed an honorary professor at the 4<sup>th</sup> respondent with effect from 16 August 2022. She received notice of that on 6 September 2022 (page 42).

31. The claimant says that the whole picture changed after the e-mail at page 108. She says that this led to the project transfer not completing, the withdrawal of her honorary professorship, and the evaporation of any plan or opportunity to be employed by the 4<sup>th</sup> respondent. That notification was given by the 7<sup>th</sup> respondent on 19 October 2022 and reads, relevantly:-

*“Further to my previous e-mail of 22 September 2022, I am writing to confirm that I have now reviewed the proposals for CHDI-funded activities with the School of Pharmacy at De Montfort University (DMU). I have decided that the University will not be participating in the proposed project. The reason for this is that the school is not able to commit the space and resources to support a research contract for the activities going forward.*

*In addition to this, it has become clear that you and the faculty have divergent expectations with regard both to the planned project activities and your engagement as an honorary professor with the faculty of Health and Life Sciences. As a result of this and following consultation with HR. I am giving you three months’ notice of the termination of your appointment as an Honorary Professor...”.*

32. The claimant does not allege that the honorary professorship in itself was ‘employment’, but that it was indicative of an intention to recruit her following her interest in taking a role.

*The 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents*

33. At the hearing before Judge Millns, it appeared that claimant included the 2<sup>nd</sup> respondent in her Regulation 9 claim against the 1<sup>st</sup> respondent and included the 5<sup>th</sup> to 9<sup>th</sup> respondents in her Regulation 5 claim against the 4<sup>th</sup> respondent. The claimant does, in fact, accept that those Regulations relate only to the employer or someone who refuses to employ her. She accepts that the 2<sup>nd</sup> respondent was not her employer, and that the 5<sup>th</sup> to 9<sup>th</sup> respondents were never going to employ her. As such, the claimant accepts that those individual respondents cannot be sued under those regulations and withdrew those claims.

34. Instead, the claimant contends that they should be a party to the proceedings under Regulation 15. That says, relevantly:-

*“15 – Awards against third parties in tribunal proceedings*



- (1) *If in proceedings on a complaint under regulation 5, 6 or 9... either the respondent or complainant claims that another person contravened regulation 3 in respect of in respect of the prohibited list to which the complaint relates, the complainant or respondent may request the Tribunal to direct that other person be joined or sisted as a party to the proceedings.*
- (2) *The request shall be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made if it is made after the Tribunal has made a decision as to whether the complaint is well-founded.*

### **Law relevant to strike out**

35. The relevant part of Rule 37 Employment Tribunal Rules of Procedure say:-

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

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

...

*(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.”*

36. Caution must be exercised given the draconian nature of the strike out, and the ground relating to prospects should only be used in the most clear and obvious cases (QDOS Consulting Ltd & Others v Swanson [2012] UKEAT/495/11). Where there are any factual disputes relevant to the claim, it would only be in exceptional cases that strike out would be appropriate (Ezsias v North Glamorgan NHS Trust [2007] EWCA Civ 330). Where there is a litigant in person claimant, additional care must be taken to ensure that the claim is understood with reference to all of the documentation as well as what the claimant describes; the Tribunal is required to take steps to investigate the claim at its highest before deciding whether or not the claim should be struck out (Cox v Adecco and others EAT/339/19).

37. All of the authorities cited above recognise that it can be appropriate to strike out a claim on the ground it has no reasonable prospect of success where it cannot succeed as a matter of law, even taken at its highest on the facts.

### **Law relevant to deposit orders**

38. The power to make a deposit order is found at Rule 39 Employment Tribunals Rules of Procedure 2013. That rule provides:-

“39.—

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

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

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

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

*(5) If the Tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order—*

*(a) the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 76, unless the contrary is shown; and*

*(b) the deposit shall be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit shall be refunded.*

*(6) If a deposit has been paid to a party under paragraph (5)(b) and a costs or preparation time order has been made against the paying party in favour of the party who received the deposit, the amount of the deposit shall count towards the settlement of that order.”*

39. I am conscious that the making of a deposit order is intended to highlight that a preliminary view indicates that an allegation has little reasonable prospect of success. It also serves as a warning to a party that cost consequences may follow if they go on to lose an argument which has been made subject to a deposit order. However, at the same time, the intention is not to achieve a strike out ‘by the back door’ by setting an amount for the deposit which a party cannot afford or which serves to dissuade them from continuing a claim because the deposit is set at too high a level.

#### **Decision to strike out claim against 1<sup>st</sup> respondent**

40. When considering whether or not it is appropriate to strike out this claim, I start from the assumption that the claimant would succeed on all of the relevant factual

disputes. This is taking her claim at its highest. Consequently, I assume that the document at page 208 is a prohibited list.

