EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Dr Suhail Baluch	AND	Portsmouth Hospitals University NHS Trust

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 20 and 21 August 2024
BY CLOUD VIDEO PLATFORM

EMPLOYMENT JUDGE N J Roper

Representation
For the Claimant: Miss R Tuck, King's Counsel
For the Respondent: Mr P O'Callaghan, Counsel

JUDGMENT

The judgment of the tribunal is that this tribunal does not have jurisdiction to hear the claimant's claims, and they are all hereby dismissed.

RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine whether this Tribunal has jurisdiction to hear the claimant's claims which the respondent asserts have already been compromised by a settlement agreement.
2. The Background:
3. In this case the claimant Dr Suhail Baluch has presented claims of unfair dismissal, detriment for having raised protected public interest disclosures, race and/or religious discrimination, and a claim for unlawful deduction from wages. The respondent asserts that these claims have already been resolved by Settlement Agreements dated 10 June 2022 and 16 June 2023.
4. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which I was referred are in a bundle provided by the parties, the contents of which I have recorded.
5. I have heard from the claimant. I have also heard from Mrs Jogvinder Hundle for the respondent. There was a degree of conflict on the evidence. I found the following facts

proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

6. The Facts:
7. The claimant Dr Suhail Baluch was employed by the respondent NHS Trust from January 2005 as a Consultant Clinical Oncologist. In September 2018 serious concerns were raised about the claimant's clinical practice and he was suspended. With effect from January 2019 the suspension was lifted but the claimant was subject to restrictions imposed by the respondent on his clinical practice on the grounds of patient safety. He remained on full pay throughout. In February 2019 two external oncologists produced a report supported by the Royal College of Radiologists to the effect that the claimant was practising below the standard expected of a consultant. During August 2019 there was also an extensive review of the claimant's clinical practice which was completed by four senior external clinical oncologists. The claimant asserts that he was then precluded from carrying out any private work, which was shared amongst his colleagues, and at this stage the working relationships between the claimant and his medical colleagues had effectively broken down.
8. Practitioner Performance Advice ("PAA") was formerly known as the National Clinical Assessment Service (NCAS). It is a service delivered by NHS Resolution when concerns have been raised about the practice of medical professionals. It provides a service which offers impartial advice, and which is also aimed at resolving concerns. PAA became involved in assisting to resolve these concerns. This was successful, and in November 2019 the claimant, the respondent, and PAA signed an action plan under which the claimant would undertake "remediation", in other words a clinical retraining programme and revalidation, which was to be with a separate hospital where he would be supervised and mentored to work through the agreed action plan. Throughout this time the claimant had access to advice and support from both the BMA and the MDU.
9. The respondent then made significant efforts to try to secure a suitable placement, which was hampered during the coronavirus pandemic. In early 2022 the respondent successfully secured a placement for the claimant with the Belfast Health and Social Care Trust ("Belfast"). However, this proposed secondment was at considerable cost because Belfast required an additional payment for each completed week of the placement for its supervision and mentoring services. In addition, because of the location, there would be significant increased accommodation and travel expenses. The proposals involved the respondent continuing to employ and to pay the claimant. The total monthly cost of the secondment amounted to approximately £19,500 which included payments to Belfast, expenses and salary costs. This eventually cost approximately £275,000. In addition, the respondent had to pay approximately £472,000 backfilling the claimant's role by way of locums between June 2022, and August 2023 when the secondment eventually ended. In short, the respondent ended up paying approximately £750,000 to resolve a problem which had been initiated by the raising of serious concerns about the claimant's clinical practice.
10. The respondent was also understandably concerned that the relationship between the claimant and his colleagues and senior managers had effectively broken down. The claimant himself had previously indicated to the respondent that he wished to leave their employment, and the claimant also discussed the possibility of a clean break and moving on with his BMA and MDU representatives. Against this background and the significant expenditure needed to support the claimant's secondment the respondent wished to achieve a clean break at the end of the secondment period.
11. I have heard from Mrs Jogvinder Hundle who is a solicitor with Mills & Reeve who was advising the respondent at this time. On 24 February 2022 she put forward on the respondent's behalf a without prejudice proposal to the claimant's MDU representative. It explained the terms of the proposed secondment to Belfast, together with the additional costs involved. It was suggested that the secondment would commence on 22 March 2022 and a draft secondment agreement was prepared. In addition, the respondent confirmed that it wanted there to be a clean break and proposed that there should be a separate settlement agreement before the placement commenced whereby the claimant would

resign on 12 months' notice and his employment would terminate at the end of the secondment period, and he would specifically agree to contract out of any potential employment law claims.

