



# EMPLOYMENT TRIBUNALS

**Claimant:** D

**First Respondent:** E

**Second Respondent:** F

## PUBLIC PRELIMINARY HEARING

**Heard at:** Newcastle (by CVP)

**On:** 21 May 2024

**Before:** Employment Judge Loy

### Appearances

For the claimant: Mr Michael Reay, claimant's father

For the first and second respondent: Elizabeth Evans-Jarvis, solicitor

## RESERVED JUDGMENT ON A STRIKE OUT APPLICATION

The respondents' application to strike out the claimant's claim is refused.

### REASONS

1. The basis of this application is that by virtue of a Court of Protection Order dated 20 October 2008 designating Hugh Jones in an individual capacity as the Deputy for the Property and Affairs of a person without capacity (for these purpose Person 'A'), that it follows as a matter of law that Hugh Jones and only Hugh Jones can correctly be identified as a respondent to proceedings brought under the Equality Act 2010.
2. This is an ambitious application.

3. It seemed to me that the purpose and consequence of the Court of Protection Order is to empower the Deputy to take decisions on matters relating to the property and affairs of Person A as if the Deputy was person A taking decisions for himself that he unfortunately cannot take for himself because of a lack of capacity.
4. The rationale for the designation of a Deputy is therefore enabling not limiting, at least regarding the property and affairs of Person A.
5. It seemed to me that 'property and affairs' extends to enabling the Deputy (and the Deputy's Appointee) to enter into contractual relationships for the purposes of (among other things) providing support for and care to Person A. It would be somewhat self-defeating if it did not.
6. It seemed also clear to me that if the Deputy is able to appoint the second respondent as its Appointee that this also involves the enabling of the statutorily derived decision-making powers of the Deputy to the Appointee. Otherwise, what would be the point of an Appointee? Those statutory powers plainly include the power to enter into private contracts with third parties whether of employment or otherwise.
7. It is of course a separate question whether on the facts of this case that the Deputy or the Appointee entered into a contract of employment with the claimant or whether a contract of employment should be implied between the claimant and the first respondent.
8. The issue in this application is whether Hugh Jones as the designated Court of Protection Deputy can as a matter of law be the only legitimate respondent to any legal proceedings arising out of breach of contract or alleging tortious liability under the Equality Act 2010.
9. If the law has been re-written to that extent, I would have expected that it would be have been made very clear in the statutory provisions underpinning the Court of Protection's authority. My attention was not drawn to anything in the statutory framework that would support such a contention.
10. To take a simple example, if the Appointee had entered into a contract with a third party company to supply bed linen to Person A and the Appointee had not paid for the goods supplied, is it being suggested that the only possible respondent to a debt claim under that contract is the Deputy and not the Appointee?
11. The claimant in this case was engaged for the purpose of providing care to Person A. The contracting parties on the face of the written contract are the claimant and the Deputy's Appointee i.e. the second respondent to these proceedings. In other words, the contract on its face is between the claimant and the second respondent (and notably not the Deputy).
12. I am unclear as to why it is being suggested that the Deputy's Appointee is able to enter into a contract with the claimant for the provision of personal care to Person A (in discharge of the local authority's statutory responsibilities) while at the same time the Deputy's Appointee is said not to be capable of being liable for any breach of the contract that the Appointee has entered into.
13. This application if successful would lead to the conclusion that a third party company contracting with the Appointee cannot as a matter of law, and

notwithstanding the validity of the contract entered into, be able to pursue the Appointee as a legitimate respondent if the Appointee is in breach of that contract.

14. Similarly, it was unclear to me why the Deputy or Appointee could not in principle enter into an express or implied contract with the first respondent for the purposes of providing personal care to Person A the effect of which might be that the first respondent is the claimant's employer, an employee/worker of a separate employer or agent within the meaning of sections 109 to 112 Equality Act 2010. It is a separate question of fact and law whether in this particular case any such contract, status or agency relationship can be established. I express no view at all on those matters.
15. For the reasons set out above, the respondents' application to strike out the claim against the first and the second respondent is refused. It will be a matter for the claimant whether or not to apply for Hugh Jones to be added as a respondent to these proceedings whether out of an abundance of caution or for any other reason.

Employment Judge Loy

21 October 2024