41. In my judgment, the claim against the 1<sup>st</sup> respondent is fundamentally unsustainable because of the detriments that are pleaded. The 1<sup>st</sup> respondent cannot be responsible under Regulation 9 for acts which are done by other entities, even if the claimant does establish that page 108 does constitute a prohibited list. This leaves only one pleaded detriment, which on the chronology occurred after the claimant's employment had ended. Regulation 9 does not apply to 'past' employers who may subject an employee to detriment. The cause of action is against the employee's employer for detriments that the employer subjects the employee to because of the prohibited list.
42. Even assuming that there is a prohibited list, and assuming that the detriments the claimant pleaded did occur because of that list, then none of them can give rise to a claim against the 1<sup>st</sup> respondent. The claim does not work as a matter of law or logic and so, no matter what the conflicts in the evidence, the claimant has no reasonable prospects of fixing the 1<sup>st</sup> respondent with liability under Regulation 9. The claim has no reasonable prospects. It is not in accordance with the overriding objective to allow such a claim to continue. It is not in the interests of either part.
43. Consequently, the Regulation 9 claim against the 1<sup>st</sup> respondent is struck out.

#### **Decision to make deposit order in respect of claim against 4<sup>th</sup> respondent**

##### *Refusal to strike out claim against 4th respondent*

44. The claimant's claim is that the whole picture changed following the sending of the e-mail at page 108. She had, in her view, a path to becoming employed at the 4<sup>th</sup> respondent. The project she worked on was then not taken on, and nor was she as an employee, following a series of events which began at the same time that page 108 was in circulation. The claimant contends that there is a link as a matter of fact. The 4<sup>th</sup> respondent gives its own account, which is that there is no prohibited list, it did not know the claimant was a union member, and there was no prospective offer of employment for the claimant (much less that one was withdrawn).
45. There is a dispute of fact about the motivations for the apparent volte face performed by the 4<sup>th</sup> respondent. Reasons for that decision are given in the documents but they are contested by the claimant. This is the sort of conflict which can only be properly resolved after hearing evidence from all of the relevant actors in order to make a finding of fact before determining the claim. It seems that there was at the very least some unfortunately un-joined thinking and communicating within the 4<sup>th</sup> respondent which has led to misunderstandings and recriminations. But I cannot, in my view, conclude with sufficient confidence that that is all there is.
46. For that reason, this is not a claim for which it is appropriate to conclude that there is no reasonable prospect of the claimant being successful. I do not consider that this is the sort of exceptional case that would justify a strike out despite the contested facts. The evidence about the purpose of page 108 and how it was received by the 4<sup>th</sup> respondent should be properly tested.

47. For that reason, I refuse to strike out the claim.

*Deposit order in the alternative*

48. Although I do not consider I can conclude that the claimant has no reasonable prospect of success, I can conclude that the claim has little reasonable prospect of success, and that is what I go on to do. To succeed in her claim, the claimant has to clear a number of hurdles and I consider it is difficult for her to clear any of them.

49. To succeed in the claim against the 4<sup>th</sup> respondent, the claimant must establish that the e-mail at 108 is a prohibited list, fulfilling the requirements of Regulation 3. The list contains the names of three individuals who were all working on the same project. The claimant is known by the 1<sup>st</sup> respondent to be involved with a work related union. Another member (the claimant did not say which) is alleged by the claimant to also be a member of or involved with the same union. The claimant does not know about the final member, but it is possible that the third person on the list is not a union member at all. It may be difficult for the claimant to establish that the three names is a list of people who should not be employed due to their union activity where one of the three is not established to be a union member.

50. Even if all of the names were Union members, the claimant will need to establish (1) the 1<sup>st</sup> respondent compiled the list for the reasons proscribed in Regulation 3, and that the 4<sup>th</sup> respondent knew it was a list created for such a purpose. I foresee this being very difficult for the claimant to establish, unless there is a broad pool of wider circumstantial evidence that I was not told about in this hearing. The claimant was clear about her case, and did not refer me to any other material other than the broad assertion that she was heavily involved in the Union and disagreed with the principles of the redundancy process which was carried out. It seems very unlikely to me that anything will emerge at the trial which supports the claimant's case about this. If there was such evidence there, I would have heard about it.

51. Finally, the claimant would then need to show that the 4<sup>th</sup> respondent's position in withdrawing from the proposed project was done because of the prohibited list. If the respondent witnesses support the written position, which I consider is going to be very likely, then it will be very difficult indeed for the claimant to establish facts pointing in the direction that the decision was made because of the e-mail at page 108.

52. I must consider whether there is anything more that a little reasonable prospect of success that the claimant will succeed in her claim. This means thinking about whether the claimant is able to show facts from which the Tribunal could conclude that her interest in employment was not progressed because of the list, and also then whether the 4<sup>th</sup> respondent can show that the decision was made for entirely other reasons.

53. In my view, there is not more than a little reasonable prospect of success that the claimant will succeed in the claim. In my view, none of the written evidence supports her position unless the claimant is able to elicit an opposite reason from the respondent witnesses for the documents saying the things they do. In other words, the claimant is reliant upon a respondent witness breaking ranks with the respondent

case, or those witnesses being so incredible at the final hearing that the Tribunal does not believe what they are saying.