12. At this time the BMA were assisting the claimant with the proposed secondment and settlement terms, with the MDU retaining responsibility for advising on the clinical aspects of the placement. On 2 March 2022 Mrs Smythers of the BMA confirmed that the BMA were advising the claimant and she requested a six-week delay with a proposal to start the secondment on 2 May 2020. She also suggested some minor amendments to the secondment agreement. As for the proposed settlement, she advised that the claimant had considered these terms to be "premature and unnecessary" and he had requested that the two agreements should "decoupled" that is to say should not be compulsorily linked.
13. On 3 March 2022 the respondent's solicitors responded to the effect that the settlement terms needed to be completed before the secondment started so that there was clarity and certainty for both parties, in particular as to what would happen when the secondment ended. The claimant's proposed amendments to the secondment agreement were accepted in principle. It is clear that the claimant then received extensive legal advice from his BMA representatives, which now included Mr Pebody, during March and April 2022. Mr Pebody of the BMA had written to the claimant on 24 March 2022 to the effect that his colleague Mrs Smythers had already provided "comprehensive advice". The claimant has not disclosed that written advice.
14. Meanwhile, Belfast had wished the secondment to start on 2 May 2022, but as of late April 2022 the claimant had not given a substantive reply. On 25 April 2022 Mr Pebody reiterated the claimant's preference to separate the secondment agreement from the settlement agreement. He raised further outstanding pay issues which he said would need to be resolved and requested draft settlement terms. At no stage during this process did the claimant or the BMA raise any suggestion that the claimant was under duress.
15. The claimant then requested a further deferral of the commencement of the secondment. On 4 May 2022 the respondent confirmed to the BMA that they had arranged to revise the start day of 16 May 2022 but that the clinical placement to Belfast was conditional on the claimant agreeing to enter into both a secondment agreement, and the proposed settlement terms. The respondent agreed to pay a further eight weeks' pay which resulted from the deferral of the start of the secondment agreement, together with a further payment to settle an outstanding historical pay issue. The draft settlement agreement including these terms was sent to the BMA on 4 May 2022.
16. On 9 May 2022 the claimant confirmed in writing to PPA that: "I'm very keen to go to Belfast to complete retraining to the satisfaction of the Belfast team so that I can be revalidated by my RO at Portsmouth, allowing me to leave this Trust and work elsewhere without the imposed restrictions." On 9 May 2022 Mr Pebody of the BMA also emailed the claimant with the proposed settlement agreement, together with confirmation that: "I will be sending you further written advice about this shortly." The claimant has not disclosed this subsequent written advice.
17. Shortly thereafter on 12 May 2022 the BMA confirmed to the respondent's solicitors that the claimant had agreed in principle to enter the settlement agreement together with the secondment agreement. He had requested further amendments to the settlement agreement to address various concerns which had been raised and the respondent agreed these and returned the documents for signature. On 13 May 2022 the BMA further advised that the claimant had a different set of questions which he needed take advice on and sought a further extension to 16 May 2022.
18. By this stage the process of possible settlement had been continuing for nearly three months and the BMA had only raised two queries on the claimant's behalf during this period. Both of these were addressed by the respondent. At no point during this period did the MDU or the BMA allege that the claimant was in some way under duress, nor that he had no real alternative other than to accept the terms offered.
19. From 16 May 2022 the claimant chose to email the respondent's solicitors himself in connection with the proposed settlement. In addition, the claimant lodged a grievance with the respondent which came as a surprise to his BMA Representative. The claimant raised

