



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr N Hartell  
**Respondent:** University of Leicester  
**Heard at:** Leicester (by CVP) **On:** 9 September 2024  
**Before:** Employment Judge M Butler (sitting alone)

## Appearances

**Claimant:** In person  
**Respondent:** Mr T Coghlin KC

## JUDGMENT AT A PRELIMINARY HEARING

The judgment of the Employment Judge is that the Claimant's application to admit further documents in the form of transcripts of conversations with some of his former colleagues is dismissed.

## REASONS

### Background

1. The Claimant presented his claim form to the Tribunal on 19 August 2021 and this is now a long running case. A previously listed final hearing was postponed in 2023 and the final hearing is now listed for 15 days beginning in February 2025. It is, therefore, important that the case is heard at that hearing.
2. There have been many preliminary hearings in this matter dealing with case management and various applications made by the parties. Today's hearing deals with the Claimant's application to admit into evidence a further substantial number of pages comprising transcripts of conversations he had with his colleagues and which he covertly recorded. The Respondent has already agreed

to put other transcripts of conversations into the bundle but draws the line at those transcripts before me today.

3. I am told the hearing bundle, except for these transcripts, is already over 5,000 pages long and is largely agreed except for the transcripts in issue today.

4. The Claimant does not wish to refer to every page of every transcript but argues the whole transcripts must be included to understand those parts of them he does wish to rely on; they are thus necessary to understand the context of the comments he relies upon.

5. The Respondent argues in relation to each part of the transcripts the Claimant seeks to rely on essentially that they are not relevant to the issues to be determined by the Tribunal or, at most, have only marginal probative value to those issues. Accordingly, they argue that it is not proportionate to include these transcripts in the hearing bundle.

6. Helpfully, the parties have agreed a list of issues which will be of great help to the Tribunal panel in the hearing.

7. The Claimant, it seems, was in the habit of covertly recording private conversations he had with colleagues. The transcripts date back to 2019. He says he began recording conversations after being subjected to an unlawful redundancy procedure in 2018. The background to the case describes how the department in which he worked changed with the arrival of Professor Baker who was intimidating and promoted an atmosphere of fear complaining that there was insufficient “churn” of staff members. He was made at risk of redundancy because he made protected disclosures about animal welfare and plagiarism.

8. The gist of the Claimant’s case for admitting the transcripts is that they illustrate a conspiracy by others to ensure he would be dismissed by reason of redundancy and that his performance was good and did not merit being made redundant.

9. I did not hear any evidence from the parties, both of whom made submissions which I summarise below.

10. I refer to the relevant law in my conclusions.

### **Submissions**

11. The Claimant spoke eloquently and at length. In relation to the relevance and probative value of the transcripts, he submitted it was disproportionate to ask for a line by line explanation of relevance. He did not consider the Tribunal will at the final hearing have to read all of them and accepted the conversations, set in a professional environment, did tend to “meander”. He further explained the relevance of the conversation with Ms Goodall in that they involved comments about him raising a grievance against senior management. He also submitted that the recorded conversations about who would be his line manager were relevant to the issues in the case in that they touch upon a conspiracy aimed at ensuring his dismissal by way of redundancy.

12. The Claimant further made the point that the accuracy of the transcripts had been agreed by the Respondent. They should be admitted in order to avoid any arguments that they have been taken out of context. Finally, he submitted that the transcripts easily met the threshold for relevance and should be admitted.

13. Mr Coghlin disputed the relevance of the recorded conversations with Ms Goodall and Professor Monks neither of whom were decision makers in the redundancy exercise. The Claimant's reliance on the 2018 redundancy exercise was irrelevant to the later exercise. Further, the covert recordings of conversations constitutes a breach of privacy of the individuals recorded without their knowledge or consent. Only incontrovertible evidence contained in covert recordings should be admitted into evidence in a hearing.

14. Mr Coghlin also submitted that there was a lack of probative value in the transcripts, expressed concern over the privacy of the individuals who were covertly recorded, said there was no public interest in admitting the transcripts and it was not proportionate to admit them.

### Conclusions

15. This hearing took up much judicial time. I regret the delay in sending out this judgment but it was necessary for me to find several hours in which to read the transcripts because only then could I determine the application.

16. There are a number of important principles at play in this application. It is for the Claimant to establish that the transcripts are relevant and have some probative value. Mr Coghlin rightly points to 5 headings which must be considered. They are relevance, probative value, privacy, the public interest and proportionality.

17. I say at the outset of my conclusions that I have great difficulty in reconciling his submissions with the above headings. He is of the view that all of the transcripts should be admitted to contextualize the parts he wishes to rely on. The problem with that is twofold. Firstly, as far as I can see, he has failed to specifically and accurately set out precisely which parts of the transcripts he wishes to rely on. Secondly, he makes reference to the transcripts showing evidence of bullying but I can find no such reference in the transcripts. Unfortunately, this puts the application on the back foot from the beginning. I am also concerned by the reference given today about the private life of Professor Baker and allegations about his private life which have no place in this case.

18. I now address each of the 5 headings in turn.

19. Of course, relevance is not a black and white concept. I must assess how relevant the transcripts are and in what way (**Vaughan v London Borough of Lewisham (UKEAT/0534/12/SM)**). Unfortunately, since the Claimant has not identified the particular parts of the transcripts which he says are relevant (in order that the remaining parts can be used as context), it is not possible for me to find they are relevant. There are several examples of this including the reference to bullying in the conversation with Ms Goodall which I could not find and the reference to him being a good performing which I also could not find. The same applies to the conversation with Professor Monks in which the Claimant says the transcript shows that senior management were not adhering to proper

governance but I could not find this mentioned in the transcript and it is not relevant to the Claimant's pleaded case.

20. In relation to probative value, in **Amwell View School v Dogherty [2007 ICR 135]**, it was held that when considering the probative value of covertly recorded evidence, I must decide whether the transcripts show evidence which is "the only – and incontrovertible evidence of the unlawful conduct in issue. I also accept Mr Coghlin's submission that in a private setting, comments may be made which would not be made in a public setting and may have to be treated with some circumspection. I find no probative value in admitting these transcripts.

21. The Claimant makes little comment about the right to privacy of those he covertly recorded and seeks to justify the recording by being fearful for his future and in order to protect himself. It is, of course, a matter for his own conscience as to how he feels of covertly recording those he works with. There is no rule of law which says covert recordings cannot be admitted into evidence in legal proceedings but those who do not give permission are entitled to their right to privacy, especially, as with the comments about Professor Baker's private life, they would not have anticipated they would ever see the light of day in a public setting.

22. Moving on to the public interest, I do not find it is served by admitting these transcripts. I do not consider I have to balance any competing interests in this application because there is little evidence that the public interest can be served by admitting into evidence which, as far as I can see, do not actually touch upon the issues in the case and, if anything, merely give a passing glance to them (although I cannot see that to be the case). A deciding factor in reaching this conclusion, although I do not need to go this far, is the fact that the conversations were covertly recorded and that serves to question the comments made (Amwell School).

23. Finally, I consider proportionality. There are two principal reasons why I do not consider it proportionate to admit these transcripts. Firstly, I cannot see any relevance in their contents. This is especially the case given the lack of highlighting of the passages which are said to be relevant. It is not proportionate to put such documents before the Tribunal and say they are there to give context to unidentified statements which support the Claimant's case particularly when they do not seem to evidence any part of that case. Secondly, for that very reason, there is no probative value in admitting them.

24. For the above reasons the application is dismissed.

---

Employment Judge M Butler

---

Date 30 September 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

.....30 September 2024.....

.....

FOR THE TRIBUNAL OFFICE