54. In my judgment, given the apparently very plausible explanations and reasons offered for the decision in the documents I have seen, I consider it very unlikely that the events outlined above will play out. I consider that the claim has extremely little prospects of success, based on the information I have available now, and so it is appropriate to make a deposit order for the core claim to continue.

#### **Decision on the inclusion of the 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents**

55. The respondents accept that Regulation 15 would allow the claimant to ask for these individuals to be joined to the proceedings for the purposes of any remedy that may follow from a successful argument that the list at page 108 is a prohibited list. That can be done at any time prior to the final hearing taking place. It could be done in this hearing.

56. The claimant accepts that she has not followed the procedure set out in Regulation 15. She did not ask the Tribunal to join these individuals. Instead, she issued this claim with their names on it. This did add some confusion about why the individuals were within the claim but, ultimately, the claim came before me with all of these respondents within it.

57. On the wording of the regulations, the proper procedure may well be to dismiss these respondents from the proceedings and allow the claimant to apply to add them back into the proceedings. Plainly, where adding the parties into the claim under this regulation is to be permitted always unless the timing point arises, that would seem to be a redundant show which would not be in the spirit of the overriding objective to have performed within the hearing.

58. Whatever the route, these respondents would be parties to the proceedings at the beginning of this hearing and also still at the end of this hearing. Consequently, I record only that these respondents are in the proceedings as permitted by Regulation 15. These are 'piggyback' claims in the sense that liability may only fall upon these respondents if the claimant is successful in her last remaining claim against the 4<sup>th</sup> respondent.

#### **Number and size of deposits to be paid**

59. The claimant makes two allegations against the 4<sup>th</sup> respondent: that it is party to a prohibited list in contravention of Regulation 3; and it did not progress her employment enquiry in contravention of Regulation 5. Both of these arguments have been determined to have little reasonable prospect of success and so two deposits should be paid in respect of the 4<sup>th</sup> respondent.

60. All but the 3<sup>rd</sup> respondent remain in the claim at the claimant's wish under Regulation 15, which allows them to remain in order that the Tribunal can consider directing those parties to pay towards any compensation awarded to the claimant for the 4<sup>th</sup> respondent's alleged breach of Regulation 5. In this way, they are included in the proceedings only in relation to the claimant's principal claim against the 4<sup>th</sup> respondent, which I have determined has little reasonable prospect of success. In

those circumstances, it is also appropriate to order that the claimant pays a deposit in respect of the claim advanced in respect of each of the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents.

61. The maximum amount of the deposit which can be awarded is £1,000 in respect of each argument or allegation which is found to have little reasonable prospect of success. In this case, that would total £9,000. In my view, the claimant's prospects of success are such that a higher amount of deposit would be ordered to re-enforce to the claimant that an Employment Judge has made an assessment that the claims have very weak prospects. However, the amount ordered to be paid as deposits should not serve to place a bar on pursuing the claims because the claimant cannot afford to pay them. I must take means into account to be sure that the claimant is able to pay the deposits I order.
62. The claimant brought information about her means to the hearing, and I viewed her current account statement showing a modest balance and regular outgoings. She told me that she had no other savings or assets in the country. She works a job based abroad but this only covers her costs relating to her outgoings in another country. Within the UK, she relies on her husband and family to support her and she told me that she is unable to afford to live independently and will move in with family. It is clear to me that the claimant's financial situation is a source of great distress and I am grateful to the claimant for her bravery in discussing it in a room full of respondents.
63. In the circumstances, I was satisfied that the objective of setting the deposit orders was met with my explanation for why they are being made and also because the claimant immediately perceived the cost consequences which may follow should she lose after paying a deposit as is outlined by Rule 39(5)(a). Taking this together with the claimant's limited means, I considered it appropriate to require the claimant to pay £15 in respect of each deposit: two sets of £15 for claims against the 4<sup>th</sup> respondent; and £15 in respect of each of the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> respondents. The total to be paid is £135.00.
64. The claimant understands that failure to pay the deposits in respect of any of these respondents will lead to the claims against those respondents being struck out. She also understands that, should the claims continue under the deposit and she loses at trial, she will lose those deposits and she would need to show why continuation of the claims was not unreasonable for the purposes of one of the gateways for a costs award to be made under Rule 76.
65. The claimant should think carefully about her next steps against that possibility of being asked to pay the respondents' costs. There remain nine respondents in the claim, and at least two sets of legal teams. Given the nature of the claim and the amount of evidence that should be heard, the final hearing has been listed for ten days. The respondents' costs in defending this claim are likely to be very significant.

### Next steps

66. The claimant must pay the deposits if she wishes to continue to advance the principal claim against the 4<sup>th</sup> respondent. Anticipating that she will do so, I have provided a

final hearing listing and directions for preparation for that hearing under separate cover.

**Employment Judge Fredericks-Bowyer**

Dated: 8 September 2023

Sent to the parties on:

.....09<sup>th</sup> November 2023.....

For the Tribunal Office:

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