further concerns with the proposed settlement agreements and requested a third extension of the commencement of the secondment to 20 June 2022 in order to take further legal advice. One matter was that of the claimant's expenses allowance which the respondent agreed to increase from £1,500 to £1,800 per month. The claimant had also instructed an independent solicitor, namely Mr Andrew Firman, to advise as to the terms of the potential settlement agreement. Between 7 and 10 June 2022 the respondent's solicitors continued to liaise and negotiate with the claimant and Mr Firman his solicitor. By 10 June 2022 the parties had exchanged 10 versions of the proposed settlement agreement and a number of additional clauses had been inserted to deal with the various concerns raised by the claimant, including expenses, study leave, accrued annual leave, IT access, and the claimant's personal property. Mr Firman also requested on behalf of the claimant an extension of the contribution towards his firm's legal costs to the sum of £1,000 plus VAT. The respondent agreed this. The claimant gave evidence the effect that he had paid an additional £2,000 or so in legal costs above this. It is clear from this that Mr Firman must have given the claimant extensive advice on the circumstances surrounding the settlement and secondment agreements, and their effect, and the claimant's options. At no stage did the claimant or Mr Firman allege during this process that the claimant was under duress.

20. Eventually on 10 June 2022 a valid and binding settlement agreement was entered into by the parties. Under the settlement agreement the claimant agreed to resign from his employment on 12 months' notice and to waive his right to bring any claims against the respondent in relation to his employment, its termination and any related or connected matter. The agreement specifically covered all the claims which the claimant has now raised in these proceedings, namely unfair dismissal, detriment arising from protected public interest disclosures, race and/or religious discrimination, and unlawful deduction from wages. The final signed version of the settlement agreement also attached the signed secondment agreement.
21. The claimant then commenced his secondment as agreed in Belfast and has now successfully completed the action plan and retraining programme and has been fully remediated. This was as envisaged by all parties and the claimant is now able to continue work as a Consultant Clinical Oncologist without any restrictions.
22. Meanwhile the claimant's retraining programme was temporarily paused in September 2022 without the respondent's knowledge. During May and June 2023 Belfast requested that the respondent should extend the secondment period so that the claimant could complete his retraining programme. The respondent agreed in principle to this, but this was subject to the respondent's requirement that some of the provisions in the June 2022 settlement agreement would need to be varied under a deed of variation. The respondent proposed draft terms and agreed to make a further contribution towards the claimant's legal fees to allow him to take independent legal advice. The claimant took advice from his BMA Representative. There was then further negotiation with regard to annual leave and the claimant's expenses. Again, at no point did the claimant's BMA representative assert that the claimant was under duress in respect of this deed of variation. The deed of variation and attached schedules were then finalised, agreed and signed by the parties on 16 June 2023.
23. The original agreed settlement agreement dated 10 June 2022, and the deed of variation dated 16 June 2023, together with the accompanying schedules, are collectively referred to in this Judgment as the Settlement Agreements.
24. One of the requirements under the agreed terms of the Settlement Agreements was that the claimant would sign a Reaffirmation Letter within five days of the termination of his employment. A draft was attached to the agreed documents to the effect that he would sign and present that letter reaffirming his agreement that his various legal claims had been compromised. The claimant had agreed his commitment to the signing and presentation of that letter.
25. The claimant then failed to sign and present this letter as agreed, in breach of the contractual terms of the Settlement Agreements. Instead, the claimant did the exact opposite of the agreed and intended resolution by commencing the Early Conciliation process with ACAS on 26 August 2023 ("Day A") in order to be in a position to present

these proceedings. The respondent then emailed the claimant's BMA representative seeking confirmation as to whether he was instructed by the claimant to complete the Reaffirmation Letter. The claimant's secondment and his employment then came to an end as agreed on 31 August 2023 (by reason of the claimant's agreed resignation on 12 months' notice). On 4 September 2023 the respondent wrote to the claimant to the effect that it had heard from the BMA who remained in a position to act for the claimant to sign off the adviser certificate for the Reaffirmation Letter but that the claimant had not given instructions to do so. The claimant subsequently confirmed to the respondent that following completion of the secondment programme he had decided to make contact with ACAS. ACAS then issued the Early Conciliation certificate on 7 October 2023 ("Day B").

26. The claimant presented these proceedings on 7 November 2023. There was then a case management preliminary hearing before Employment Judge Self on 7 May 2024 at which this hearing was listed. Subsequent to the case management order made on that day the claimant has confirmed that his claims as presented are for unfair constructive dismissal; detriment arising from protected public interest disclosures; race and/or religious discrimination; and for unlawful deduction from wages. The claims go back to the period before 2018 and there are no claims which post-date the Settlement Agreements. The claims raised are all covered by the contracting out provisions of the terms of the Settlement Agreements, and in any event, they would appear to be substantially out of time.
27. Employment Judge Self also gave directions that the parties should explain their position on the claimant's challenge to the Settlement Agreements, namely that of duress.
28. In the claimant's own words, his arguments to establish economic duress are these: "The settlement agreement terms were fraudulent and deceitful misrepresentations. The Trust management made a conscious decision to suddenly put me in a position, where I had no choice but to sign. This unfair and unwarranted settlement agreement was presented to me as "fait accompli" with dozens of items I would never have considered. When I objected to those terms, they rejected in writing and refused to address my grievance, apologise, or remedy harm done to me, but accepting that it accepts cancellation of my 14 years of relentless and unmatched contribution to the quality improvement of cancer services, specifically patient safety, and governance. The acceptance of terms was asked of me while I was desperate to get back to work (after more than three years of full clinical exclusion) is a cancer specialist. It was wholly involuntary, I still feel the extreme unpleasant duress to take it or leave it, the terms I was offered."
29. The respondent denies that there was any duress and asserts that the claimant willingly entered the Settlement Agreements having received appropriate advice, and that they are effective to compromise all of the claimant's claims, and that accordingly this Tribunal does not have jurisdiction to hear them.
30. <u>The Disclosure Process:</u>
31. There had been a dispute between the parties as to disclosure of relevant documents before this hearing. It was confirmed on behalf of the claimant before the commencement of this hearing that the claimant was satisfied that we had an agreed bundle of relevant documents. The respondent had agreed the bundle, but it asserts that the claimant has failed in his obligations to disclose relevant documents for the following reasons.
32. The claimant's adviser Mr Pebody of the BMA wrote to the claimant on 24 March 2022 to the effect that his colleague Mrs Smythers had already provided "comprehensive advice". Similarly, on 9 May 2022 Mr Pebody emailed the claimant stating: "I will be sending you further written advice about this shortly". The claimant has chosen to include some of his exchanges with those who advised him about the settlement and secondment agreements, and has clearly waived his legal advice privilege which would normally apply to these documents. However, he has not disclosed the "comprehensive advice" or the "further written advice" referred to in those two emails which would appear to be of significant relevance to his assertion that he was only acting under duress when he signed the agreement in June 2022.
33. The Court of Appeal in <u>Dunlop Slazenger International</u> reaffirmed the earlier dicta of Mustill J to the effect: "Where a person is deploying in court material which would otherwise be

privileged, the opposite party and the court must have the opportunity of satisfying themselves that what the party has chosen to release from privilege represents the whole of the material relevant to the issue in question. To allow an individual item to be plucked out of context would be to risk injustice through its real weight or meaning being misunderstood."

34. The respondent asserts that this Tribunal should infer from the claimant's failure to give full and frank disclosure that he received appropriate advice as to the scope and intent of the agreements and the alternatives which were open to him in the event that he chose not to sign the agreements.
35. I agree with that assertion, particularly as there is no challenge from the claimant as to the validity of the settlement agreements save for the allegation of duress. In other words, he accepts that the statutory conditions of settlement agreements were complied with, (which of course necessitates receiving independent advice from a qualified and insured legal adviser as to the effect of compromising statutory claims before agreeing to do so).
36. For these reasons I have no hesitation in finding that the claimant received appropriate advice as to the scope and intent of the agreements and the alternatives which were open to him in the event that he chose not to sign the agreements.
37. Having established the above facts, I now apply the law.
38. The Law:
39. This hearing is to determine the validity or otherwise of a settlement agreement. Section 203 of the Employment Rights Act 1996 ("the Act") imposes restrictions on contracting out of claims. S 203(1) provides: "any provision in an agreement (whether a contract of employment or not) is void insofar as it purports – (a) to exclude or limit the operation of any provision of this Act, or (b) to preclude a person from bringing any proceedings under this Act before an employment tribunal. S203(2) provides that this does not apply if the conditions regulating settlement agreements are satisfied. To this end section 203(3) provides: "For the purposes of subsection (2)(f) the conditions regulating settlement agreements under this Act are that - (a) the agreement must be in writing; (b) the agreement must relate to the particular proceedings; (c) the employee or worker must have received advice from a relevant independent adviser as the terms of the effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal; (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a professional body, covering the risk of a claim by the employee or worker in respect of loss arising in consequence of the advice; (e) the agreement must identify the adviser; and (f) the agreement must state that the conditions regulating settlement agreements under this Act are satisfied."
40. There are similar provisions under the Equality Act 2010 ("the EqA"). Under section 147(2) EqA a qualifying settlement agreement is a contract in relation to which each of the conditions in subsection (3) is met. Subsection 147(3) EqA provides: "those conditions are that - (a) the agreement must be in writing; (b) the contract relates to the particular complaint; (c) the complainant has, before entering into the contract, received advice from an independent adviser about its terms and effect (including, in particular, its effect on the complainant's ability to pursue the complaint before an employment tribunal); (d) on the date of giving the advice, there is in force a contract of insurance, or an indemnity provided for members of a profession or professional body, covering the risk of a claim by the complainant in respect of loss arising from the advice; (e) the contract identifies the adviser; and (f) the contract states that the conditions in paragraphs (c) and (d) are met."
41. I have been referred to and I have considered the cases of Dunlop Slazenger International Ltd v Joe Bloggs Sports Limited [2003] EWCA Civ 901; Ian Clifford v IBM United Kingdom Ltd [2024] EAT 90; Hilton UK Hotels Ltd v McNaughton [2005] UKEAT 0059/04/2009; Cole v Elders' Voice [2021] ICR 601 UKEAT 25119; Hennessy v Craigmyle and Co and Anor [1986] 461; Pao On v Lau Yin Long [1980] AC 614; Sphikas & Son v Porter [1997] UKEAT 927/96/0303; D&C Builders Ltd v Rees [1966] 2 QB 617; Pakistan International Airline Corp v Times Travel (UK) Ltd [2021] UKSC 40; Cox v Adecco Group UK & Ireland Ltd and Others [2021] ICR 1307; and Huyton SA v Peter Cremer Gmbh & Co [1999] 1 Lloyd's Rep 620.

42. The above authorities include cases which confirm the well-established principles relating to settlement agreements. These include the cases of Clifford, Hilton UK Hotels, and Cole. However, they are not directly relevant to this case because the claimant does not challenge the conclusion that (but for his allegations of duress) the Settlement Agreements meet the statutory requirements and are effective to compromise his statutory claims. The issue before this Tribunal is solely whether the Settlement Agreements are void because of the alleged duress.
43. There are very binding few authorities which relate directly to the matter of duress in the context of employment law settlements. One such is Hennessy in which the Tribunal decision that an agreement was not rendered void by economic duress was upheld by both the EAT and the Court of Appeal. This confirmed that economic duress can only provide a basis for avoiding a contract if there was no real alternative. The relevant dicta included: "it must be shown that the payment made, or the contract entered into, was an involuntary act. Whether economic duress of this order did exist is entirely a question for the tribunal of fact." On the facts of Hennessy it was held that the claimant did have an alternative option, namely: "to complain to an Industrial Tribunal that his dismissal was unfair and to draw Social Security benefit meanwhile. Highly unattractive though that option might have been, it was a real alternative". In addition, it was held that where an agreement was reached after "independent advice and assistance from a skilled conciliation officer, it must make the possibility of economic duress more remote". The Court of Appeal observed that: "in real life it must be very rare to encounter economic duress of an order which renders actions involuntary. It follows that if Mr Hennessy's situation was not uncommon, it is highly unlikely that he was subject to the necessary degree of economic duress."
44. In Sphikas the EAT overturned a Tribunal's decision to the effect that there had been economic duress where the claimant's employer had withheld payment prior to the conclusion of settlement negotiations. The EAT held that not all pressure would amount to duress and that in a dispute between employer and employee the availability of an employment tribunal claim acted as "an important antidote to the inequality of bargaining power inherent in an employment relationship." The EAT held that tribunal proceedings had always provided the claimant with a "practical and effective" alternative to settling his claim, and for that reason there was no "absence of practical choice". This meant that there was no entitlement to rely on a plea of economic duress.
45. In the context of a commercial law case, the Supreme Court has considered the essential elements of economic duress in Pakistan International Airline Corp v Times Travel (UK) Ltd. Lord Burrows held (in paragraphs 78 to 80) that there are two essential elements before duress can be made out: "The first is a threat "or pressure exerted" by the defendant that is illegitimate. The second is that the illegitimate threat (or pressure) caused the claimant to enter into the contract." In addition, in the context of economic duress, there must be a third element, namely: "The claimant must have had no reasonable alternative but to give in to the illegitimate pressure."
46. In paragraphs 1 and 2 Lord Hodge agreed with these comments, but he added that the courts have also developed the common law doctrine of duress to include lawful act economic duress by drawing on the rules of equity in relation to undue influence. Thus they have treated as "illegitimate" conduct which was identified by equity as giving rise to an agreement which it was unconscionable for the party who had conducted himself or herself in that way to seek to enforce. In other words, "morally reprehensible behaviour which in equity was judged to render the enforcement of a contract unconscionable in the context of undue influence has been treated by English common law as illegitimate pressure in the context of duress."
47. It therefore also falls to consider whether the conduct of this respondent was such that it would be unconscionable for it to be able to enforce the settlement agreements. Put another way the question is whether the respondent's behaviour is morally reprehensible such that in equity it will be judged to render the enforcement of the contract unconscionable in the context of undue influence.
48. Judgment:

49. As noted above, there is no challenge to the effect or enforceability of the Settlement Agreements other than that of economic duress. In short this therefore means that absent any such duress the claimant accepts that the Settlement Agreements are effective to compromise the claimant's claims in accordance with the relevant statutory framework such that this Tribunal no longer has jurisdiction to hear those claims. In particular the claimant does not contend: (i) that there was any failure to satisfy the necessary conditions relating to Settlement Agreements and compromise contracts in section 203 of the Act and/or section 147 EqA; (ii) that there was any failure on the part of his advisers to provide appropriate independent legal advice; (iii) that any advice given to the claimant was in any way deficient or wrong; (iv) that any of the claims which the claimant now seeks to pursue were not known to him; nor that (v) any of the acts or omissions which form the basis of this claim post-date the Settlement Agreements.
50. As confirmed in Pakistan International Airline Corp v Times Travel (UK) Ltd there are three key elements which the claimant must establish to show that there has been economic duress. These are (i) a threat or pressure exerted by the respondent which was illegitimate; and (ii) that the illegitimate threat or pressure caused the claimant to enter the contract; and (iii) that the claimant must have had no reasonable alternative but to give in to the illegitimate threat or pressure.
51. The claimant's own words to advance his arguments to establish economic duress are set out at the end of the findings of fact above, and for ease of reference are repeated here: "The settlement agreement terms were fraudulent and deceitful misrepresentations. The Trust management made a conscious decision to suddenly put me in a position, where I had no choice but to sign. This unfair and unwarranted settlement agreement was presented to me as "fait accompli" with dozens of items I would never have considered. When I objected to those terms, they rejected in writing and refused to address my grievance, apologise, or remedy harm done to me, but accepting that it accepts cancellation of my 14 years of relentless and unmatched contribution to the quality improvement of cancer services, specifically patient safety, and governance. The acceptance of terms was asked of me while I was desperate to get back to work (after more than three years of full clinical exclusion) is a cancer specialist. It was wholly involuntary, I still feel the extreme unpleasant duress to take it or leave it, the terms I was offered."
52. In my judgment this is simply at odds with the reality of the situation. Paragraphs 5 to 8 inclusive of the respondent's Grounds of Resistance provide a neat and (in my view) neutral summary, which runs thus: "(5) The claimant was employed by the respondent as a Consultant Clinical Oncologist from 17 January 2005 until his employment terminated on 31 August 2023. (6) In late 2018, serious concerns were raised regarding the claimant's capability. (7) The respondent commissioned two external reviews of patient cases/clinical harm in 2019 and in 2020. The respondent also undertook an internal investigation into these concerns. During this time the claimant was supported by his unions (the MDU and the BMA). He was also subject to restrictions on his clinical practice on the grounds of patient safety. (8) In 2019, an action plan was devised to address the clinical performance concerns and it was agreed that the claimant would undertake a remediation/retraining programme. The respondent searched for a suitable placement/host for the claimant with another NHS Trust in order that he could undertake the remediation training. Efforts to secure a placement were unfortunately hampered by the coronavirus pandemic. At considerable cost to the respondent, it was agreed that the claimant would commence a placement/secondment with another NHS Trust on 20 June 2022 and that he would leave the respondent's employment at the end of the secondment period."
53. In other words, there was a mutually beneficial agreed settlement against the following background: (i) there were significant concerns about the claimant's performance which had been raised by the respondent and the claimant's professional colleagues; (ii) the claimant agreed with the conclusion of an independent body, the PPA, that there was a need for him to remediate and revalidate; (iii) there was a serious breakdown of working relationships between the claimant and his colleagues; (iv) the claimant himself had expressed his desire to leave the employment of the respondent; (v) a compromise was

reached and agreed by all concerned whereby the claimant would retrain at a different hospital; (vi) and the claimant agreed that he would resign his employment with the respondent at the end of that retraining, and pursue his career elsewhere, and would prior vied finality by agreeing not to pursue any employment law claims against the respondent.

54. The clearly beneficial effect of this to the claimant was that he would remain in employment on his full consultant's salary and that he would be independently retrained and revalidated, and then would be able to continue working as a consultant elsewhere. In exchange for the significant financial outlay involved the respondent needed certainty that this would be the end of the matter, and that there would be no future tribunal claims against it. The Settlement Agreements were prepared to achieve exactly that end, and they were reached against this background during which the claimant had extensive support and advice from each of the BMA, the MDU, and an independent solicitor. He also had other options open to him. These included exercising a grievance through the respondent's formal process; challenging the alleged performance concerns; remaining in employment and presenting Employment Tribunal claims; and subsequently resigning his employment in order to present Employment Tribunal claims which included those pertaining to potential (constructive) dismissal. He could have exercised any of these options at any stage during this dispute up to and including his agreement to the Settlement Agreements. It is clear that he received professional advice on the merits of presenting proceedings if he wished to do so, but instead he chose, having received that advice, to enter the Settlement Agreements under which he compromised those rights. He took no steps to challenge that state of affairs until the completion of his secondment in Belfast, which the respondent had continued to pay for, at which time he refused to sign the Reaffirmation Letter which he had earlier accepted and agreed.
55. That is the background in this case against which the test of alleged economic duress falls to be applied.
56. The first element of the test is whether there was a threat or pressure exerted by the respondent which was illegitimate. The main thrust of the claimant's complaint appears to be the fact that the Settlement Agreement and the Secondment Agreement had to be linked, in other words the respondent did not agree the claimant's preference that they should be required to pay him throughout this Secondment Agreement period without any requirement for him to resign without any live legal claims at the end of that process. He effectively asserts that he wanted the Secondment Agreement, but was forced to sign the Settlement Agreement which he never agreed in order to ensure the secondment. In my judgment this cannot be said in any way to be an illegitimate stance by the respondent nor in any way can it said to be unconscionable, inequitable or improper conduct by the respondent. None of the claimant's advisers from the BMA, the MDU, nor his independent solicitor had ever suggested to the respondent at any stage that the suggestion was illegitimate or improper. That is hardly surprising given that it was an effective implementation of an agreed resolution to a difficult set of background circumstances. The claimant has failed to establish that there was any illegitimate threat or pressure exerted by the respondent, and that is necessarily fatal to his claim.
57. The second element of the test is whether any illegitimate threat or pressure caused the claimant to enter the contract, and given that there was no such threat or pressure, the second element cannot be made out.
58. In any event, in my judgment, the third element is also not met. It cannot be said that the claimant had no reasonable alternative but to give in to the terms of the Settlement Agreements. There were a number of alternative options before the claimant, which are set out above. He must have been well aware of one possible alternative open to him. namely to resign from the respondent's employment and to bring his claims before this Tribunal, because necessarily he must have received advice from three different sources which addressed the nature of the claims that he was agreeing not to pursue. The respondent accepts that this may not have been a palatable alternative, in circumstances where he had agreed with PPA to undergo remedial training in order to continue with his career as a consultant. His resignation would have precluded that immediate opportunity but if (as he now asserts) he always wished to challenge the criticisms of his performance

and subsequent investigations as being unfair and/or discriminatory in the context of an Employment Tribunal claim, then that was an option which was clearly open to him. Having received specialist advice on exactly that matter, he chose not to do so.

59. In my judgment the claimant has failed to make out any of the three constituent elements of economic duress. I conclude that the Settlement Agreements were all valid, and their effect has been to compromise the claimant's claims under the statutory scheme. This Tribunal does not have jurisdiction to hear any of the claimant's claims as presented, and accordingly these claims are all now hereby dismissed.

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Employment Judge N J Roper
Dated 21 August 2024

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Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/